R25. Administrative Services, Finance.
R25-7. Travel-Related Reimbursements for State Employees.
R25-7-1. Purpose.

The purpose of this rule is to establish procedures to be followed by departments to pay travel-related reimbursements to state employees.

R25-7-2. Authority and Exemptions.

This rule is established pursuant to:

(1) Section 63A-3-107, which authorizes the Division of Finance to make rules governing in-state and out-of-state travel expenses; and

(2) Section 63A-3-106, which authorizes the Division of Finance to make rules governing meeting per diem and travel expenses for board members attending official meetings.

R25-7-3. Definitions.

(1) "Agency" means any department, division, commission, council, board, bureau, committee, office, or other administrative subunit of state government.

(2) "Board" means a board, commission, council, committee, task force, or similar body established to perform a governmental function.

(3) "Department" means all executive departments of state government.

(4) "Finance" means the Division of Finance.

(5) "Home-Base" means the location the employee leaves from and/or returns to.

(6) "Per diem" means an allowance paid daily.

(7) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."

(8) "Rate" means an amount of money.

(9) "Reimbursement" means money paid to compensate an employee for money spent.

(10) "State employee" means any person who is paid on the state payroll system.

R25-7-4. Eligible Expenses.

(1) Reimbursements are intended to cover all normal areas of expense.

(2) Requests for reimbursement must be accompanied by original receipts for all expenses except those for which flat allowance amounts are established.

R25-7-5. Approvals.

(1) For insurance purposes, all state business travel, whether reimbursed by the state or not, must have prior approval by an appropriate authority. This also includes non-state employees where the state is paying for the travel expenses.

(2) Both in-state and out-of-state travel must be approved by the Executive Director or designee. The approval of in-state travel reimbursement forms may be considered as documentation of prior approval for in-state travel. Prior approval for out-of-state travel should be documented on form FI5 - "Request for Out-of-State Travel Authorization".

(3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of the Request for Out-of-State Travel Authorization, form FI 5, or on an attachment, and must be approved by the Department Director or the designee.

(4) The Department Director, the Executive Director, or the designee must approve all travel to out-of-state functions where more than two employees from the same department are attending the same function at the same time.

R25-7-6. Reimbursement for Meals.

(1) State employees who travel on state business may be eligible for a meal reimbursement.

(2) The reimbursement will include tax, tips, and other expenses associated with the meal.

(3) Allowances for in-state travel differ from those for out-of-state travel.

(a) The daily travel meal allowance for in-state travel is $43.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	$10.00
Lunch	$14.00
Dinner	$19.00
Total	$43.00

(b) The daily travel meal allowance for out-of-state travel is $46.00 and is computed according to the rates listed in the following table.

TABLE 2

Out-of-State Travel Meal Allowances

Meals	Rate
Breakfast	$10.00
Lunch	$14.00
Dinner	$22.00
Total	$46.00

(4) When traveling to a Tier I premium location (Anchorage, Chicago, Hawaii, New York City, San Francisco, and Seattle), the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed at the actual meal cost, with original receipts, up to $69 per day.

When traveling to a Tier II premium location (Atlanta, Baltimore, Boston, Dallas, Los Angeles, San Diego, and Washington, DC), the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed at the actual meal cost, with original receipts, up to $59 per day.

(a) The traveler will qualify for premium rates on the day the travel begins and/or the day the travel ends only if the trip is of sufficient duration to qualify for all meals on that day.

(b) Complimentary meals of a hotel, motel and/or association and meals included in registration costs are deducted from the premium location allowance as follows:

Tier I Location

(i) If breakfast is provided deduct $16, leaving a premium allowance for lunch and dinner of actual up to $53.

(ii) If lunch is provided deduct $20, leaving a premium allowance for breakfast and dinner of actual up to $49.

(iii) If dinner is provided deduct $33, leaving a premium allowance for breakfast and lunch of actual up to $36.

Tier II Location

(i) If breakfast is provided deduct $13, leaving a premium allowance for lunch and dinner of actual up to $46.

(ii) If lunch is provided deduct $17, leaving a premium allowance for breakfast and dinner of actual up to $42.

(iii) If dinner is provided deduct $29, leaving a premium allowance for breakfast and lunch of actual up to $30.

(c) The traveler must use the same method of reimbursement for an entire day.

(d) Actual meal cost includes tips.

(e) Alcoholic beverages are not reimbursable.

(5) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed the actual meal cost, with original receipts, not to exceed the federal reimbursement rate

for the location as of the date of travel.

(a) The traveler may use both reimbursement methods during a trip; however, they must use the same method of reimbursement for an entire day.

(b) Actual meal cost includes tips.

(c) Alcoholic beverages are not reimbursable.

(6) The meal reimbursement calculation is comprised of three parts:

(a) The day the travel begins. The traveler's entitlement is determined by the time of day the traveler leaves their home base (the location the employee leaves from and/or returns to), as illustrated in the following table.

TABLE 3

The Day Travel Begins

1st Quarter a.m. 12:00-5:59	2nd Quarter a.m. 6:00-11:59	3rd Quarter p.m. 12:00-5:59	4th Quarter p.m. 6:00-11:59
*B, L, D	*L, D	*D	*no meals
In-State			
$43.00	$33.00	$19.00	$0
Out-of-State			
$46.00	$36.00	$22.00	$0

*B = Breakfast, L = Lunch, D = Dinner

(b) The days at the location.

(i) Complimentary meals of a hotel, motel, and/or association and meals included in the registration cost are deducted from the total daily meal allowance. However, continental breakfasts will not reduce the meal allowance. Please Note: For breakfast, if a hot food item is offered, it is considered a complimentary meal, no matter how it is categorized by the hotel/conference facility. The meal is considered a "continental breakfast" if no hot food items are offered.

(ii) Meals provided on airlines will not reduce the meal allowance.

(c) The day the travel ends. The meal reimbursement the traveler is entitled to is determined by the time of day the traveler returns to their home base, as illustrated in the following table.

TABLE 4

The Day Travel Ends

1st Quarter a.m. 12:00-6:00	2nd Quarter a.m. 6:01-12:00	3rd Quarter p.m. 12:01-6:00	4th Quarter p.m. 6:01-11:59
*no meals	*B	*B, L	*B, L, D
In-State			
$0	$10.00	$24.00	$43.00
Out-of-State			
$0	$10.00	$24.00	$46.00

*B = Breakfast, L = Lunch, D = Dinner

(7) An employee may be authorized by the Department Director or designee to receive a taxable meal allowance when the employee's farthest destination is at least 100 miles one way from their home base and the employee does not stay overnight.

(a) Breakfast is paid when the employee leaves their home base before 6:00 a.m.

(b) Lunch is paid when the trip meets one of the following requirements:

(i) The employee is on an officially approved trip that warrants entitlement to breakfast and dinner.

(ii) The employee leaves their home base before 10 a.m. and returns after 2 p.m.

(iii) The Department Director provides prior written approval based on circumstances.

(c) Dinner is paid when the employee leaves their home base and returns after 6:00 p.m.

(d) The allowance is not considered an absolute right of the employee and is authorized at the discretion of the Department Director or designee.

R25-7-7. Meals for Statutory Non-Salaried State Boards.

(1) When a board meets and conducts business activities during mealtime, the cost of meals may be charged as public expense.

(2) Where salaried employees of the State of Utah or other advisors or consultants must, of necessity, attend such a meeting in order to permit the board to carry on its business, the meals of such employees, advisors, or consultants may also be paid. In determining whether or not the presence of such employees, advisors, or consultants is necessary, the boards are requested to restrict the attendance of such employees, advisors, or consultants to those absolutely necessary at such mealtime meetings.

R25-7-8. Reimbursement for Lodging.

State employees who travel on state business may be eligible for a lodging reimbursement.

(1) For stays at a conference hotel, the state will reimburse the actual cost plus tax and any mandatory fees charged by the hotel for both in-state and out-of-state travel. The traveler must include the conference registration brochure with the Travel Reimbursement Request, form FI 51A, FI 51B, or ESS Travel.

(2) For in-state lodging at a non-conference hotel, the state will reimburse the actual cost up to $70 per night for single occupancy plus tax and any mandatory fees charged by the hotel except as noted in the table below:

TABLE 5

Cities with Differing Rates

Beaver	$75.00 plus tax and mandatory fees
Blanding	$75.00 plus tax and mandatory fees
Bluff	$95.00 plus tax and mandatory fees
Brigham City	$80.00 plus tax and mandatory fees
Bryce Canyon City	$80.00 plus tax and mandatory fees
Cedar City	$80.00 plus tax and mandatory fees
Duchesne	$85.00 plus tax and mandatory fees
Ephraim	$75.00 plus tax and mandatory fees
Farmington	$85.00 plus tax and mandatory fees
Fillmore	$75.00 plus tax and mandatory fees
Garden City	$80.00 plus tax and mandatory fees
Green River	$85.00 plus tax and mandatory fees
Hanksville	$75.00 plus tax and mandatory fees
Heber	$85.00 plus tax and mandatory fees
Kanab	$90.00 plus tax and mandatory fees
Layton	$90.00 plus tax and mandatory fees

Logan	$85.00 plus tax and mandatory fees
Mexican Hat	$90.00 plus tax and mandatory fees
Moab	$110.00 plus tax and mandatory fees
Monticello	$80.00 plus tax and mandatory fees
Ogden	$90.00 plus tax and mandatory fees
Panguitch	$75.00 plus tax and mandatory fees
Park City/Midway	$110 plus tax and mandatory fees
Price	$75.00 plus tax and mandatory fees
Provo/Orem/Lehi/American Fork/ Springville	$85.00 plus tax and mandatory fees
Roosevelt/Ballard	$90.00 plus tax and mandatory fees
Salt Lake City Metropolitan Area (Draper to Centerville), Tooele	$100.00 plus tax and mandatory fees
St.George/Washington/Springdale/ Hurricane	$85.00 plus tax and mandatory fees
Torrey	$85.00 plus tax and mandatory fees
Tremonton	$90.00 plus tax and mandatory fees
Vernal	$95.00 plus tax and mandatory fees
All Other Utah Cities	$70.00 plus tax and mandatory fees

(3) State employees traveling less than 50 miles from their home base are not entitled to lodging reimbursement. Miles are calculated from either the departure home-base or from the destination to the traveler's home-base. The traveler may leave from one home-base and return to a different home-base. For example, if the traveler leaves from their residence, then the home-base for departure calculations is their residence. If the traveler returns to where they normally work (ie. Cannon Health Building), then the home-base for arrival calculations is the Cannon Health Building.

(a) In some cases, agencies must use judgment to determine a traveler's home-base. The following are some things to consider when determining a traveler's home-base.

(i) Is the destination less than 50 miles from the traveler's home or normal work location? If the destination is less than 50 miles from either the traveler's home or from their normal work location, then generally the employee should not be reimbursed for lodging.

(ii) Is there a valid business reason for the traveler to go to the office (or to some other location) before driving to the destination?

(iii) Is the traveler required to work at the destination the next day?

(iv) Is the traveler going directly home after the trip, or is there a valid business reason for the traveler to first go to the office (or to some other location)?

(v) Even if "it is not specifically against policy", would the lodging be considered necessary, reasonable and in the best interest of the State?

(4) When the State of Utah pays for a person from out-of-state to travel to Utah, the in-state lodging per diem rates will apply.

(5) For out-of-state travel stays at a non-conference hotel, the state will reimburse the actual cost per night plus tax and any mandatory fees charged by the hotel, not to exceed the federal lodging rate for the location. These reservations must be made through the State Travel Office.

(6) The state will reimburse the actual cost per night plus tax and any mandatory fees charged by the hotel for in-state or out-of-state travel stays where the department/traveler makes reservations through the State Travel Office.

If lodging is not available at the allowable per diem rate in the area the employee needs to stay, the State Travel Office will book a hotel with the best available rate. In this circumstance, the employee will be reimbursed at the actual rate booked.

If an employee chooses to stay at a hotel that costs more than the allowable per diem rate, the employee will only be reimbursed for the allowable per diem rate plus tax and any mandatory fees charged by the hotel. These instances will be audited 100% by the State Finance Post-Auditors.

(7) Lodging is reimbursed at the rates listed in Table 5 for single occupancy only. For double state employee occupancy, add $20, for triple state employee occupancy, add $40, for quadruple state employee occupancy, add $60.

(8) Exceptions will be allowed for unusual circumstances when approved in writing by the traveler's Department Director or designee prior to the trip.

(a) For out-of-state travel, the approval may be on the form FI 5.

(b) Attach the written approval to the Travel Reimbursement Request, form FI 51B, FI 51D, or ESS Travel.

(9) A proper receipt for lodging accommodations must accompany each request for reimbursement.

A proper receipt is a copy of the registration form generally used by motels and hotels which includes the following information: name of motel/hotel, street address, town and state, telephone number, current date, name of person/persons staying at the motel/hotel, date(s) of occupancy, amount and date paid, number in the party, and (single, double, triple, or quadruple occupancy).

(10) When lodging is required, travelers should stay at the lodging facility nearest to the meeting/training/work location where state lodging per diem rates are accepted in order to minimize transportation costs.

(11) Travelers may also elect to stay with friends or relatives or use their personal campers or trailer homes instead of staying in a hotel.

(a) With proof of staying overnight away from home on approved state business, the traveler will be reimbursed the following:

(i) $25 per night with no receipts required or

(ii) Actual cost up to $40 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.

(12) Travelers who are on assignment away from their home base for longer than 90 days will be reimbursed as follows:

(a) First 30 days - follow regular rules for lodging and meals. Lodging receipt is required.

(b) After 30 days - $46 per day for lodging and meals. No receipt is required.

R25-7-9. Reimbursement for Incidentals.

State employees who travel on state business may be eligible for a reimbursement for incidental expenses.

(1) Travelers will be reimbursed for actual out-of-pocket costs for incidental items such as baggage tips, maid service, and bellman. Gratuities/tips for various services such as assistance with baggage, maid service, and bellman, may be reimbursed up to a combined maximum of $5.00 per day.

(a) Include an original receipt for each individual incidental item above $19.99.

(2) The state will reimburse incidental ground transportation and parking expenses.

(a) Travelers shall document all official business use of taxi, bus, parking, and other ground transportation including dates, destinations, parking locations, receipts, and amounts.

(b) Personal use of such transportation to restaurants is not reimbursable.

(c) The maximum that airport parking will be reimbursed is the economy lot parking rate at the airport they are flying out of. A receipt is required for amounts of $20 or more.

(d) Gratuities/Tips for ground transportation (taxi/shuttle/rideshare) will be reimbursed up to the greater of $5 or 18% for each ride. Gratuities/Tips must be shown on an original receipt.

(3) Registration should be paid in advance on a state warrant, or with a state purchasing card.

(a) A copy of the approved FI 5 form must be included with the Payment Voucher for out-of-state registrations.

(b) If a traveler must pay the registration when they arrive, the agency is expected to process a Payment Voucher and have the traveler take the state warrant with them.

(4) Telephone calls related to state business are reimbursed at the actual cost.

(a) The traveler shall list the amount of these calls separately on the Travel Reimbursement Request, form FI 51A, FI 51B, or ESS Travel.

(b) The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for business telephone calls and personal telephone calls.

(5) Allowances for personal telephone calls made while out of town on state business overnight may be based on the number of nights away from home. The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for personal telephone calls.

(a) Four nights or less - actual amount up to $2.50 per night.

(b) Five to eleven nights - actual amount up to $20.00

(c) Twelve nights to thirty nights - actual amount up to $30.00

(d) More than thirty days - start over

(6) Actual laundry expenses up to $18.00 per week will be allowed for trips in excess of six consecutive nights, beginning after the sixth night out.

(a) The traveler must provide receipts for the laundry expense.

(b) For use of coin-operated laundry facilities, the traveler must provide a list of dates, locations, and amounts.

(7) An amount of $5 per day will be allowed for travelers away in excess of six consecutive nights beginning after the sixth night out.

(a) This amount covers miscellaneous incidentals not covered in this rule.

(b) This allowance is not available for travelers going to conferences.

(8) Travel on a Weekend during Trips of More Than 10 Nights' Duration - A department may provide for employees to return home on a weekend when a trip extends longer than ten nights. Reimbursements may be given for costs allowed by these policies.

R25-7-10. Reimbursement for Transportation.

State employees who travel on state business may be eligible for a transportation reimbursement.

(1) Air transportation is limited to Air Coach or Excursion class. Priority seating charges will not be reimbursed unless preapproved by the department director or designee.

(a) All reservations (in-state and out-of-state) should be made through the State Travel Office for the least expensive air fare available at the time reservations are made.

(b) Only one change fee per trip will be reimbursed.

(c) The explanation for the change and any other exception to this rule must be given and approved by the Department Director or designee.

(2) Travelers may be reimbursed for mileage to and from the airport and long-term parking or away-from-the-airport parking.

(a) The maximum reimbursement for parking, whether travelers park at the airport or away from the airport, is the long term parking rate at the airport they are flying out of.

(b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A, FI 51B, or ESS Travel for amounts of $20 or more.

(c) Travelers may be reimbursed, up to the maximum reimbursements rate, for mileage to and from the airport to allow someone to drop them off and to pick them up.

(3) Travelers may use private vehicles with approval from the Department Director or designee.

(a) Only one person in a vehicle may receive the reimbursement, regardless of the number of people in the vehicle.

(b) Reimbursement for a private vehicle will be at the rate of 42 cents per mile or 54 cents per mile if a state vehicle is not available to the employee.

(i) To determine which rate to use, the traveler must first determine if their department has an agency vehicle (long-term leased vehicle from Fleet Operations) that meets their needs and is reasonably available for the trip (does not apply to special purpose vehicles). If reasonably available, the employee should use an agency vehicle. If an agency vehicle that meets their needs is not reasonably available, the agency may approve the traveler to use either a daily pool fleet vehicle or a private vehicle. If a daily pool fleet vehicle is not reasonably available, the traveler may be reimbursed at 54 cents per mile.

(ii) If a trip is estimated to average 100 miles or more per day, the agency should approve the traveler to rent a daily pool fleet vehicle if one is reasonably available. Doing so will cost less than if the traveler takes a private vehicle. If the agency approves the traveler to take a private vehicle, the employee will be reimbursed at the lower rate of 42 cents per mile.

(c) Agencies may establish a reimbursement rate that is more restrictive than the rate established in this Section.

(d) Any exceptions to this mileage reimbursement rate guidance must be approved in writing by the employees Executive Director or designee.

(e) Mileage will be computed using Mapquest or other generally accepted map/route planning website, or from the latest official state road map and will be limited to the most economical, usually traveled routes.

(f) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(g) An approved Private Vehicle Usage Report, form FI 40, should be included with the department's payroll documentation reporting miles driven on state business during the payroll period.

(h) Departments may allow mileage reimbursement on an approved Travel Reimbursement Request, form FI 51A, FI 51B, or ESS Travel, if other costs associated with the trip are to be reimbursed at the same time.

(4) A traveler may choose to drive instead of flying if preapproved by the Department Director or designee.

(a) If the traveler drives a state-owned vehicle, the traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of the airline trip. The traveler may also be reimbursed for incidental expenses such as toll fees

and parking fees.

(b) If the traveler drives a privately-owned vehicle, reimbursement will be at the rate of 42 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director or designee.

(i) The lowest fare available within 30 days prior to the departure date will be used when calculating the cost of travel for comparison to private vehicle cost.

(ii) A comparison printout which is available through the State Travel Office is required when the traveler is taking a private vehicle.

(iii) The traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of an airline trip.

(iv) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(c) When submitting the reimbursement form, attach a schedule comparing the cost of driving with the cost of flying. The schedule should show that the total cost of the trip driving was less than or equal to the total cost of the trip flying.

(d) If the travel time taken for driving during the employee's normal work week is greater than that which would have occurred had the employee flown, the excess time used will be taken as annual leave and deducted on the Time and Attendance System.

(5) Use of rental vehicles must be approved in writing in advance by the Department Director or designee.

(a) An exception to advance approval of the use of rental vehicles shall be fully explained in writing with the request for reimbursement and approved by the Department Director or designee.

(b) Detailed explanation is required if a rental vehicle is requested for a traveler staying at a conference hotel.

(c) When making rental car arrangements through the State Travel Office, reserve the vehicle you need. Upgrades in size or model made when picking up the rental vehicle will not be reimbursed.

(i) State employees should rent vehicles to be used for state business in their own names, using the state contract so they will have full coverage under the state's liability insurance.

(ii) Rental vehicle reservations not made through the State Travel Office must be approved in advance by the Department Director or designee.

(iii) The traveler will be reimbursed the actual rate charged by the rental agency.

(iv) The traveler must have approval for a rental car in order to be reimbursed for rental car parking.

(6) Travel by private airplane must be approved in advance by the Department Director or designee.

(a) The pilot must certify to the Department Director or designee that the pilot is certified to fly the plane being used for state business.

(b) If the plane is owned by the pilot/employee, the pilot must certify the existence of at least $500,000 of liability insurance coverage.

(c) If the plane is a rental, the pilot must provide written certification from the rental agency that the insurance covers the traveler and the state as insured. The insurance must be adequate to cover any physical damage to the plane and at least $500,000 for liability coverage.

(d) Reimbursement will be made at 53 cents per mile.

(e) Mileage calculation is based on air mileage and is limited to the most economical, usually-traveled route.

(7) Travel by private motorcycle must be approved prior to the trip by the Department Director or designee. Travel will be reimbursed at 20 cents per mile.

(8) A car allowance may be allowed in lieu of mileage reimbursement in certain cases. Prior written approval from the Department Director, the Executive Director of the Department of Administrative Services, and the Governor is required.

KEY: air travel, per diem allowances, state employees, transportation

September 21, 2018 63A-3-107

Notice of Continuation February 8, 2018 63A-3-106

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
AGO_GRAMA_Coordinator@agutah.gov

Records requests received via email after regular business hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.) will be deemed received the following business day.

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
AGO_GRAMA_Coordinator@agutah.gov

Appeals received via email after regular business hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.) will be deemed received the following business day for purposes of calculating the time for a decision by the Chief Administrative Officer.

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
September 7, 2018 63G-2-204

Notice of Continuation September 28, 2016

R137. Career Service Review Office, Administration.
R137-1. Grievance Procedure Rules.
R137-1-1. Authority and Purpose of Rule for Grievance Procedures.

(1) The authority for the rule on these grievance procedures is found at Section 67-19a-203.

(2) This rule establishes official procedures and standardized practices for administering these grievance procedures.

R137-1-2. Definitions.

Terms defined in Section 63G-4-103 of the Utah Administrative Procedures Act (UAPA) are incorporated by reference within this rule. In addition, other terms which are used in this rule are defined below:

"Abandonment of Grievance" means either the voluntary withdrawal of a grievance or the failure by an employee to properly pursue a grievance through these grievance procedures.

"Administrative Review of the File" means an informal adjudicative proceeding according to Subsection 67-19a-403(3)(b).

"Administrator" means the person appointed under Subsection 67-19a-201(2)(b).

"Affidavit" means a signed and sworn statement offered for consideration in connection with a grievance proceeding.

"Affirmative Defense" means a responsive answer asserting facts in addition to those alleged that are legally sufficient to rebut asserted allegations.

"Appeal" means a formal request to a higher level of review of a lower level decision.

"Appointing Authority" means the officer, board, commission, person or group of persons authorized to make appointments on personnel/human resource management matters in their respective agency.

"Burden of Moving Forward" means a party's obligation to present evidence on a particular issue at a particular time. The burden of moving forward may shift back and forth between the parties based on certain legal principles.

"Burden of Proof" means the obligation to prove affirmatively a fact or set of facts at issue between two parties.

"CSRO" means the agency of state government that statutorily administers these grievance procedures according to Sections 67-19a-101 through 67-19a-501.

"Closing Argument" means a party's final summation of evidence and argument, which is presented at the conclusion of the hearing.

"Consolidation" means the combining of two or more grievances involving the same controversy for purposes of holding a joint hearing, proceeding, or administrative review.

"Continuance" means an authorized postponement or adjournment of a hearing until a later date, whether the date is specified or not.

"Declaratory Order" means a ruling that is explanatory in purpose; it is designed to clarify what before was uncertain or doubtful. A declaratory order constitutes a declaration of rights between parties to a dispute and is binding as to both present and future rights. It is an administrative interpretation or explanation of a right, statute, order or other legal matter under a statute, rule, or an order.

"Default" means an omission of or untimely failure to take or perform a required act in the processing of a grievance. It is the failure to discharge an obligation which results in a forfeiture.

"Deposition" means a form of discovery in which testimony of a witness is given under oath, subject to cross-examination, and recorded in writing, prior to the hearing.

"Discovery" means the prehearing process whereby one party may obtain from the opposing party, or from other individuals or entities, information regarding the witnesses to be called, the documents and exhibits to be used at the hearing, and the facts and information about the case.

"Evidentiary Hearing" means a proceeding of relative formality, though much less formal than a trial, in which witnesses may be heard and evidence is presented and considered. Specific issues of fact and of law are tried. Afterwards, ultimate conclusions of fact and of law are set forth in a written decision or order.

"Excusable Neglect" means harmless error, mistake, inadvertence, surprise, a failure to discover evidence that, through due diligence, could not have been discovered in time to meet the applicable time period, misrepresentation or misconduct by the employer, or any other reason justifying equitable relief.

"Extraordinary Circumstances" means factors not normally incident to or foreseeable during an administrative proceeding. It includes circumstances beyond a party's control that normal prudence and experience could not foresee, anticipate or provide for.

"File" means to submit a document, grievance, petition, or other paper to the CSRO as prescribed by these rules. The term "file" includes faxing and E-mailing.

"Filing Date" means the day that a document, grievance, petition, or other paper is recorded as having been received by the CSRO.

"Grievance Procedures" mean the grievance and appeal procedures codified at Sections 67-19a-101 through 67-19a-501 and promulgated through this rule.

"Grievant" means the person or party advancing one or more issues as a petitioner through these grievance procedures.

"Group Grievance" means a grievance submitted and signed by two or more aggrieved employees. The term does not include "class action."

"Hearing" means the opportunity to be heard or present evidence in an administrative proceeding.

"Hearing Officer" means an impartial trier of facts appointed by the CSRO administrator and assigned to decide a particular grievance.

"Hearsay Evidence" means evidence not based upon a witness's personal knowledge as a direct observer of an event. Rather, hearsay evidence stems from the repetition of what a witness heard another person say. Hearsay's value rests upon the credibility of the declarant. Hearsay is a statement made outside of the hearing that is offered as evidence of the truth of matters asserted in the hearing.

"Initial Hearing" means a hearing conducted by the administrator to make an initial determination regarding timeliness, authority, jurisdiction, direct harm, standing and eligibility to advance a grievance.

"Issuance" means the date on which a decision, order or ruling is signed and dated; it is not the date of mailing, or the date of the mailing certificate, nor the postal date. Date of issuance is the date specified according to Subsection 63G-4-401, of the UAPA.

"Joint Hearing" means the uniting of two or more grievances involving the same, similar, or related circumstances or issues to conduct a single hearing; also see "Consolidation."

"Jurisdiction" means the legal right and authority to hear and decide issues and controversies.

"Management Representative" means a person of managerial or supervisory status who is not subject to exclusion. Legal counsel is not included within the meaning of the term.

"Motion" means a request offered verbally or in writing for a ruling or to take some action.

"Motion to Dismiss" means a motion requesting that a grievance or appeal be dismissed because it does not state a claim for which the CSRO provides a remedy, or is in some other way legally insufficient.

"Notice" and "Notification" mean a proper written notice

to the parties involved in a grievance procedural hearing or conference, setting forth date, time, location, and the issue to be considered.

"Pleadings" mean the formal written allegations of the parties that set forth their respective claims and defenses.

"Presiding Hearing Officer" means either the Administrator or designated Level 4 hearing officer.

"Pro Se" means in one's own behalf. A person is represented pro se in an administrative proceeding when acting without legal counsel or other representation.

"Quash" means to cancel, annul, or vacate.

"Relevant" means directly applying to the matter in question; pertinent, germane. It is evidence that tends to make the existence of any facts more probable or certain than they would be without the evidence; and tending to prove the precise fact at issue.

"Remand" means to send back, as for further deliberation and judgment, to the presiding official or other tribunal from which a grievance was appealed.

"Standard of Proof" means the evidentiary standard, which in CSRO adjudications is the substantial evidence standard.

"Stay" means a temporary suspension of a case or of some designated proceeding within the case. A stay is different than a continuance or extension of time and can only be granted when agreed to by the parties and when the administrator or assigned hearing officer finds a stay necessary for judicial economy and the interest of justice.

"Submit" means to commit to the discretion of another; to present for determination.

"Subpoena" means a formal legal document issued under authority to compel the appearance of a witness at an administrative proceeding, the disobedience of which may be punishable as a contempt of court.

"Subpoena Duces Tecum" means a formal legal document issued under authority to compel specific documents, books, writings, papers, or other items.

"Substantial Evidence" means evidence possessing something of substance and relevant consequence, and which furnishes substantial basis of fact from which issues tendered can be reasonably resolved. It is evidence that a reasonable mind might accept as adequate to support a conclusion, but is less than a preponderance.

"Summary Judgment" means a ruling made upon motion by a party or the presiding hearing officer when there is no dispute as to either material fact or inferences to be drawn from undisputed facts, or if only a question of law is involved. The motion may be directed toward all or part of a claim or defense.

"Transcript" means an official verbatim written record of an adjudicative proceeding or any part thereof, which has been recorded and subsequently transcribed by a certified court reporter.

"UAPA" means the Utah Administrative Procedures Act found at Sections 63G-4-102 through 63G-4-601.

"Withdraw" means to recall or retract a grievance from further consideration under these grievance procedures.

"Witness Fee" means an appearance fee and may also include a mileage rate established by statutory provision pursuant to Section 78B-1-119.

"Working Days" means for purposes of the time periods for filing a grievance, advancing an appeal or responding to an employee's grievance or appeal, all days except Saturdays, Sundays and recognized State holidays.

R137-1-3. Classification Jurisdiction.

The CSRO and the CSRO hearing officers have no jurisdiction over classification and reclassification grievances, appeals, and complaints nor over position schedule assignments, according to Section 67-19-31 and Subsections 67-19a-202(1)(a) and 67-19a-302(3), and Section R477-3-5.

R137-1-4. Complaints From Applicants.

(1) A public applicant for a position with the state's work force has no standing to submit a grievance and is precluded from using these grievance procedures, according to Subsection 67-19-16(6).

(2) A public applicant who alleges a violation of a legally prohibited practice based upon race, color, sex, pregnancy, childbirth, or pregnancy-related conditions, age, if the individual is 40 years of age or older, religion, national origin, or disability, is directed to Section R137-1-5 of these grievance procedures.

R137-1-5. Discrimination: Legally Prohibited Practices.

(1) Discrimination Claims. Claims alleged to be based upon a legally prohibited practice as set forth in Section 34A-5-106, including employment discrimination on the basis of race, color, sex, pregnancy, childbirth, or pregnancy-related conditions, age, if the individual is 40 years of age or older, religion, national origin, or disability, are not admissible under these grievance procedures. The CSRO and CSRO hearing officers have no jurisdiction over the preceding claims.

(2) Processing Discrimination Complaints. A public applicant, a probationary employee, a career service employee, or an exempt employee who alleges a violation of a legally prohibited practice pursuant to Section 34A-5-106, may file a timely complaint with the individual's respective department head. If the individual is not satisfied with the department head's decision, or if the decision is not rendered within ten working days after submission of the complaint, the individual may then file a complaint with the Utah Anti-discrimination Division pursuant to Section 67-19-32.

(3) Filing Discrimination Complaints. Employees and applicants desiring to file a legally prohibited discrimination complaint may contact the Utah Anti-Discrimination Division.

R137-1-6. Filing Procedure.

The submission of correspondence, pleadings, grievance materials, and legal documents is subject to the following provisions:

(1) Filing/Receipt. Papers to be filed with the CSRO or the administrator are deemed filed on the date actually received. The date on which papers are received and date-stamped is regarded as the date of filing.

(2) Time Periods. All papers, memoranda, petitions, grievances, pleadings, briefs, exhibits, and written motions to be filed with the administrator must be filed in the Career Service Review Office, 1120 State Office Building, Capitol Hill, Salt Lake City, Utah 84114, within the time limits prescribed either by law, by these rules, or by order of the administrator or by the designated CSRO hearing officer.

(a) All filing dates are based upon the CSRO's working days.

(b) Papers must be signed by the person filing the paper or by the person's authorized representative.

(c) Documents being submitted are to contain the name, business address, and telephone number of the representative, if a party or person is being represented.

(d) Copies of all filed papers shall be served upon the appropriate opposing party or person to grievance proceedings, with notice of service given to the administrator.

(e) Notice to a designated representative constitutes notice to the representative's client.

(f) Notice to an employee who is not represented shall be served at the address specified on the employee's statement of grievance or correspondence, or in the absence of such specification, at the last mailing address shown in the employing agency's personnel file.

R137-1-7. Subpoenas.

Subsection 63G-4-205(2) of the UAPA is incorporated by reference.

(1) Subpoena Power. Pursuant to Subsection 67-19a-204(2)(a)(ii), the administrator may issue subpoenas to witnesses and may obtain documents or other evidence in conjunction with any inquiry, investigation, hearing, or other proceedings.

(a) The aggrieved employee has the right to require the production of books, papers, records, documents and other items pertinent to the facts at issue that are within the control of the agency against which the grievance is lodged, and which are not held to be protected or privileged by law. Affidavits and ex parte statements offered during a hearing may be received and considered by the CSRO hearing officer.

(b) A person receiving a subpoena issued by the CSRO will find the title of the proceeding posted thereon, and the person to whom it is directed shall be compelled to attend and give testimony. A subpoena duces tecum may be used to produce designated books, or other items at a specified time and place when these items are under an agency's or a person's control.

(c) A request by counsel or a party's representative to issue a subpoena must be reasonable and timely. At least five full working days' notice prior to a scheduled hearing must be given to the administrator, not counting preparation and delivery time. The requesting party shall simultaneously notify the opposing party of the request.

(d) The original of each subpoena is to be presented to the person named therein, and a copy shall be issued to the counsel or representative of each party.

(2) Service of Subpoenas. Service of subpoenas shall be made by the CSRO by E-mail, unless the CSRO is requested to deposit the subpoena properly addressed and postage prepaid, with the U.S. Postal Service, or to send it by State Mail and Distribution Services, or to send it by facsimile transmission, or in any combination.

(3) Proof of Service. If service has not been acknowledged by the witness, the server may make an affidavit of service. Failure to make proof of service does not affect the validity of the service.

(4) Quashing. Subsection 67-19a-204(2)(a)(iii) governs the quashing of subpoenas by the administrator.

R137-1-8. Notice, Service, Issuance and Distribution.

(1) Service by the Parties. The parties to a proceeding shall serve upon each other one copy of all pleadings filed with the administrator. Service of a pleading may be made by any of the following: personal delivery, U.S. Postal Service, postage prepaid, State Mail and Distribution Services, facsimile, or E-mail.

(a) Pleadings must be accompanied by a certificate of service or an affidavit of mailing, indicating how, where, when and to whom service is being made.

(b) It is the duty of a party or person or their representative to notify the administrator and the opposing party or representative in writing of any changes in names, addresses, or telephone numbers.

(2) Service of Subpoena. Service of subpoenas shall be executed in accordance with Section R137-1-7(2) above.

(3) Issuance of Decisions and Orders. A CSRO decision, order, ruling or other document shall be considered issued on the date that it is signed by its CSRO originator, rather than on other dates such as the date it is mailed, postmarked, received or distributed.

(a) All notices, decisions, orders and rulings by the administrator or by a CSRO hearing officer are to be distributed to the counsel or representatives of record and upon any person appearing pro se.

(b) The CSRO will retain the original notice, decision, order or ruling with the record of the proceedings. Distribution of a CSRO notice, decision, order or ruling is accomplished when any of the following occurs:

(i) deposit postage prepaid with the U.S. Postal Service,

(ii) deposit with State Mail and Distribution Services,

(iii) personal delivery,

(iv) facsimile transmission, or

(v) E-mail transmission.

(c) A mailing certificate must be attached to the notice, decision, order or ruling bearing the date of mailing and the names and addresses of those persons to whom the notice, decision, order or ruling is originally distributed.

R137-1-9. Hearing Dates, Continuance/Extension of Time.

(1) Once the administrator has made an initial determination that the CSRO has authority to review or decide a grievance or appeal, for grievances filed under Sections 67-19a-202(1) and 67-19a-202(2), the administrator shall set a date for an evidentiary Level 4 hearing that is:

(a) within 30 days of the administrator's determination; or

(b) if agreed to by the parties, no more than 150 days from the administrator's determination date.

(2) Notwithstanding Subsection (1), after the evidentiary hearing date has been set, each party may be granted one continuance or extension of time for the hearing, provided there are extraordinary circumstances justifying such continuance or extension. A party desiring an extension of time or a continuance of the evidentiary hearing shall file a written request with the administrator or appointed hearing officer.

(a) Every petition for a continuance shall specify the reason for the requested delay.

(b) In considering a request for continuance, the administrator or the appointed CSRO hearing officer shall take into account:

(i) whether the request was timely made in writing; and

(ii) whether the request is based on extraordinary circumstances.

(3) Inattention or lack of preparation does not constitute extraordinary circumstances justifying a continuance or extension of time of the evidentiary hearing.

R137-1-10. Eligibility to Grieve.

(1) Standing. Only executive branch career service employees and reporting employees alleging retaliatory action, as defined by Subsections 67-19a-101(3) and 67-19a-101(10), may use these grievance procedures.

(a) Pursuant to Subsection 67-19-16(6) and Section 67-19a-301, the CSRO has no jurisdiction over grievance petitions filed by probationary employees, public applicants, exempt employees, noncareer service employees, public employees of the state's political subdivisions, public employees covered by other grievance systems, or employees of state institutions of higher education.

(2) Questionable Standing. Where a question or dispute exists whether an employee qualifies to use these grievance procedures, such controversies must be resolved through application of R137-1-17 by the administrator. The administrator's determination shall be final and subject to review only in the Utah Court of Appeals.

(3) Class Action. Pursuant to Subsection 67-19a-401(8), class action grievances will not be admissible for consideration by the CSRO under these grievance procedures.

(4) Group Grievance. A group grievance is admissible provided that each aggrieved employee signs the grievance, according to Subsections 67-19a-401(8)(a) and (b).

R137-1-11. Issues Appealable to Level 4.

All grievances shall be reviewed to determine:

(1) Whether the matters or issues raised in a grievance fall

within the CSRO's limited jurisdiction as set forth in Subsections 67-19a-202(1), 67-19a-202(2), and 67-19a-202(3), or

(2) Whether any issues or components of a grievance were satisfactorily resolved at an earlier step in the grievance procedures. Matters or issues resolved at an earlier step in the grievance procedures may not be advanced to the CSRO.

R137-1-12. Employees' Rights.

(1) Representation. The state does not provide legal counsel or representation to aggrieved employees nor pay the fees for an employee's representation. Also, Subsection 67-19a-406(4)(a) precludes the CSRO from awarding fees or costs to an employee's attorney or representative. Pursuant to Subsection 67-19a-402.5(6)(a), an appellate court may award costs and attorney fees, accrued at the appellate court level, to a prevailing employee in a retaliatory action grievance.

(2) Pro Se Status. A party or person to a grievance proceeding may appear pro se. When a party or person appears pro se, the party or person is entitled to request the issuance of subpoenas, directly examine and cross-examine witnesses, make opening and closing statements, submit documentary evidence, summarize testimony, and in all respects fully present one's own case.

(3) No Reprisal. Pursuant to Subsection 67-19a-303(3), no appointing authority, director, manager, or supervisor may take action to retaliate against a grievant, a representative, an advocate, or a witness who participates in or is scheduled to participate in a grievance proceeding.

R137-1-13. Automatic Processing, Waiver, Excusable Neglect, Abandonment of Grievance, Default, Transfer and Stay.

(1) Automatic Processing. An agency's failure to reply in writing to an aggrieved employee's grievance within the prescribed time period automatically grants the aggrieved employee the right to advance the grievance to the next step of these grievance procedures listed in Section 14 (below). Pursuant to Subsection 67-19a-401(2), the parties may mutually agree to waive or extend steps 1, 2, or 3 or extend the statutory time period for those steps. Waivers of the statutory time periods by agency management and the aggrieved employee must be in writing and submitted to the administrator.

(2) Waiver. When the administrator finds that a grievance is one that an agency cannot resolve because of the nature of the grievance, the matter may be waived in writing to a higher level. Steps 1, 2, or 3 may be waived, but not step 4. Any waiver agreed to between the parties must be in writing, dated and submitted to the administrator according to Subsection 67-19a-401(2) and (3).

(3) Excusable Neglect. The standard of excusable neglect may be offered as a defense to lack of timeliness in filing or processing a grievance, or for not appearing at a scheduled proceeding. An employee may file a motion for an enlargement of the time limits for filing or processing a grievance consistent with Section 67-19a-401 (6)(a).

(a) The administrator or appointed CSRO hearing officer shall determine the applicability of the excusable neglect standard when offered as a defense to lack of timeliness or not appearing at a scheduled proceeding.

(b) All questions are to be resolved at the original level of occurrence.

(4) Abandonment of Grievance. In the event the administrator or CSRO hearing officer determines that a grievance claim has been withdrawn, abandoned, or otherwise neglected beyond either the established time lines or a reasonable period, the matter no longer qualifies for further processing through these grievance procedures. When withdrawal is intended, it should be accomplished in writing.

(5) Default. An employee who defaults in processing a grievance forfeits further rights granted by these rules and under Section 63G-4-209 of the UAPA, which is incorporated by reference.

(6) Transfer. The administrator may administratively transfer a grievance from the aggrieved employee's department to another, more appropriate department to respond as necessary to serve the ends of justice and fairness.

(7) Stay. Upon written request, the administrator or the CSRO hearing officer may grant a stay of a decision, order, ruling, remedy, or proceeding. However, stays may be granted only when agreed to by the parties and when the administrator or assigned hearing officer finds a stay necessary for judicial economy and the interest of justice.

R137-1-14. Grievance Procedure Levels.

Persons acting on grievances pursuant to Sections 67-19a-402, and in accordance with these rules, shall conduct their filings through the following levels of increasing accountability:

Level 1; A written grievance shall be submitted to the employee's immediate supervisor. A standard grievance form is available from the CSRO. Once submitted, the written grievance is a formal complaint necessitating a response. At all levels of procedure, the parties must comply with the time periods outlined in Sections 67-19a-401 and 67-19a-402. If a supervisor is the subject of a grievance or complaint, the employee may proceed directly to Level 2.

Level 2; If the grievance is not resolved at Level 1, the employee may advance their grievance to the agency or division director (or director's designee) at Level 2. If an agency or division director is the subject of a grievance or complaint, the employee may proceed directly to Level 3.

Level 3; If the grievance is not resolved at Level 2, the employee may advance their grievance to the department head, executive director, or commissioner (or director's designee) at Level 3.

Level 4; If the grievance is not resolved at Level 3, the employee may advance their grievance to the CSRO at Level 4. For grievances filed under Sections 67-19a-202(1) and 67-19a-202(2), the CSRO provides an evidentiary de novo hearing, conducted before a CSRO hearing officer. When the CSRO receives a request for administrative review of an abusive conduct investigation filed under Section 67-19a-202(3), no evidentiary hearing is required.

The purpose of the levels is to curtail employees from having to submit their grievances to persons not specified in the above steps or levels. Only the above-listed persons (or their designated representatives) in agency management are authorized to respond to state employees' grievances. Grievances by a reporting employee alleging retaliatory action filed under Section 67-19a-202(2) and requests for the CSRO to review the findings of an abusive conduct investigation filed under Section 67-19a-202(3) are not subject to Levels 1-3 and may be filed directly with the CSRO.

R137-1-15. Procedure for Appealing Disciplinary Action Imposed by Department Head.

(1) An aggrieved employee who has been demoted or dismissed by their respective department head (i.e., executive director or commissioner) may appeal the department head's action directly to the CSRO at the evidentiary step 4 level.

(a) An appeal from discipline imposed by the department head is distinguishable from a grievance.

(b) A grievance is filed at step 1 and proceeds through steps 2 and 3.

(c) When an appeal from discipline imposed by a department head occurs at the step 3 level, it may be appealed directly to the CSRO.

(2) When appealed to the CSRO, the appeal must be filed

within 30 working days from the date an aggrieved employee receives written notification from the department head who imposed the disciplinary action.

R137-1-16. Procedure for Appealing Reduction in Force or Abandonment of Position.

An aggrieved employee may appeal a reduction in force or abandonment of position according to the following:

(1) Upon receiving the department head's final, written decision, the employee may appeal from a reduction in force by filing a written appeal within 20 working days of receipt of the decision with the CSRO.

(2) An employee separated from employment for abandonment of position may appeal the department head's final written decision by filing a written appeal with the CSRO within 20 working days of receipt of the decision.

R137-1-17. Initial Review by Administrator.

When an employee advances a grievance to the CSRO or directly appeals a department head's decision to the CSRO, the administrator shall make an initial determination of whether the CSRO has authority to review or decide the grievance or appeal. In order to make this determination, the administrator may hold an initial adjudicative hearing in accordance with Subsections 67-19a-403(2), 67-19a-402.5(2)(b)(i) and Section 63G-4-206 or conduct an informal adjudicative review of the file in accordance with Subsections 67-19a-403(2), 67-19a-402.5(2)(b)(ii) and Section 63G-4-202 which are incorporated by reference.

(1) Procedural Issues. The administrator shall make an initial determination of the following: timeliness, direct harm, jurisdiction, standing, eligibility of the issues to be advanced, and any other procedural matters or jurisdictional controversies according to Sections 67-19a-402.5, 67-19a-403 and 67-19a-404.

(2) Determination. The administrator has authority to determine which types of grievances may be heard at Level 4. Those types of grievances found to have been resolved at a lower level or those that do not qualify for advancement to Level 4 are precluded from further consideration in any grievance submitted for CSRO consideration.

(3) Preclusion. Those types of actions not listed in Sections 67-19a-202(1), 67-19a-202(2) or 67-19a-202 (3) are precluded from advancement to Level 4. For grievances filed under Section 67-19a-202(1), if the CSRO does not have jurisdiction at Level 4, the matter shall be deemed final at Level 3 according to Section 67-19a-302(3).

(4) Reconsideration. A written request for reconsideration may be filed with the administrator. It must be filed within 20 days from the date the administrator issues a decision regarding whether the CSRO has authority to review or decide a grievance or appeal. Section 63G-4-302 of the UAPA is incorporated by reference. The written reconsideration request must contain specific reasons why a reconsideration is warranted with respect to the factual findings and legal conclusions of the hearing decision or administrative review of the file decision. New or additional evidence may not be considered.

(5) Judicial Review.

(a) The aggrieved employee or the responding agency may appeal the administrator's initial adjudicative hearing decision and final agency action to the Utah Court of Appeals within 30 calendar days from the date of issuance according to Subsection 63G-4-401(3)(a) and Section 63G-4-403 of the UAPA, which are incorporated by reference.

(b) A decision reached by the CSRO upon administrative review of the findings resulting from an abusive conduct investigation under Section 67-19a-501 is final and not subject to appeal.

(c) A decision reached by the CSRO in reviewing a retaliatory action grievance from a reporting employee, as defined by Subsections 67-19a-10110 and 67-19a-10111,may be appealed to the Utah Court of Appeals.

(6) Summary Judgment. The administrator or the (Presiding Officer, Utah Code Ann. Section 63G-4-103(1)(h)(i)) hearing officer may, pursuant to an administrative review of the procedural facts and circumstances of a grievance case, summarily dispose of a case on the ground that:

(a) the matter is untimely;

(b) the grievant has failed to appear at the properly scheduled date, time, and place pursuant to written notice;

(c) the grievant lacks standing;

(d) the grievant has withdrawn or otherwise abandoned the grievance;

(e) the grievant has not been directly harmed;

(f) the issue grieved does not qualify to be advanced beyond step 3; or

(g) the requested remedy or relief exceeds the scope of these grievance procedures.

(7) Transcription and Transcript Fees. If a party appeals the administrator's initial adjudicative hearing decision to the Utah Court of Appeals, the appealing party is responsible for having the CSRO's recording transcribed by a certified court reporter and for paying all transcription costs and any transcript fees. The CSRO does not participate in the payment of these fees when appeals are taken to the appellate court. See Utah Rules of Appellate Procedure, Rule 11, and Section 63G-4-403(3), regarding transcript costs from formal adjudications under the UAPA.

R137-1-18. Procedural Matters.

The provisions under this section pertain to initial administrative and Level 4 proceedings before the CSRO.

(1) Purpose. A formal adjudicative proceeding provides a fair and impartial opportunity for the parties to be heard and to present their evidence. The adjudicative process allows the CSRO administrator or the CSRO hearing officer to be completely informed about the case. After having considered the parties' evidence, the CSRO administrator or the CSRO hearing officer may then render a proper determination based upon all of the facts, circumstances, and applicable laws, rules and policies.

(2) Types of Adjudications. For purposes of Section 63G-4-202 of the UAPA:

(a) All initial administrative and Level 4 adjudications at the CSRO are formal adjudicative proceedings. Sections 63G-4-205 through 63G-4-209, 63G-4-401 and 63G-4-403 through 63G-4-405 of the UAPA are incorporated by reference within this rule and are applicable to these adjudicative proceedings.

(3) Rules of Evidence/Procedure Inapplicable. The technical rules of evidence and the formal rules of civil procedure as observed in the courts of law are inapplicable to these grievance procedure proceedings, except for the rules of privilege as recognized by law and those specific references to the rules of evidence and procedure as set forth in the UAPA.

(4) Expelling. The presiding CSRO hearing officer may clear the proceeding of witnesses not under examination and may exclude any unruly or disruptive person. The hearing officer may also expel any persons whose presence is antagonistic, oppressive, intimidating or appears to have a chilling effect on the witness under examination.

(5) Presentation of Case. Each party is given the opportunity to make an opening statement and to present evidence. After the evidence is closed, each party may offer a closing argument. The moving party may offer one rebuttal. Continuous rebuttal is not permissible.

(6) Objections.

(a) When an objection is made as to the admissibility of evidence, the presiding CSRO hearing officer shall note the

objection for the record and make a ruling or take the objection under advisement to be ruled upon later.

(b) The presiding CSRO hearing officer has discretion to exclude inadmissible evidence and to order that cumulative or repetitive evidence be discontinued.

(c) A party objecting to the introduction of evidence must state the precise grounds of the objection at the time such evidence is offered.

(7) Marking Exhibits. All exhibits shall be numerically marked and labeled in the order received into evidence, unless previously marked and labeled.

(8) Motion to Dismiss. The administrator or CSRO hearing officer may, upon a party's motion or upon their own motion, dismiss the grievance or appeal before the CSRO.

(9) Consolidation of Grievances. Grievances of the same or of a sufficiently similar context may be consolidated by the administrator for purposes of conducting a single or joint hearing.

(10) Standard of Proof. In all CSRO adjudicative proceedings, the standard of proof is the substantial evidence standard according to Subsections 67-19a-406(2) and 67-21-3.5.

(11) Hearsay Evidence. Hearsay evidence is admissible in CSRO formal adjudicative proceedings as qualified by Subsection 63G-4-208(3) of the UAPA which is incorporated by reference.

(12) Discovery. The following rule provisions satisfy Section 63G-4-205 of the UAPA on discovery.

(a) Discovery shall be limited to that which is relevant and nonprivileged, and for which each party has a substantial, demonstrable need for supporting their respective claims or defenses.

(b) At the discretion and approval of the administrator or appointed CSRO hearing officer, parties to a dispute may obtain discovery. The CSRO administrator or hearing officer has discretion to entertain discovery motions on a case-by-case basis regarding the following:

(i) production of documents, records and things under Utah Rule 34 of Civil Procedure; and

(ii) depositions only when a proposed witness is unavailable for giving testimony at a scheduled hearing.

(c) No other form of discovery is permitted.

(d) Witness lists and copies of exhibits shall be offered by each party to the opposing party and to the CSRO hearing officer during a prehearing/scheduling conference, unless the exchange is scheduled for a later date.

(i) Each party's list of witnesses shall contain a brief statement describing the nature of the proposed testimony to be offered by each witness.

(ii) A party may not surprise the opposing party with a witness or an exhibit at the hearing which was not made known by a scheduled exchange date, unless the witness or exhibit is in direct rebuttal to admitted opposing evidence. Also refer to R137-1-7(1)(c).

(13) Page Limitation.

(a) Unless otherwise specified by the CSRO, written motions, pleadings, briefs, and memoranda for all CSRO proceedings may not exceed 10 typed, double-spaced 8-1/2 x 11 inch pages, exclusive of any statement of facts. Reply briefs may not exceed five pages.

(b) An application for an exception to the above-stated page limitation provisions must be timely filed in writing, and not more than five double-spaced 8-1/2 x 11 inch pages in a 12-point font. The applicant party has the burden to offer sufficient justification for requests to exceed the page limitations.

(c) The CSRO may weigh all requests to exceed the page limitations based upon the reasonableness and necessity of such requests in light of each case and its circumstances. The CSRO does not automatically grant exceptions simply on the basis of a request.

R137-1-19. Witnesses.

(1) Availability of State Employees to Testify. An agency shall be responsible for making available any of its employees who are subpoenaed to testify in a hearing.

(a) Off Duty Employees. Agencies are not responsible for making available an employee who is: off duty; on sick, annual or other approved leave; or who, for any other reason, is not at work during the time the hearing is in progress.

(b) Nondisruption. The parties and their representatives, the administrator and the CSRO hearing officer shall make every effort to avoid disruption to the operation of state government in the calling of state employees to testify in hearings under these grievance procedures.

(c) Witness Failure. If a requested witness does not appear at the scheduled hearing, the witness's failure to appear may not necessitate the postponement of any proceedings.

(d) Excessive Witnesses. If the number of witnesses requested by a party is excessive, the administrator or the CSRO hearing officer may require the party to justify the request or face denial of part or all of the request.

(e) Witness Fees and Mileage Fees. A witness fee and a mileage fee are available to nonstate employees and to state employees who use nonworking hours if their presence is required in a grievance proceeding as a witness according to Section 78B-1-119. The CSRO reserves the right to determine on an individual case basis whether it will authorize a travel fee, and to what extent, for an out-of-state witness called by a party.

(2) Hostile Witnesses. When the presiding CSRO hearing officer determines that a witness is uncooperative or even hostile, the witness may be examined by the party calling that witness as if under cross-examination. The party calling the witness may, upon showing that the witness was called in good faith but that the testimony is a surprise, proceed to impeach the witness by proof of prior inconsistent statements.

(3) Exclusion/Sequestering of Witnesses.

(a) The presiding CSRO hearing officer may sequester witnesses from the hearing until they are called to testify.

(b) Witnesses not presently testifying may be sequestered on motion by one or both parties or in the presiding hearing officer's discretion.

(c) The presiding CSRO hearing officer will counsel the witnesses not to discuss the case with those witnesses who have not yet testified.

(4) Management Representative. Prior to every hearing the agency may designate one person to serve as the agency's management representative. The agency's management representative is entitled to remain throughout the hearing to represent the agency at any proceeding even if called to testify, unless the hearing officer determines it is reasonable to expel the management representative for any or part of the hearing.

R137-1-20. Public Hearings.

A CSRO hearing is open to the public unless there are reasonable grounds to justify an executive session for either part or all of a hearing. This provision does not apply to witnesses who are being called to testify according to R137-1-19.

(1) Closing Hearings. All grievance procedure hearings shall be open to the public except as follows:

(a) The administrator or the CSRO hearing officer may close either a portion or an entire hearing based upon reasonable grounds.

(b) A Level 4 hearing may be closed in part or in its entirety when the proceeding involves discussion about a state employee's character, professional competence, or physical or mental health according to Subsection 52-4-205(1)(a) of the Open and Public Meetings statute.

(2) Sealing Evidence. The administrator or the CSRO hearing officer may seal the record when appropriate according to Subsection 67-19a-406(4)(c).

(3) Media Presence. All hearings at Level 4 are open to the media, unless closed pursuant to R137-1-20(1) above. However, television cameras are not permitted at Level 4 proceedings.

(4) Distribution of Decisions. Once the grievance process, including all administrative appeals, has been completed and if the agency's decision was sustained, the administrator may provide copies of legal decisions, orders, and rulings to the public upon request. Portions of or entire legal decisions and orders may be withheld if deemed to be legally privileged or protected under the state's Government Records Access and Management Act (GRAMA), or if the record is sealed according to the Open and Public Meetings statute.

R137-1-21. The Level 4 Adjudicatory Procedures.

(1) Authority of the CSRO Hearing Officer/Presiding Officer. The CSRO hearing officer/presiding officer is authorized to:

(a) serve as the presiding officer at Level 4 hearings as set forth at Subsection 63G-4-103(1)(h)(i) of the UAPA;

(b) maintain order, ensure the development of a clear and complete record, rule upon offers of proof, receive relevant evidence, and assign the burden of proof according to Subsection 67-19a-406(2);

(c) set reasonable limits on repetitive and cumulative testimony and sequester any witness whose later testimony might be colored by the testimony of another witness or any person whose presence might have a chilling effect on another testifying witness;

(d) rule on any motions, discovery requests, exhibit lists, witness lists and proposed findings;

(e) require the filing of memoranda of law and the presentation of oral argument with respect to any question of law;

(f) compel testimony and order the production of evidence and the appearance of witnesses;

(g) admit evidence that has reasonable and probative value; and

(h) reopen the evidentiary record.

(2) Conduct of Hearings. A hearing shall be confined to those issues related to the subject matter presented in the original grievance statement.

(a) An evidentiary proceeding may not be allowed to develop into a general inquiry into the policies and operations of an agency.

(b) An evidentiary proceeding is intended solely to receive evidence that either refutes or substantiates specific claims or charges. A proceeding may not be used as an occasion for irresponsible accusations, general attacks upon the character or conduct of the employing agency, agency management, or other employees. A hearing may not be used as a forum for making derogatory assertions having no bearing on the claims or specific matters under review.

(3) Level 4 Hearing. An evidentiary Level 4 hearing shall be recorded according to Section 67-19a-406 and held de novo, with both parties being granted full administrative process as follows:

(a) The CSRO hearing officer shall first make factual findings based solely on the evidence presented at the hearing without deference to any prior factual findings of the agency. The CSRO hearing officer shall then determine whether:

(i) the factual findings made from the evidentiary Level 4 hearing support, by substantial evidence, the allegations made by the agency or the appointing authority, and

(ii) the agency has correctly applied relevant policies, rules, and statutes.

(b) When the CSRO hearing officer determines in accordance with the procedures set forth above that the evidentiary Level 4 factual findings support the allegations of the agency or the appointing authority, then the CSRO hearing officer must determine whether the agency's decision, including any disciplinary sanctions imposed, is excessive, disproportionate or otherwise constitutes an abuse of discretion. In making this latter determination, the CSRO hearing officer shall give deference to the decision of the agency or the appointing authority. If the CSRO hearing officer determines that the agency's penalty is excessive, disproportionate or constitutes an abuse of discretion, the CSRO hearing officer shall determine the appropriate remedy.

(4) Discretion. Upon commencement, the CSRO hearing officer shall announce that the hearing is convened and is being held on the record. The CSRO hearing officer shall note appearances for the record and note the party having the burden of moving forward first.

(5) Closing the Record. After all testimony, documentary evidence, and arguments have been presented, the CSRO hearing officer shall close the record and terminate the proceeding, unless one or both parties agree to submit a posthearing brief or memoranda of law within a specified time.

(6) Posthearing Briefs. When posthearing briefs or memoranda of law are scheduled to be submitted, the record shall remain open until the briefs or memoranda are exchanged and received by the CSRO hearing officer and incorporated into the record, or until the time to receive these submissions has expired. After receipt of posthearing documents, or upon the expiration of the time to receive posthearing documents, the case is then taken under advisement, and the period commences for the issuance of the written decision.

(7) Findings of Fact, Conclusions of Law. After closing the record, the CSRO hearing officer shall write a decision containing findings of fact and conclusions of law according to Section 67-19a-406 and Section 63G-4-208 of the UAPA, which is incorporated by reference. When the CSRO hearing officer's decision and order is filed with the administrator it then becomes the decision and order of the Level 4 hearing.

(8) Distribution of Decisions. The administrator shall distribute copies of the Level 4 decision and order to the persons, parties and representatives of record.

(9) Past Work Record. In those proceedings where a disciplinary penalty is at issue, the past employment record of the employee is relevant for purposes of either mitigating or sustaining the penalty when substantial evidence supports an agency's allegations.

(10) Compliance and Enforcement. State agencies, department heads, division directors and officials are expected to comply with decisions and orders issued by the CSRO hearing officer. Enforcement measures available to the CSRO include:

(a) petitioning the governor, who may remove his appointed state officers with or without cause, and with respect to those who can only be removed for cause, refusal to obey a lawful order may constitute sufficient cause for removal;

(b) a mandamus order to compel the official to obey the order;

(c) the charge of a Class A misdemeanor according to Section 67-19-29; and

(d) seeking enforcement of a legal decision, order or ruling through civil enforcement in the district court according to Subsection 63G-4-501(1) of the UAPA which is incorporated by reference.

(11) Rehearings. Rehearings are not permitted.

(12) Reconsideration.

(a) Section 63G-4-302 of the UAPA is incorporated by reference within this rule, and requests for reconsideration of an Level 4 decision will be conducted in accordance with that section, except for the time period which is stated below.

(b) The written reconsideration request must contain specific reasons why a reconsideration is warranted with respect

to the factual findings and legal conclusions of the Level 4 decision. The same CSRO hearing officer shall decide the propriety of a reconsideration. A request for reconsideration is filed with the administrator. To be timely the written request for reconsideration shall be filed within twenty days after the Level 4 decision is issued as provided at Section 63G-4-302.

(13) Appeal to the Utah Court of Appeals. To appeal to the Utah Court of Appeals, a party must file with the court within 30 calendar days from the date of issuance of the Level 4 decision and final agency action according to Sections 63G-4-401 and 63G-4-403 of the UAPA, which are incorporated by reference. The dates of mailing, postmarking and receipt are not applicable to filing with the court.

(14) Transcript Fee. The party petitioning the Utah Court of Appeals for a review must bear all costs of transcript production for the Level 4 decision. The CSRO may not share any cost for a transcript or transcription of the Level 4 hearing.

R137-1-22. Declaratory Orders.

This rule provides a procedure for the submission and review of requests for and disposition of declaratory rulings pertaining to the applicability of statutes, administrative rules, and orders either governing or issued by the administrator, the previous Career Service Review Board or a CSRO hearing officer. Section 63G-4-503 of the UAPA is incorporated by reference.

(1) Applicability. The applicability of a declaratory order refers to the determination of whether a statute, rule, or order should be applied, and if so, how the law should be applied to the facts.

(2) Petition Procedure. Any person or agency with proper standing may petition for a declaratory ruling.

(a) The petition must be addressed and delivered to the CSRO.

(b) The petition shall be date-stamped upon receipt in the CSRO.

(3) Petition Form. The petition shall:

(a) be clearly designated as a request for a declaratory order;

(b) identify the statute, rule, decision or order to be reviewed;

(c) describe the circumstances in which applicability is to be reviewed;

(d) describe the reason or need for the applicability review;

(e) include an address and telephone number where the petitioner can be reached during regular work days; and

(f) be signed by the petitioner.

(4) Petition Review and Disposition. As appropriate the administrator:

(a) shall review and consider the petition;

(b) shall prepare a declaratory ruling, stating:

(i) the applicability or nonapplicability of the statute, rule, or order at issue;

(ii) the reasons for the applicability or nonapplicability of the statute, rule, decision or order; and

(iii) any requirements imposed on a petitioning person or agency, or any other person according to the ruling; and

(c) may:

(i) interview the petitioner or the agency representative;

(ii) hold a public hearing on the petition;

(iii) consult with legal counsel or the Attorney General; or

(iv) take any action that the administrator deems necessary to provide the petition with an adequate review and due consideration.

(5) Time Period and Issuance. The administrator shall prepare the declaratory ruling without unnecessary delay. The CSRO shall issue a copy of the ruling to the petitioner by depositing it with the U.S. Postal Service, postage prepaid, or by depositing it with State Mail and Distribution Services, by faxing it or E-mailing it, as appropriate. In the event of a necessary delay, the CSRO must issue a notice of progress to the petitioner within 30 days of receipt of the petition.

(6) Records. The CSRO shall retain the petition and the original of the declaratory ruling in its records.

(7) Statutory Construction. Questions requiring the construction of statutory provisions may be submitted to the Attorney General for a formal or informal letter opinion.

(8) Refusal. The administrator may refuse to issue a declaratory order if the question in issue is one that is being contested in a case currently before the CSRO.

R137-1-23. Procedure for Filing a Request for Administrative Review of an Abusive Conduct Investigation.

(1) Under Section 67-19a-202(3), an employee may file a request for administrative review of the findings of an abusive conduct investigation.

(2) A Request for Administrative Review of an Abusive Conduct Investigation may be filed directly with the CSRO within 10 days after the date on which the employee receives notification of the investigative findings.

KEY: grievance procedures, reconsiderations

September 28, 2018	**34A-5-106**
Notice of Continuation July 11, 2016	**67-19-16**
	67-19-30
	67-19-31
	67-19-32
	67-19a et seq.
	63G-4 et seq.

R152. Commerce, Consumer Protection.
R152-1a. Internet Content Provider Ratings Methods Rule.
R152-1a-1. Authority and Purpose.

In accordance with Utah Code Section 76-10-1234, these rules (R152-1a) establish acceptable rating methods by which a content provider may restrict access to material harmful to minors.

R152-1a-2. Definitions.

As used in these rules (R152-1a):

(1) "Content provider" is as defined in Utah Code Section 76-10-1230.

(2) "Harmful to minors" is as defined in Utah Code Section 76-10-1201.

(3) "HTML" means Hypertext Markup Language, the authoring language used to create documents on the Internet, which defines the structure and layout of an Internet document.

(4) "URL" means an Internet address, usually consisting of at least an access protocol and a domain name.

(5) "Utah content provider" means a content provider described in Utah Code Section 76-10-1233(1).

R152-1a-3. Compliance with Utah Code Section 76-10-1233(1).

A Utah content provider may comply with Utah Code Section 76-10-1233(1) by rating material harmful to minors with a rating label:

(1) listed in R152-1a-4; and

(2) placed in a location listed in R152-1a-5.

R152-1a-4. Acceptable Rating Labels.

A Utah content provider may rate material harmful to minors with one of the following labels:

(1) "XXX" in all capital letters;

(2) "xxx" in all lower case letters; or

(3) "-NFM-" which consists of the letters NFM in all capital letters:

(a) immediately preceded by a single hyphen, en dash, or em dash; and

(b) immediately followed by a single hyphen, en dash, or em dash.

R152-1a-5. Acceptable Rating Locations.

A Utah content provider may rate material harmful to minors by placing a label listed in R152-1a-4 in one of the following locations:

(1) if the material harmful to minors is contained within an Internet website:

(a) within the URL of the website; or

(b) within the first 300 characters of the HTML for the website;

(2) if the material harmful to minors is contained within an email message:

(a) within the first 300 characters of the email message;

(b) in the subject line of the email message;

(c) in the return address of the email message; or

(d) in any of the descriptive headers of the email message; or

(3) if the material harmful to minors is contained within a chat-room message or any other type of instant message:

(a) within the first 300 characters of the chat-room message or instant message; or

(b) within the personal identification of the sender of the chat-room message or instant message.

KEY: Internet ratings, consumer protection
September 18, 2006 76-10-1234
Notice of Continuation July 15, 2016 76-10-1233(1)

R154. Commerce, Corporations and Commercial Code.
R154-100. Utah Administrative Procedures Act Rules.
R154-100-1. Purpose of Rules.

The purpose of these rules is to designate those categories of adjudicative proceedings within the Division of Corporations and Commercial Code which will be conducted on an informal basis, in accordance with the Utah Administrative Procedures Act and the Rules of Procedure for Adjudicative Proceedings before the Department of Commerce.

R154-100-2. Designation of Informal Adjudicative Proceedings.

A. Any adjudicative proceedings as to the following matters shall be conducted on an informal basis:

1. The disapproval of any articles of incorporation, amendment, merger, consolidation, dissolution, or any other document required by Section 61-6-1 et seq. to be approved by the Division before filing.

2. The revocation of a certificate of authority of a foreign corporation to transact business in this state.

3. The disapproval of an application for an assumed name pursuant to Section 42-2-6.6(4).

4. The application for, and issuance of, registration of a trademark or service mark pursuant to Section 70-3-3.

5. The cancellation of registration of a trademark or service mark pursuant to Section 70-3-10.

B. All adjudicative proceedings as to any matters not specifically listed herein shall be conducted on an informal basis.

C. No hearing shall be held in any informal adjudicative proceeding which is initiated pursuant to these rules. However, any final order issued by the division is subject to agency review, consistent with the provisions of Section 63G-4-301 and the Rules of Procedure which govern Adjudicative Proceedings Before the Department of Commerce.

KEY: administrative procedure, government hearing
1988 13-1-10
Notice of Continuation September 11, 2018 63G-4-202

R156. Commerce, Occupational and Professional Licensing.
R156-9. Funeral Service Licensing Act Rule.
R156-9-101. Short title.

This rule shall be known as the "Funeral Service Licensing Act Rule".

R156-9-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 9, as defined or used in this rule:

(1) "Contract" means a guaranteed preneed funeral arrangement contract.

(2) "Funeral service establishment" is defined in Subsection 58-9-102(18).

(3) "Guaranteed product contract" means a contract wherein goods or services are selected which will be provided at the time of need for the consideration specified in the contract regardless of the market price at the time of need.

(4) "Recipient of goods and services" is synonymous with "beneficiary" as defined in Subsection 58-9-102(2), and is used herein to avoid confusion with various common meanings of the term "beneficiary".

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 9, is further defined in accordance with Subsection 58-1-203(1)(e) in Section R156-9-502.

R156-9-103. 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 9.

R156-9-104. 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.

R156-9-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(1)(d) and 58-1-301(3), the qualifications for licensure in Subsections 58-9-302(1)(g), 58-9-302(2)(e), 58-9-302(4)(e) and 58-9-306(6) and (7) are defined, clarified, or established as follows:

(1) An applicant for licensure as a funeral service director shall pass:

(a) the National Board Examinations (science and art sections) of the Conference of Funeral Service Examining Boards, which may be taken while the individual is enrolled in an approved funeral service school; and

(b) the Utah Funeral Service Director Law and Rule Examination, with a score of at least 75%.

(2) An applicant for licensure as a funeral service intern or funeral service director by endorsement shall pass the Utah Funeral Service Director Law and Rule Examination, with a score of at least 75%.

(3) An applicant for licensure as a preneed sales agent shall pass the Utah Preneed Funeral Arrangement Sales Agent Law and Rule Examination, with a score of at least 75%.

(4) An individual who fails the Utah Funeral Service Director Law and Rule Examination, or the Utah Preneed Funeral Arrangement Sales Agent Law and Rule Examination, may retake the failed examination:

(a) no more than three times within a three month period; and

(b) no earlier than three months following any failure thereafter.

R156-9-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 9 is established by rule in Section R156-1-308a.

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

R156-9-304. Continuing Professional Education - Funeral Service Directors.

In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b) and Section 58-9-304, the continuing education requirements for funeral service directors is defined, clarified or established as follows:

(1) Continuing professional education shall consist of 20 hours of qualified continuing professional education in each preceding two-year period of licensure or expiration of licensure.

(2) If a renewal period is shortened or extended to effect a change of renewal cycle or if an initial license is granted for a period of less than two years, the continuing professional education hours required for that period shall be increased or decreased proportionately.

(3) The standards for qualified continuing professional education are:

(a) College classes, seminars, or workshops sponsored by professional associations in areas related to funeral service will generally qualify for continuing professional education (CPE) if the education contributes to the professional competence and knowledge of the funeral service director and if the program complies with the standards set forth under Subsection (b).

(b) CPE programs shall meet the following standards:

(i) the course shall be formally organized and be primarily instructional;

(ii) the sponsor shall prepare an outline of the course which shall be retained for a minimum of four years following the presentation;

(iii) the sponsor shall list the hour rating of the course in the course outline. One hour of CPE shall be credited for each 50 minute period of instruction;

(iv) the sponsor shall record and keep an accurate record of course attendance including the date, place, and the name of the licensed funeral service directors attending the course; and

(v) the sponsor shall issue a certificate of completion listing the time, date, place, name of licensee, number of hours of CPE completed and the course title.

(c) Formal correspondence or other individual study programs which require registration shall provide evidence of satisfactory completion including test results and meet all other requirements as specified in this section will qualify.

(d) Each semester hour of college credit shall equal 15 hours of CPE. A quarter hour shall equal ten hours of CPE.

(4) Upon written request from the licensee, the Board may waive the requirement for CPE as provided in Section R156-1-308d.

(5) The licensee is responsible to insure that the program will qualify for CPE. Each licensee shall keep an accurate record of CPE on forms supplied by the Division. The records shall be maintained for a minimum of four years.

(6) The Division in collaboration with the Board shall perform random audits to determine if the licensee is in compliance with the CPE requirements. If audited, or upon request by the Division, the licensee is responsible to submit documentation of compliance with CPE requirements.

R156-9-401. Facility/Staff Requirements.

(1) The funeral service establishment is responsible for the maintenance and safe operation of equipment used in funeral services and to insure that the facility is in compliance with the local or state health, fire and life safety codes. All funeral service establishments shall be kept and maintained in a clean and sanitary condition, and all refrigeration units, embalming tables, sinks, receptacles, instruments, and other appliances used in embalming, cremation, or alkaline hydrolysis of dead human

bodies shall be thoroughly cleansed and disinfected.

(2) The funeral service director is responsible to comply with the standards established by the Occupational Safety and Health Administration for the Federal Government and for the State of Utah.

(3) A funeral establishment or a number of funeral establishments under one management shall contain:

(a) a preparation room equipped with tile, cement, or composition floor, necessary drainage and ventilation. Every preparation room shall be provided with proper and convenient receptacles for refuse, bandages, cotton and other waste materials and supplies. All refuse, bandages, cotton, and other waste materials shall be destroyed in a sanitary manner, in accordance with health regulations.

(b) necessary instruments, supplies and proper protective clothing for the preparation and embalming of dead human bodies for burial, transportation, or other disposition.

(4) The care and preparation of the body for burial or other disposition of all human dead bodies shall be strictly private. No one shall be allowed in the embalming room while a dead body is being embalmed, except the licensed embalmer, intern, staff, public officials in the discharge of their duties and upon request, members of the immediate family of the deceased.

R156-9-402. Duties and Responsibilities of a Funeral Service Director in Supervision of Funeral Service Interns, Preneed Funeral Arrangement Sales Agents and Unlicensed Staff.

The duties and responsibilities of a supervising funeral service director include:

(1) being professionally responsible for the acts and practices of the supervisee;

(2) being engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(3) being available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training;

(4) monitoring the performance of the supervisee for compliance with laws, standards, and ethics applicable to the funeral service profession, including the Utah Vital Statistics Rules of the Utah Department of Health;

(5) submitting appropriate documentation to the Division with respect to all work completed by the funeral service intern evidencing the performance of the supervisee during the period of supervised training, including the supervisor's evaluation of the supervisee's competence in the practice of the funeral service profession. This report shall be submitted to the Division within 30 days after the supervisor-supervisee relationship is terminated or within 30 days after the supervisee has completed 2000 hours of supervised experience in a period exceeding one year, performed 50 embalmings, and has satisfactorily completed all the duties and functions of an intern throughout the entire internship period;

(6) supervising not more than one funeral service intern at any given time unless approved by the Board and Division;

(7) being physically present and directly supervising, or ensuring that another funeral director directly supervises all duties and functions completed by a funeral service intern throughout the entire internship period;

(8) being responsible for and signing all preneed and at need funeral contracts sold by persons under supervision;

(9) assuring each supervisee is appropriately licensed as a funeral service intern or preneed funeral arrangement sales agent prior to beginning the supervision;

(10) notifying the Division of beginning or ending of association or employment of a preneed sales agent with the funeral service establishment within ten days. Notification shall be made on forms provided by the Division; and

(11) assuring that the supervision requirements are met as required in Section 58-9-307.

R156-9-403. Death Registration - Removal of Body - Transportation and Preservation of Dead Human Bodies.

(1) A funeral service director licensed in another state may enter the state of Utah for the purpose of transporting a dead human body to another state without being in violation of Title 58, Chapter 9. However, the person shall comply with the Utah Vital Statistics Rules of the Utah Department of Health and any other statute or rule regulated by the Utah Department of Health.

(2) All licensed funeral service directors, who release a dead human body to such persons, are responsible to insure that the out of state persons and their staff comply with the Utah Vital Statistics Rules of the Utah Department of Health.

R156-9-502. Unprofessional Conduct.

"Unprofessional conduct" as defined in Title 58, Chapters 1 and 9, is further defined in accordance with Subsection 58-1-203(1)(e) to include:

(1) violating the ethical standards of the profession;

(2) failing to comply with laws and rules established by any local, state, federal or other authority regarding funeral services, preneed contracts, health, safety, sanitation, regarding funeral establishments or transportation or handling of dead human bodies, or disclosure requirements to purchasers or prospective purchasers of funeral services or preneed contract;

(3) failing to comply with any provision of the Title 58, Chapter 9, Funeral Service Licensing Act or this Funeral Service Licensing Act Rule;

(4) failing to comply with the disclosure requirements of the Federal Trade Commission;

(5) failing to accurately report and record information required by law to be reported on a death certificate;.

(6) solicitation or the direct or indirect offer to pay a commission for the procurement of dead human bodies;

(7) failing to comply with the Utah Vital Statistics Rules as promulgated by the Utah Department of Health;

(8) selling preneed funeral arrangements by a preneed funeral arrangement sales agent when the sales agent is not associated with or employed by a funeral service establishment;

(9) selling a preneed funeral arrangement when the preneed funeral arrangement sales agent has not obtained approval to do so from the funeral service establishment and the contract is not approved by the supervising funeral director;

(10) selling an insurance policy to fund a preneed funeral arrangement contract naming a funeral service establishment as beneficiary, prior to executing the underlying preneed funeral arrangement contract;

(11) selling a preneed funeral arrangement without executing an approved preneed funeral arrangement contract within ten working days following the sale;

(12) failing to notify the Division of the beginning or ending of association or employment of a preneed funeral arrangement sales agent;

(13) exercising undue influence over a consumer thereby requiring or causing the consumer to purchase goods or services beyond those the consumer desires or needs;

(14) collecting or receiving money from the sale of an insurance policy funding a preneed funeral arrangement contract unless the person is collecting or receiving the money as a licensed insurance agent or broker;

(15) violating Title 31A, Chapter 23a, containing the fiduciary duties of a trustee with respect to money collected or received as a licensed insurance agent or broker;

(16) receiving a death benefit payment of life insurance proceeds beyond the funeral service establishment's insurable

interest in the recipient of goods and services specified in a preneed contract, unless the excess is promptly returned to the insurance company or paid to those entitled to the funds;

(17) converting a preneed funeral arrangement funded by money placed in trust to insurance except as provided by this rule;

(18) failing to provide guaranteed goods and services at time of need in accordance with the terms of a preneed funeral arrangement contract;

(19) retaining life insurance proceeds of a policy purchased to fund funeral arrangements but not accompanied by a preneed funeral arrangement contract, unless the licensee provides an equivalent value of funeral goods and services;

(20) failing to report known violations of governing law or rules to the Division and to appropriate law enforcement or other appropriate agencies; and

(21) failing to handle, remit or deposit funds received in payment for a preneed funeral arrangement contract by placing the funds in trust or remitting the funds to an insurance carrier as is required by the contract terms and conditions and by all laws and rules regulating the sale of preneed funeral arrangements and insurance and annuity policies.

R156-9-604. Affiliation of Licensed Sales Agent with Licensed Funeral Service Establishment.

(1) When a licensed sales agent enters association with a licensed funeral service establishment and such association is not currently registered with the Division under the provisions of Subsection 58-9-302(3)(d), or this subsection, the licensed funeral service establishment shall file a notice of association with the Division on forms provided by the Division within ten days after commencement of association.

(2) The licensed funeral service establishment shall provide the licensed sales agent with a copy of the notice filed with the Division.

(3) If a notice of association is not filed by the licensed funeral service establishment within ten days after association, the sales agent may not represent the licensed funeral service establishment with respect to any preneed funeral arrangement until such notice is filed.

R156-9-605. Licensure of Persons Selling Preneed Funeral Arrangements to be Funded by Proceeds from Insurance or Annuity Policy.

(1) Any person who sells or represents that they will or intend to sell specific funeral goods or services, represents that goods or services will be provided by a specific funeral establishment, represents that specified amount of money will purchase defined funeral goods or services, or represents that payment for those goods or services to be provided at some future date shall be accomplished through the purchase of a life insurance policy or annuity policy, is engaged in the sale of a preneed funeral arrangement and is required to be licensed as a funeral service establishment or sales agent.

(2) Any person who sells or represents that they will or intend to sell an insurance or annuity policy which will provide a certain benefit at time of death, represents that such benefit will be available to pay for funeral arrangements and no reference is made to specific funeral goods or services, to the cost of specific funeral goods or services, or to the services of a specific funeral service establishment, is not engaged in the sale of a preneed funeral arrangement and is not required to be licensed as a funeral service establishment or preneed sales agent.

(3) Nothing in this section shall be interpreted to affect or modify any requirement under state law regarding licensure of persons engaged in the sale of insurance or annuity policies.

R156-9-606. Preneed Funeral Arrangement Contracts Funded by Insurance or Annuity Policy.

(1) The beneficiary designation on any insurance or annuity policy sold to fund a preneed funeral arrangement contract shall be a contingent designation using such wording as "as their interests may appear under a funeral arrangement contract" with information identifying the funeral arrangement contract, or other substantially equivalent beneficiary designation language.

(2) Monies received by a licensee in payment for an insurance or annuity policy sold to fund a preneed funeral arrangement contract shall be handled in accordance with the contractual terms and conditions of the policy and the insurance laws applicable to the policy.

R156-9-607. Contract Forms - Division Model.

(1) In accordance with Subsection 58-9-302(3)(e), a funeral service establishment shall ensure that if any amendments are made to, any form of contract or agreement that is filed with its application for licensure, the amendments meet the requirements of Section 58-9-701 before that contract or agreement is used in any marketing or sale of preneed funeral arrangements.

(2) In accordance with the provisions of Subsection 58-9-701(2)(a), easy-to-read type size is defined to be of a type size large enough to accommodate no more than six lines per vertical inch and no more than 15 characters per horizontal inch.

(3) After April 30, 2007, a new preneed contract form is not required to contain a clause indicating that the Division has approved the contract. Preneed contract forms approved prior to April 30, 2007, shall continue to contain a clause indicating approval by the Division.

R156-9-608. Contract Notice Regarding Medicaid.

The following notice shall appear in all preneed contracts:

"Notice: Under Federal regulations, a Medicaid recipient whose preneed contract is revoked, canceled, or mutually rescinded may become ineligible for Medicaid benefits. Before permitting or causing your preneed agreement to be revoked, canceled or rescinded, you should seek the advice of an attorney or a Medicaid representative."

R156-9-609. Retention of Completed or Terminated Contracts.

Contracts shall be maintained for a period of five years after the contracts have been serviced and obligations of the funeral service establishment have been completed, or after the contracts have been otherwise terminated. The contracts shall be filed and maintained with a copy of the death certification or burial transit permit with respect to those contracts for which services have been provided, and with sufficient documentation to clearly identify the basis for termination of otherwise terminated.

R156-9-610. Cash Advance Item Prohibited Unless a Guaranteed Product.

A cash advance item as defined in 16 CFR Part 453, Funeral Industry Practices Trade Regulation Rule, of the Federal Trade Commission is prohibited in a preneed funeral arrangement contract unless the item is a guaranteed product permitting the contract to meet the requirements of Subsection 58-9-701(2)(d).

R156-9-611. Use of Funds in Trust Account to Purchase Insurance or Annuity Policy.

A funeral service establishment may convert a contract funded by monies held in trust with a contract funded by the proceeds from an insurance or annuity policy provided:

(1) the buyer consents in writing to the conversion after full disclosure of the consequences of the transaction in writing

by the funeral service establishment;

(2) the buyer's consent is given without coercion, threat, concealment of material fact, undue influence, or other prejudicial influence inconsistent with the buyer's best interest;

(3) the funeral service establishment uses all monies held in the individual trust account, including interest, as premium for the purchase of the life insurance or annuity policy, unless otherwise directed in writing by the buyer;

(4) the new preneed funeral arrangement contract must be in writing and must provide for goods and services which at least equal to those required of the funeral service establishment under the original contract, and

(5) the new contract meets all requirements of Title 58, Chapter 9, and this rule.

R156-9-612. Conversion of Trust Accounts Under Prior Law Prohibited.

Conversion of funds held in trust which was established under any prior law regulating preneed funeral arrangements, may not be converted to a trust under the provisions of current statute and rules, but shall continue to be held in trust under the terms and conditions of the predecessor law. However, the funeral service establishment is required to file reports with the Division as required under this rule.

R156-9-613. Prohibition Against Provider Accepting Payment in a Form Other Than Cash, Cash Equivalents, or Negotiable Instruments.

A funeral service establishment may accept in payment for a preneed funeral arrangement contract only cash, cash equivalents, or negotiable instruments which are readily convertible to cash.

R156-9-614. Funeral Service Establishment Expenditure of Earnings from Trust Account.

(1) In accordance with Subsection 58-9-704(1), earnings of a preneed funeral arrangement trust account shall be available to the funeral service establishment for expenditure toward reasonable trustee expenses of administering a trust account, not to exceed the lesser of the earnings remaining in the trust account or 1% of the entire trust account, plus any amounts necessary to pay taxes incurred on the entire trust account's earnings.

(2) In accordance with Subsection 58-9-704(2), earnings of an individual account within the trust shall be available to the funeral service establishment for expenditure toward other authorized reasonable funeral service establishment expenses incurred against the individual account, not to exceed earnings totaling 30% of the sales amount of the respective preneed funeral arrangement contract.

(3) Remaining earnings of individual accounts within the trust shall, except as provided in Subsection 58-9-704(3), remain in each individual account within the trust to pay by account, the costs of providing the goods and services required under respective preneed funeral arrangement contracts.

R156-9-615. Maximum Life Insurance Proceeds Payable to Funeral Service Establishment.

(1) Preneed life insurance proceeds payable to a funeral service provider shall not exceed the funeral service establishment's insurable interest in the recipient of goods and services which, by definition, shall not exceed the funeral service establishment's current retail price for the goods and services provided, as determined by the funeral service establishment's price list in effect at the recipient of goods and service's death.

(2) Excess preneed life insurance proceeds not paid to the funeral service establishment shall be returned to the owner of the life insurance policy or his heirs and beneficiaries unless otherwise designated by the owner or his heirs and beneficiaries.

R156-9-616. Reporting Requirements.

(1) In accordance with Sections 58-9-504 and 58-9-706, each funeral service establishment shall maintain an annual report at the establishment which shall be subject to Division audit at anytime. The annual report shall be maintained in a format set forth by the Division and shall include:

(a) a statement of compliance certifying:

(i) that all payments received from the sale of contracts have been:

(A) placed in the funeral service establishment's trust account in accordance with Section 58-9-702 and administered in accordance with Sections 58-9-703 through 58-9-705 and this rule; or

(B) submitted to the insurance company whose insurance or annuity policy funds the contract;

(ii) that complete and accurate information concerning the preneed funeral arrangements by the funeral service establishment or the funeral service establishment's sales agent was furnished or made available to the independent certified public accountant who prepared the report of agreed upon procedures; and

(iii) that the annual report is complete and accurate;

(b) at least one of the following reports which reconciles balances in all trust accounts and insurance policies to those in the annual report:

(i) a report from a bank trust department;

(ii) a report from a licensed insurance company; or

(iii) an accounting report on forms available from the Division, completed by an independent certified public accountant (CPA) licensed pursuant to Title 58, Chapter 26a, which report indicates the procedures used and agreed upon by the CPA and the funeral service establishment.

(c) an exhibit listing preneed contracts sold prior to April 29, 1991, funded by money, 75% of which is required to be maintained in the name of the contract buyer in the funeral service establishment's trust account as provided in Section 58-9-703, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services and buyer if different, and balance due; the individual trust account number and amount trusted; and the trust earnings, earnings used, and trust balance;

(d) an exhibit listing preneed contracts sold after April 28, 1991, funded by money, 100% of which is required to be maintained in the name of the contract buyer in the funeral service establishment's trust account as provided in Section 58-9-703, which shall include at a minimum the information required under subsection (c);

(e) an exhibit listing preneed contracts funded by money placed in trust which were serviced, revoked, rescinded, or amended since the last reporting period, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services and buyer if different; the individual trust account number and trust balance at the recipient of goods and service's death; the date the contract was closed; and an explanation regarding any preneed contract closed but not serviced;

(f) an exhibit listing preneed contracts sold after April 28, 1991, funded in whole or in part by insurance, which shall include at a minimum: the contract number, date, amount, recipient of goods and services and buyer if different; the insurance company; the policy number, policy holder, and face amount; and

(g) an exhibit listing preneed contracts funded by insurance which were serviced, revoked, rescinded, or otherwise amended since the last reporting period, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services, and buyer if different; the insurance

company; the policy number and policy holder; the policy proceeds; the date the contract was closed; and an explanation regarding any preneed contract closed but not serviced.

R156-9-617. Maximum Revocation Fee.

If a buyer revokes or defaults under a guaranteed preneed funeral arrangement contract, the funeral service establishment may retain a revocation fee from the trust corpus, not to exceed 25% of the amount received from the sale of the contract and trust earnings thereupon, provided the revocation fee is clearly identified in the contract.

R156-9-618. Goods and Services Not Provided - Refund.

If goods or services selected in the preneed contract are not provided at the time of need, the amount paid for those goods and services and any unexpended earnings thereupon will be distributed to the preneed contract buyer or the buyer's representative or in their absence, the buyer's heirs and beneficiaries.

KEY: funeral industries, licensing, funeral service directors, preneed funeral arrangements

September 10, 2018	**58-1-106(1)(a)**
Notice of Continuation April 26, 2016	**58-1-202(1)(a)**
	58-9-504

R156. Commerce, Occupational and Professional Licensing.
R156-61. Psychologist Licensing Act Rule.
R156-61-101. Title.

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

R156-61-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 61, as used in Title 58, Chapters 1 and 61 or this rule:

(1) "Approved diagnostic and statistical manual for mental disorders" means the following:

(a) Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition: DSM-5 or Fourth Edition: DSM-IV published by the American Psychiatric Association;

(b) 2013 ICD-9-CM for Physicians, Volumes 1 and 2 Professional Edition published by the American Medical Association; or

(c) ICD-10-CM 2013: The Complete Official Draft Code Set published by the American Medical Association.

(2) "CoA" means Committee on Accreditation of the American Psychological Association.

(3) "Direct supervision" of a supervisee in training, as used in Subsection 58-61-304(1)(f), means:

(a) a supervisor meeting with the supervisee when both are physically present in the same room at the same time; or

(b) a supervisor meeting with the supervisee remotely via real-time electronic methods that allow for visual and audio interaction between the supervisor and supervisee under the following conditions:

(i) the supervisor and supervisee shall enter into a written supervisory agreement which, at a minimum, establishes the following:

(A) frequency, duration, reason for, and objectives of electronic meetings between the supervisor and supervisee;

(B) a plan to ensure accessibility of the supervisor to the supervisee despite the physical distance between their offices;

(C) a plan to address potential conflicts between clinical recommendations of the supervisor and the representatives of the agency employing the supervisee;

(D) a plan to inform a supervisee's client or patient and employer regarding the supervisee's use of remote supervision;

(E) a plan to comply with the supervisor's duties and responsibilities as established in rule; and

(F) a plan to physically visit the location where the supervisee practices on at least a quarterly basis during the period of supervision or at a lesser frequency as approved by the Division in collaboration with the Board;

(ii) the supervisee submits the supervisory agreement to the Division and obtains approval before counting direct supervision completed via live real-time methods toward the 40 hour direct supervision requirement; and

(iii) in evaluating a supervisory agreement, the Division shall consider whether it adequately protects the health, safety, and welfare of the public.

(4) "On-the-job training program approved by the Division", as used in Subsection 58-61-301(1)(b), means a program that meets the standards established in Section R156-61-601.

(5)(a) "Predoctoral internship" refers to a formal training program that meets the minimum requirements of the Association of Psychology Postdoctoral and Internship Centers (APPIC) offered to culminate a doctoral degree in clinical, counseling, or school psychology.

(b) A training program may be a full-time one year program or a half-time two year program.

(6)(a) "Program accredited by the CoA", as used in Subsections R156-61-302a(1), means a psychology department program that, as of the date on which a student completes a doctoral psychology degree program:

(i) has obtained an accreditation from the CoA; or

(ii)(A) has applied to the CoA for accreditation;

(B) has been approved by the CoA for a site visit, which is to occur within the ensuing six years; and

(C) has not previously been denied accreditation by the CoA.

(7)(a) "Program of respecialization", as used in Subsection R156-61-302a(3), is a formal program designed to prepare someone with a doctoral degree in psychology with the necessary skills to practice psychology.

(b) The respecialization activities shall include substantial requirements that are formally offered as an organized sequence of course work and supervised practicum leading to a certificate (or similar recognition) by an educational body that offers a doctoral degree qualifying for licensure in the same area of practice as that of the certificate.

(8) "Qualified faculty", as used in Subsection 58-1-307(1)(b), means a university faculty member who provides pre-doctoral supervision of clinical or counseling experience in a university setting who:

(i) is licensed in Utah as a psychologist; and

(ii) is training students in the context of a doctoral program leading to licensure.

(9) "Residency program", as used in Subsection 58-61-301(1)(b), means a program of post-doctoral supervised clinical training necessary to meet licensing requirements as a psychologist.

(10)(a) "Psychology training", as used in Subsection 58-61-304(1)(e), means practical training experience providing direct services in the practice of mental health therapy and psychology under supervision. All activities in full-time internships and full-time post-doctoral positions devoted solely to mental health delivery meet this definition.

(b) Activities not directly related to the practice of psychology, even if commonly performed by psychologists, do not meet the definition of psychology training under Subsection 58-61-304(1)(e). Examples of ineligible activities include psychology coursework, analog clinical activities (e.g. role plays), activities required for business purposes (e.g. billing), supervision of others engaged in activities other than practice of psychology (e.g. supervising adolescents in wilderness settings), and activities commonly performed by non-psychologists (e.g. teaching of psychology on topics not of a professional nature).

R156-61-103. 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 61.

R156-61-104. 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.

R156-61-201. Advisory Peer Committee Created - Membership - Duties.

(1) There is hereby enabled in accordance with Subsection 58-1-203(1)(f), the Ethics Committee as an advisory peer committee to the Psychologist Licensing Board on either a permanent or ad hoc basis consisting of members licensed in good standing as psychologists qualified to engage in the practice of mental health therapy, in number and area of expertise necessary to fulfill the duties and responsibilities of the committee as set forth in Subsection (3).

(2) The committee shall be appointed and serve in accordance with Section R156-1-205.

(3) The committee shall assist the Division in its duties, functions, and responsibilities defined in Section 58-1-202 including:

(a) upon the request of the Division, reviewing reported

violations of Utah law or the standards and ethics of the profession by a person licensed as a psychologist and advising the Division if allegations against or information known about the person presents a reasonable basis to initiate or continue an investigation with respect to the person;

(b) upon the request of the Division providing expert advice to the Division with respect to conduct of an investigation; and

(c) when appropriate serving as an expert witness in matters before the Division.

R156-61-302a. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsection 58-61-304(1)(d), an institution or program of higher education awarding a psychology degree that qualifies an applicant for licensure as a psychologist shall be accredited by the CoA.

(a) An applicant shall graduate from the actual program that is accredited by CoA. No other program within the department or institution qualifies unless separately accredited.

(b) If a transcript does not uniquely identify the qualifying CoA accredited degree program, it is the responsibility of the applicant to provide signed, written documentation from the program director or department chair that the applicant did indeed graduate from the qualifying accredited degree program.

(2) In accordance with Subsection 58-61-304(1)(d), an institution or program of higher education awarding a psychology doctoral degree that is not accredited by CoA shall meet the following criteria in order to qualify an applicant for licensure as a psychologist:

(a) if located in the United States or Canada, be an institution having a doctoral psychology program recognized by the Association of State and Provincial Psychology Boards (ASPPB)/National Register Joint Designation Committee as being found to meet "designation criteria", at the time the applicant received the earned degree. Whether a program is found to meet designation criteria is a decision to be made by the ASPPB/National Register Joint Designation Committee; or

(b) if located outside of the United States or Canada, be an institution that meets the ASPPB National Register (NR) Designation Guidelines for defining a doctoral degree in psychology as determined by the NR.

(3) An applicant whose psychology doctoral degree training is not designed to lead to clinical practice or who wishes to practice in a substantially different area than the training of the doctoral degree shall complete a program of respecialization as defined in Subsection R156-61-102(7), and shall meet requirements of Subsection R156-61-302a(2).

(4) The date of completion of the doctoral degree shall be the graduation date listed on the official transcript.

R156-61-302b. Qualifications for Licensure - Experience Requirements.

(1) An applicant for licensure as a psychologist under Subsection 58-61-304(1)(e) or mental health therapy under Subsections 58-61-304(1)(e) and (1)(f) shall complete a minimum of 4,000 hours of psychology training approved by the Division in collaboration with the Board. The training shall:

(a) be completed in not less than two years;

(b) be completed in not more than four years following the awarding of the doctoral degree unless the Division in collaboration with the Board approves an extension due to extenuating circumstances;

(c) be completed while the applicant is enrolled in an approved doctoral program or licensed as a certified psychology resident;

(d) be completed while the applicant is under the supervision of a qualified psychologist meeting the requirements under Section R156-61-302d;

(e) if completed under the supervision of a qualified faculty member who is not an approved psychology training supervisor in accordance with Section R156-61-302d, the training shall not be credited toward the 4,000 hours of psychology doctoral clinical training;

(f) be completed as part of a supervised psychology training program as defined in Subsection R156-61-102(4) that does not exceed:

(i) 40 hours per week for full-time internships and full-time post doctoral positions; or

(ii) 20 hours of part-time internships and part-time post doctoral positions; and

(g) be completed while the applicant is under supervision of a minimum of one hour of supervision for every 20 hours of pre-doctoral training and experience and one hour for every 40 hours of post-doctoral training and experience.

(2) In accordance with Subsection 58-61-301(1)(b), an individual engaged in a post-doctoral residency program of supervised clinical training shall be certified as a psychology resident.

(3) An applicant for licensure may accrue any portion of the 4,000 hours of psychology doctoral degree training and experience required in Subsection 58-61-304(1)(e) in a pre-doctoral program.

(4) An applicant who applies for licensure as a psychologist who completes the 4,000 hours of psychology doctoral degree training and experience required in Subsection 58-61-304(1)(e) in a pre-doctoral program or post-doctoral residency, and meets qualifications for licensure, may be approved to sit for the examinations, and upon passing the examinations will be issued a psychologist license.

(5) An applicant for licensure as a psychologist who has commenced and completed all or part of the psychology or mental health therapy training requirements under Subsection R156-61-302b(1) outside the state, may receive credit for that training completed outside of the state if it is demonstrated by the applicant that the training is equivalent to the requirements for training under Subsections 58-61-304(1)(e) and (f), and Subsection R156-61-302b(1).

R156-61-302c. Qualifications for Licensure - Examination Requirements.

(1) The examination requirements which shall be met by an applicant for licensure as a psychologist under Subsection 58-61-304(1)(g) are:

(a) passing the Examination for the Professional Practice of Psychology (EPPP) developed by the American Association of State Psychology Board (ASPPB) with a passing score as recommended by the ASPPB; and

(b) passing the Utah Psychologist Law and Ethics Examination with a score of not less than 75%.

(2) A person may be admitted to the EPPP and Utah Psychologist Law and Ethics examinations in Utah only after meeting the requirements under Section 58-61-305, and after receiving written approval from the Division.

(3) If an applicant is admitted to an EPPP examination based upon substantive information that is incorrect and furnished knowingly by the applicant, the applicant shall automatically be given a failing score and shall not be permitted to retake the examination until the applicant submits fees and a correct application demonstrating the applicant is qualified for the examination and adequately explains why the applicant knowingly furnished incorrect information. If an applicant is inappropriately admitted to an EPPP examination because of a Division or Board error and the applicant receives a passing score, the results of the examination may not be used for licensure until the deficiency which would have barred the applicant for admission to the examination is corrected.

(4) An applicant who fails the EPPP examination three

times will only be allowed subsequent admission to the examination after the applicant has appeared before the Board, developed with the Board a plan of study in appropriate subject matter, and thereafter completed the planned course of study to the satisfaction of the Board.

(5) An applicant who is found to be cheating on the EPPP examination or in any way invalidating the integrity of the examination shall automatically be given a failing score and shall not be permitted to retake the examination for a period of at least three years or as determined by the Division in collaboration with the Board.

(6) In accordance with Section 58-1-203 and Subsection 58-61-304(1)(g), an applicant for the EPPP or the Utah Psychologist Law and Ethics Examination shall pass the examinations within one year from the date of the psychologist application for licensure. If the applicant does not pass the examinations within one year, the pending psychologist application shall be denied. The applicant may continue to register to take the EPPP examination under the procedures outlined in Subsection R156-61-302c(4).

(7) In accordance with Section 58-1-203 and Subsection 58-61-304(2)(d), an applicant for psychologist licensure by endorsement shall pass the Utah Psychologist Law and Ethics Examination within six months from the date of the psychologist application for licensure. If the applicant does not pass the examination in six months, the pending psychologist application shall be denied.

R156-61-302d. Qualifications for Designation as an Approved Psychology Training Supervisor.

In accordance with Subsections 58-61-304(1)(e) and (f), to be approved by the Division in collaboration with the Board as a supervisor of psychology or mental health therapy training, an individual shall:

(1) be currently licensed in good standing as a psychologist in the jurisdiction in which the supervised training is being performed; and

(2) have practiced as a licensed psychologist for not fewer than 4,000 hours in a period of not less than two years.

R156-61-302e. Duties and Responsibilities of a Supervisor of Psychology Training and Mental Health Therapist Training.

The duties and responsibilities of a psychologist supervisor are further defined, clarified or established as follows. The psychologist supervisor shall:

(1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training, including supervision of all activities requiring a mental health therapy license;

(2) engage in a relationship with the supervisee in which the supervisor is independent from control by the supervisee, and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(3) supervise not more than three full-time equivalent supervisees unless otherwise approved by the Division in collaboration with the Board;

(4) be available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training, ability to diagnose patients, and other factors determined by the supervisor;

(5) comply with the confidentiality requirements of Section 58-61-602;

(6) provide timely and periodic review of the client records assigned to the supervisee;

(7) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of psychology;

(8) submit appropriate documentation to the Division with respect to work completed by the supervisee evidencing the performance of the supervisee during the period of supervised psychology training and mental health therapist training, including the supervisor's evaluation of the supervisee's competence in the practice of psychology and mental health therapy;

(9) ensure that the supervisee is certified by the Division as a psychology resident, or is enrolled in a psychology doctoral program and engaged in a training experience authorized by the educational program;

(10) ensure the psychologist supervisor is legally able to personally provide the services which the psychologist supervisor is supervising; and

(11) ensure the psychologist supervisor meets all other requirements for supervision as described in this section.

R156-61-302f. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 61, is established by rule in Section R156-1-308a.

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

R156-61-302g. License Reinstatement - Requirements.

An applicant for reinstatement of a license after two years following expiration of that license shall:

(1) upon request meet with the Board for the purpose of evaluating the applicant's current ability to safely and competently engage in practice as a psychologist and to make a determination of education, experience or examination requirements which will be required before reinstatement;

(2) upon the recommendation of the Board, establish a plan of supervision under an approved supervisor which may include up to 4,000 hours of psychology and/or mental health therapy training;

(3) take or retake, and pass the Utah Psychology Law Examination; or the EPPP Examination, or both, if it is determined by the Board it is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a psychologist; and

(4) complete a minimum of 48 hours of professional education in subjects determined necessary by the Board to ensure the applicant's ability to engage safely and competently in practice as a psychologist.

R156-61-302h. Continuing Education.

(1) There is hereby established a continuing education requirement for all individuals licensed or certified under Title 58, Chapter 61.

(2) During each two year period commencing on October 1 of each even numbered year:

(a) a licensed psychologist shall be required to complete not less than 48 hours of continuing education directly related to the licensee's professional practice;

(b) a certified psychology resident shall be required to complete not less than 24 hours of continuing education directly related to professional practice.

(3) The required number of hours of continuing education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(4) Continuing education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a psychologist;

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well organized, and

sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training, and experience; and

(e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.

(5) Credit for continuing education shall be recognized in accordance with the following:

(a) Unlimited hours shall be recognized for continuing education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences.

(b) A maximum of ten hours per two year period may be recognized for teaching in a college or university, teaching continuing education courses in the field of psychology, or supervision of an individual completing the experience requirement for licensure as a psychologist.

(c) A minimum of six hours per two year period shall be completed in ethics/law.

(d) A maximum of six hours per two year period may be recognized for clinical readings directly related to practice as a psychologist.

(e) A maximum of 18 hours per two year period may be recognized for Internet or distance learning courses that includes an examination, a completion certificate and recognized by the American Psychological Association or a state or province psychological association.

(f) A maximum of six hours per two year period may be recognized for regular peer consultation, review and meetings if properly documented that the peer consultation, review and meetings meet the following requirements:

(i) have an identifiable clear statement of purpose and defined objective for the educational consultation/meeting directly related to the practice of a psychologist;

(ii) are relevant to the licensee's professional practice;

(iii) are presented in a competent, well organized manner consistent with the stated purpose and objective of the consultation/meeting;

(iv) are prepared and presented by individuals who are qualified by education, training and experience; and

(v) have associated with it a competent method of registration of individuals who attended.

(6) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of four years after the close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain information with respect to qualified professional education to demonstrate it meets the requirements under this section.

R156-61-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) violation of any provision of the "Ethical Principles of Psychologists and Code of Conduct" of the American Psychological Association (APA) as adopted by the APA, June 1, 2010 edition, which is adopted and incorporated by reference;

(2) violation of any provision of the "ASPPB Code of Conduct" of the Association of State and Provincial Psychology Boards (ASPPB) as adopted by the ASPPB, 2005 edition, which is adopted and incorporated by reference;

(3) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-61-302d and R156-61-302e;

(4) engaging in and aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(5) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(6) failing to establish and maintain appropriate professional boundaries with a client or former client;

(7) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;

(8) engaging in sexual activities or sexual contact with a client with or without client consent;

(9) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;

(10) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition which could reasonably be expected to place the client at a disadvantage recognizing the power imbalance which exists or may exist between the psychologist and the client;

(11) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially vulnerable or susceptible to being disadvantaged because of his personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance which exists or may exist between the psychologist and that individual;

(12) physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(13) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(14) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(15) exploiting a client for personal gain;

(16) using a professional client relationship to exploit a client or other person for personal gain;

(17) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(18) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;

(19) failure to cooperate with the Division during an investigation

(20) participating in a residency program or other post degree experience without being certified as a psychology resident for post-doctoral training and experience;

(21) supervising a residency program of an individual who is not certified as a psychology resident; or

(22) when providing services remotely:

(a) failing to practice according to professional standards of care in the delivery of services remotely;

(b) failing to protect the security of electronic, confidential data and information; or

(c) failing to appropriately store and dispose of electronic, confidential data and information.

R156-61-601. Standards - Approved On-the-Job Training Program.

In accordance with Subsection R156-61-102(4), an on-the-job training program is one that:

(1) includes only individuals who have completed all courses required for graduation in a doctoral degree that satisfies the licensure requirements under Title 58, Chapter 61

and these rules;

(2) starts immediately upon completion of all courses required for graduation;

(3) ends no later than 45 days from the date it begins, or upon licensure, whichever is earlier;

(4) may not be extended or used a second time;

(5) is completed while the individual is an employee of a public or private agency engaged in the practice of psychology; and

(6) is supervised by an individual who:

(a) is licensed under Title 58, Chapter 61; and

(b) conducts supervision at least weekly on circumstances where supervisor and supervisee are physically present in the same room at the same time.

KEY: licensing, psychologists
June 15, 2015 58-1-106(1)(a)
Notice of Continuation September 18, 2018 58-1-202(1)(a)
58-61-101

R162. Commerce, Real Estate.
R162-2g. Real Estate Appraiser Licensing and Certification Administrative Rules.
R162-2g-101. Authority.

(1) The authority to promulgate rules governing the appraisal industry is granted by Section 61-2g-201(2)(h).

(2) The authority to establish and collect fees is granted by Section 61-2g-202(1).

(3) The authority to exempt specific persons from complying with USPAP standards is granted by Section 61-2g-205(5)(c) within certain limitations as imposed by Section 61-2g-403(1)(c).

R162-2g-102. Definitions.

(1) "Affiliation" means an ongoing business association:

(a) between:

(i) two individuals registered, licensed, or certified under Section 61-2g; or

(ii) an individual registered, licensed, or certified under Section 61-2g and:

(A) an appraisal entity; or

(B) a government agency;

(b) for the purpose of providing an appraisal service; and

(c) regardless of whether an employment relationship exists between the parties.

(2) The acronym "AQB" stands for the Appraiser Qualifications Board of the Appraisal Foundation.

(3) "Board" means the Utah Real Estate Appraiser Licensing and Certification Board.

(4) "Business day" means a day other than:

(a) a Saturday;

(b) a Sunday; or

(c) a federal or state holiday.

(5) The acronym "CAMA" stands for Computer Assisted Mass Appraisal.

(6) "Classification" means the type of license or certification held by an appraiser.

(7) "Day" means calendar day unless specified as "business day."

(8) "Deferral" means the postponement or delay for completion of a continuing education requirement due to active military duty or due to the impacts of a state- or federally-declared disaster as specified in R162-2g-306a.

(9) "Desk review" means review of an appraisal:

(a) including verification of the data; but

(b) not including a physical inspection of the property.

(10) "Distance education" means an education process based on the geographical separation of student and instructor, including:

(a) computer conferencing;

(b) satellite teleconferencing;

(c) interactive audio;

(d) interactive computer software;

(e) Internet-based instruction; and

(f) other interactive online courses.

(11) "Division" means the Division of Real Estate of the Department of Commerce.

(12) "Draft report" means an appraisal report that is distributed prior to being completed, as provided in Subsection R162-2g-502b(1).

(13) "Entity" means:

(a) a corporation;

(b) a partnership;

(c) a sole proprietorship;

(d) a limited liability company;

(e) another business entity; or

(f) a subsidiary or unit of an entity described in this Subsection (13).

(14) "Field review" means review of an appraisal, including:

(a) a physical inspection of the property; and

(b) verification of the data.

(15) "Non-certified education" means a continuing education course offered outside of Utah, but for which a licensee may apply for credit pursuant to R162-2g-307d(4).

(16) "Person" means an individual or an entity.

(17) "Reinstatement" means renewing a license or certification for an additional period after its expiration date has passed, but prior to 12 months after the expiration date.

(18) The acronym "RELMS" stands for Real Estate Licensing and Management System, which is the online database through which individuals registered, licensed, or certified under these rules must submit certain information to the division.

(19) "Renewal" means reissuing a license or certification upon its expiration for an additional period.

(20) "School" means:

(a) an accredited college, university, junior college, or community college;

(b) any state or federal agency or commission;

(c) a nationally recognized real estate appraisal or real estate related organization, society, institute, or association; or

(d) any school or organization approved by the board.

(21) "School director" means an authorized individual in charge of the educational program at a school.

(22) "Supervisory Appraiser" means a state-certified residential appraiser or a state certified general appraiser that directly supervises a trainee.

(23) "Trainee" means a person who is working under the direct supervision of a state-certified residential appraiser or a state-certified general appraiser to earn experience hours for licensure, and who meets the requirements of Subsection R162-2g-302.

(24) "Transaction value" means:

(a) for loans or other extensions of credit, the amount of the loan or extension of credit;

(b) for sales, leases, purchases, and investments in, or exchanges of, real property, the market value of the real property interest involved; and

(c) for the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

(25) The acronym "USPAP" stands for the current edition of the Uniform Standards of Professional Appraisal Practice published by the Appraisal Foundation.

R162-2g-302. Application for Trainee Registration.

(1) Registration required.

(a) An individual who intends to obtain a license to practice as a state-licensed appraiser shall first register with the division as a trainee.

(b) The division and the board shall not award or recognize experience hours toward licensure for any appraisal work that is performed by an individual during a period of time when the individual is not registered as a trainee.

(2) Character. An individual registering with the division as a trainee shall evidence honesty, integrity, and truthfulness.

(a) A trainee applicant shall be denied registration for:

(i) a felony that resulted in:

(A) a conviction occurring within five years of the date of application; or

(B) a jail or prison release date falling within five years of the date of application; or

(ii) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in:

(A) a conviction occurring within three years of the date of application; or

(B) a jail or prison release date falling within three years of the date of application.

(b) A trainee applicant may be denied registration upon consideration of the following:

(i) criminal convictions and pleas entered at any time prior to the date of application;

(ii) the circumstances that led to any criminal convictions or pleas under consideration;

(iii) past acts related to honesty or moral character, with particular consideration given to any such acts involving the appraisal business;

(iv) dishonest conduct that would be grounds under Utah law for sanctioning an existing licensee;

(v) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;

(vi) court findings of fraudulent or deceitful activity in civil lawsuits;

(vii) evidence of non-compliance with court orders or conditions of sentencing;

(viii) evidence of non-compliance with terms of a probation agreement, plea in abeyance, or diversion agreement; and

(ix) failure to pay taxes or child support obligations.

(3) Competency. An individual registering with the division as a trainee shall evidence competency. In evaluating an applicant for competency, the division and board may consider any evidence, including the following:

(a) civil judgments, with particular consideration given to any such judgments involving the appraisal business;

(b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;

(c) the extent and quality of the applicant's training and education in appraisal;

(d) the extent of the applicant's knowledge of the Utah Real Estate Appraiser Licensing and Certification Act;

(e) evidence of disregard for licensing laws;

(f) evidence of drug or alcohol dependency; and

(g) the amount of time that has passed since any incident under consideration.

(4) Pre-licensing education.

(a) Within the five-year period preceding the date of application, an applicant shall successfully complete 75 classroom hours:

(i) approved by the AQB; and

(ii)(A) certified by the division pursuant to Subsection R162-2g-307c(1)-(3); or

(B) not required to be certified by the division pursuant to Subsection R162-2g-307c(6).

(b) The 75 hours of required education shall include:

(i) 30 hours of appraisal principles;

(ii) 30 hours of appraisal procedures; and

(iii) the 15-hour National USPAP course, or its equivalent.

(c) The15-hour National USPAP Course or its equivalent may not be accepted by the division as qualifying education unless it is:

(i) taught by an instructor who:

(A) is a state-certified residential or state-certified general appraiser; and

(B) has been certified by the AQB; or

(ii) approved as a distance education course by the AQB and International Distance Education Certification Center.

(d) A person who applies for trainee registration on or after January 1, 2015 shall successfully complete the division-approved Supervisory Appraiser and Appraiser Trainee Course:

(i) as taught by a division-approved instructor; and

(ii) within the two-year period preceding the date of application.

(e) Examination. An applicant shall evidence having passed the final examination in all pre-licensing courses.

(5) Application to the division. An applicant shall submit the following to the division:

(a) a completed application as provided by the division;

(b) course completion certificates for the 75 hours of pre-licensing education;

(c)(i) two fingerprint cards in a form acceptable to the division; or

(ii) evidence that the applicant's fingerprints have been successfully scanned at a testing center;

(d) all court documents related to any past criminal proceeding;

(e) complete documentation of any sanction taken against any license in any jurisdiction;

(f) a signed letter of waiver authorizing the division to:

(i) obtain the fingerprints of the applicant;

(ii) review past and present employment records;

(iii) review education records; and

(iv) conduct a criminal background check;

(g) the fee for the criminal background check;

(h) the name of the state-certified appraiser(s) with whom the trainee is affiliated;

(i) the name and business address of any appraisal entity or government agency with which the trainee is affiliated; and

(j) the nonrefundable application fee.

(6) Affiliation with certified appraiser(s). Applicants shall affiliate with at least one supervising certified appraiser and evidence that affiliation by:

(a) identifying each supervising certified appraiser on a form supplied by the division; and

(b) obtaining each supervising certified appraiser's signature on the application.

R162-2g-304a. Application to Sit for the State-Licensed Appraiser Exam.

(1) An applicant to sit for the state-licensed appraiser exam shall provide the following to the division:

(a) completed experience forms, as required by the division:

(i) documenting all experience hours completed by the applicant from the date of trainee registration to the date of application for licensure; and

(ii) evidencing at least 1,000 hours of appraisal experience:

(A) pursuant to Subsection R162-2g-304d;

(B) completed during the time when the applicant was registered with the division as a trainee; and

(C) accrued in no fewer than:

(I) 6 months for applicants submitting experience primarily from Appendices 1 and 2, or

(II) 12 months for applicants submitting experience primarily from appendix 3;

(b) evidence of having successfully completed a state-licensed appraiser pre-licensing required core curriculum as described in Appendix 4, Table 1 and that has been certified by the division pursuant to Subsection R162-2g-307c; and

(c) a nonrefundable application fee.

(2) The pre-licensing curriculum required by Subsection (1)(b) shall be conducted by:

(a) a college or university;

(b) a community or junior college;

(c) a real estate appraisal or real estate related organization;

(d) a state or federal agency or commission;

(e) a proprietary school;

(f) a provider approved by a state certification and licensing agency; or

(g) the Appraisal Foundation or its boards.

(3)(a) Upon determining that the applicant satisfies the education and experience requirements, the division shall issue

to the applicant a form permitting the applicant to register for the examination.

(b) Upon being approved to register for the examination pursuant to this Subsection (3)(a), an applicant shall:

(i) return the examination application form to the testing service designated by the division; and

(ii) pay a nonrefundable examination fee to the testing service designated by the division.

(c) The permission to register to sit for the examination shall be valid for 24 months after issuance.

R162-2g-304b. Application to Sit for the State-Certified Residential Appraiser Exam.

(1) An applicant to sit for the state-certified residential appraiser exam shall provide the following to the division:

(a) completed experience forms, as required by the division, evidencing at least 1,500 hours of total appraisal experience, at least 500 of which:

(i) meet the requirements of Subsection R162-2g-304d;

(ii) are completed during the time when the applicant is licensed as a state-licensed appraiser:

(A) with the division; or

(B) in another state, if licensure was required in that state at the time the appraisal was performed; and

(iii) are accrued in no fewer than:

(A) for applicants submitting experience primarily from appendices 1 and 2, 6 months from the date the applicant received the state-licensed appraiser credential; or

(B) for applicants submitting experience primarily from appendix 3, 12 months from the date the applicant received the state-licensed appraiser credential;

(b) evidence of having completed at least one of the following six education options:

(i) option 1: received a Bachelor's degree or higher in any field of study from an accredited college or university;

(ii) option 2: received an Associate's degree from an accredited college or university in a field of study related to:

(A) Business Administration;

(B) Accounting;

(C) Finance;

(D) Economics; or

(E) Real Estate;

(iii) option 3: successful completion of 30 semester hours of college-level courses that cover each of the following specific topic areas and hours:

(A) English composition (3 semester hours);

(B) micro economics (3 semester hours);

(C) macro economics (3 semester hours);

(D) finance (3 semester hours);

(E) algebra, geometry, or higher mathematics (3 semester hours);

(F) statistics (3 semester hours);

(G) computer science (3 semester hours);

(H) business law or real estate law (3 semester hours); and

(I) two elective courses in: accounting, geography, agricultural economics, business management, or real estate (3 semester hours each);

(iv) option 4: successful completion of at least 30 hours of College Level Examination Program ® (CLEP®) examinations from the following subject matter areas:

(A) College Algebra;

(B) College Composition;

(C) College Composition Modular;

(D) College Mathematics;

(E) Principals of Macroeconomics;

(F) Principals of Microeconomics;

(G) Introductory Business Law; and

(H) Principals of Management

(v) option 5: any combination of option 3 and option 4 that includes all of the topics identified in option 3; or

(vi) option 6: no college-level education is required for appraisers who have held a state-licensed appraiser credential for a minimum of five years and have no record of any adverse, final, and non-appealable disciplinary action affecting the state-licensed appraiser's legal eligibility to engage in appraisal practice within the five years immediately preceding the date of application for a state-certified residential credential;

(c) evidence of having successfully completed a state-certified residential appraiser pre-licensing required core curriculum as described in Appendix 4, Table 1 and that has been certified by the division pursuant to Subsection R162-2g-307c; and

(d) except as provided in this Subsection (4)(a), a nonrefundable application fee.

(2) The pre-licensing curriculum required by Subsection(1)(c) shall be provided by:

(a) a college or university;

(b) a community or junior college;

(c) a real estate appraisal or real estate related organization;

(d) a state or federal agency or commission;

(e) a proprietary school;

(f) a provider approved by a state certification and licensing agency; or

(g) the Appraisal Foundation or its boards.

(3)(a) Upon determining that the applicant satisfies the education and experience requirements, the division shall issue to the applicant a form permitting the applicant to register for the examination.

(b) Upon being approved to register for the examination pursuant to this Subsection (3)(a), an applicant shall:

(i) return the examination application form to the testing service designated by the division; and

(ii) pay a nonrefundable examination fee to the testing service designated by the division.

(c) The permission to register to sit for the examination shall be valid for 24 months after issuance.

(4)(a) A state-licensed appraiser who, within six months of renewing the license, submits an application and consequently qualifies for certification shall not be required to pay the entire application fee but shall instead pay the difference between the renewal fee and the application fee.

(b) A certification that is obtained under this Subsection (4)(a) shall expire on the same date that the license was due to expire prior to the granting of certification.

R162-2g-304c. Application to Sit for the State-Certified General Appraiser Exam.

(1) An applicant to sit for the state-certified general appraiser exam shall provide the following to the division:

(a) completed experience forms, as required by the division, evidencing at least 3,000 hours of total appraisal experience, at least 1,000 of which:

(i) meet the requirements of Subsection R162-2g-304d;

(ii) are completed during the time when the applicant is licensed as a state-licensed appraiser or state-certified residential appraiser:

(A) with the division; or

(B) in another state, if licensure was required in that state at the time the appraisal was performed;

(iii) are accrued in no fewer than:

(A) 12 months from the date the applicant received a state-licensed appraiser credential for applicants submitting experience primarily from appendices 1 and 2, or

(B) 18 months from the date the applicant received a state-licensed appraiser credential for applicants submitting experience primarily from appendix 3; and

(iv) evidence that at least 1,500 experience hours are

derived from non-residential appraisal experience.

(b) evidence of having received a bachelor's degree or higher degree from an accredited college or university;

(c) evidence of having successfully completed a state-certified general appraiser pre-licensing required core curriculum as described in Appendix 4, Table 1 and that has been certified by the division pursuant to Subsection R162-2g-307c; and

(d) except as provided in this Subsection (4)(a), a nonrefundable application fee.

(2) The pre-licensing curriculum required by Subsections (1)(c) shall be provided by:

(a) a college or university;

(b) a community or junior college;

(c) a real estate appraisal or real estate related organization;

(d) a state or federal agency or commission;

(e) a proprietary school;

(f) a provider approved by a state certification and licensing agency; or

(g) the Appraisal Foundation or its boards.

(3)(a) Upon determining that the applicant satisfies the education and experience requirements, the division shall issue to the applicant a form permitting the applicant to register for the examination.

(b) Upon being approved to register for the examination pursuant to this Subsection (3)(a), an applicant shall:

(i) return the examination application form to the testing service designated by the division; and

(ii) pay a nonrefundable examination fee to the testing service designated by the division.

(c) The permission to register to sit for the examination shall be valid for 24 months after issuance.

(4)(a) A state-licensed appraiser or a state-certified residential appraiser who, within six months of renewing the license or certification, submits an application and consequently qualifies for certified general status shall not be required to pay the entire application fee but shall instead pay the difference between the renewal fee and the application fee.

(b) A certification that is obtained under this Subsection (4)(a) shall expire on the same date that the license was due to expire prior to the granting of certified general status.

R162-2g-304d. Experience Hours.

(1)(a) Except as provided in this Subsection (1)(b), appraisal experience shall be measured in hours according to the appraisal experience hours schedules found in Appendices 1 through 3.

(b)(i) An applicant who has experience in categories other than those shown on the appraisal experience hours schedules, or who believes the schedules do not adequately reflect the applicant's experience or the complexity or time spent on an appraisal, may petition the board on an individual basis for evaluation and approval of the experience as being substantially equivalent to that required for licensure or certification.

(ii) Upon a finding that an applicant's experience is substantially equivalent to that required for licensure or certification, the board may award the applicant an appropriate number of hours for the alternate experience.

(2) General restrictions.

(a) An applicant may not accrue more than 2,000 experience hours in any 12-month period.

(b) The board may not award credit for:

(i) appraisal experience earned more than five years prior to the date of application;

(ii) appraisals that were performed in violation of:

(A) Utah law;

(B) the law of another jurisdiction; or

(C) the administrative rules adopted by the division and the board;

(iii) appraisals that fail to comply with USPAP;

(iv) appraisals of the value of a business as distinguished from the appraisal of commercial real estate;

(v) personal property appraisals; or

(vi) an appraisal that fails to clearly and conspicuously disclose the contribution made by the applicant in completing the assignment.

(c) At least 50% of the appraisals submitted for experience credit shall be appraisals of properties located in Utah.

(d) With regard to experience hours claimed from the schedules found in Appendices 1 and 2, no more than 25% of the total experience required for licensure or certification may be earned from appraisals where the interior of the subject property is not inspected.

(e) A maximum of 50% of required experience hours may be earned from appraisal of vacant land.

(f) Experience gained for work without a traditional client may qualify for experience hours but cannot exceed 50% of the total experience requirement. Work without a traditional client includes the following:

(i) a client hiring an appraiser for a business purpose; or

(ii) a practicum course so long as the course is approved by the AQB Course Approval Program and, if the course is taught in Utah either live or by distance education, also approved by the division.

(g) An applicant may receive credit only for experience hours actually worked by the applicant and as limited by the maximum experience hours described in these rules.

(3) Specific restrictions applicable to trainees applying for licensure.

(a)(i) A registered trainee may not claim experience hours for any appraisal work performed after January 1, 2015 unless the trainee and the trainee's supervisor(s) have completed the division-approved Supervisory Appraiser and Appraiser Trainee Course prior to performing the work to be claimed.

(ii) A trainee and the trainee's supervisor who signs the experience log shall document on the log the specific duties that the trainee performs for each appraisal.

(b) For each duty performed, the trainee shall be awarded a percentage of the total experience hours that may be awarded for the property type being appraised:

(i) pursuant to the appraisal experience hour schedules found in Appendices 1 through 3; and

(ii) with the following limitations for Appendix 2:

(A) participation in highest and best use analysis: 10% of total hours;

(B) participation in neighborhood description and analysis: 10% of total hours;

(C) property inspection: 20% of total hours, pursuant to this Subsection (3)(c);

(D) participation in land value estimate: 20% of total hours;

(E) participation in sales comparison property selection and analysis: 30% of total hours;

(F) participation in cost analysis: 20% of total hours;

(G) participation in income analysis: 30% of total hours;

(H) participation in the final reconciliation of value: 10% of total hours; and

(I) participation in report preparation: 20% of total hours.

(J) The applicant may claim up to 100% of the total hours allowed for the tasks listed in this Subsection(A) through (I).

(c) In order for a trainee to claim credit for an inspection pursuant to this Subsection (3)(b)(ii)(C):

(i) as to the first 35 residential appraisals or first 20 non-residential appraisals completed, as applicable to the license or certification being sought, the inspection must include:

(A) exterior measurement of the relatively permanent structures located on the subject property that are designed or

intended for support, enclosure, shelter, or protection of persons, animals, or property having a permanent roof supported by columns or walls; and

(B) inspection of the exterior of a property that is used as a comparable in an appraisal; and

(ii) as to appraisals after the first 35 residential appraisals or first 20 non-residential appraisals completed, as applicable to the license or certification being sought, the inspection must satisfy all scope of work requirements.

(d) No more than one-third of the experience hours submitted toward licensure may come from any one of the categories identified in this Subsection (3)(b)(ii).

(4) Specific restrictions applicable to applicants for certification.

(a) An individual who obtained a license from the division through reciprocity shall provide to the division all records necessary for the division to verify that the individual satisfies the experience requirements outlined in these rules.

(b) The board may not award credit:

(i) for any appraisal where the applicant cannot prove more than 50% participation in the:

(A) data collection;

(B) verification of data;

(C) reconciliation;

(D) analysis;

(E) identification of property and property interests;

(F) compliance with USPAP standards; and

(G) preparation and development of the appraisal report; or

(ii) to more than one licensed appraiser per completed appraisal, except as provided in this Subsection (5).

(c)(i) An individual applying for certification as a state-certified residential appraiser shall document at least 75% of the hours submitted from:

(A) the residential experience hours schedule found in Appendix 1; or

(B) the residential portion of the mass appraisal hours schedule found in Appendix 3.

(ii) No more than 25% of the total hours submitted may be from:

(A) the general experience hours schedule found in Appendix 2; or

(B) properties other than 1- to 4-unit residential properties identified in the mass appraisal hours schedule found in Appendix 3.

(d) An individual applying for certification as a state-certified general appraiser shall document at least 1,500 experience hours as having been earned from:

(i) the general experience hours schedule found in Appendix 2; or

(ii) properties other than 1- to 4-unit residential properties identified in the mass appraisal hours schedule found in Appendix 3.

(5) Specific restrictions applicable to mass appraisers.

(a) Single-property appraisals performed under USPAP Standards 1 and 2 by mass appraisers shall be awarded full credit pursuant to Appendices 1 and 2.

(b) Review and supervision of appraisals by mass appraisers shall be awarded credit pursuant to this Subsection (6)(b)-(c).

(c)(i) Mass appraisers and mass appraiser trainees who perform 60% or more of the appraisal work shall be awarded full credit pursuant to Appendix 3.

(ii) Mass appraisers and mass appraiser trainees who perform between 25% and 59% of the appraisal work shall be awarded 50% credit pursuant to Appendix 3.

(iii) Mass appraisers and mass appraisal trainees who perform less than 25% of the appraisal work shall be awarded no credit for the appraisal assignment.

(d) In addition to submitting proof of required experience and samples, randomly selected from the experience log, of work conforming to USPAP Standards 5 and 6:

(i) a state-licensed appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least five appraisals conforming to USPAP Standards 1 and 2 equaling at least 65 experience hours;

(ii) a state-certified residential appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least eight residential appraisals equaling at least 110 experience hours:

(A) conforming to USPAP Standards 1 and 2; and

(B) including at least two of each of the following property types:

(I) vacant residential or agricultural land;

(II) two- to four-unit dwelling;

(III) single-family unit; and

(IV) complex one to four unit residential dwellings; and

(iii) a state-certified general appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least eight appraisals from Appendix 2 conforming to USPAP Standards 1 and 2 equaling at least 300 experience hours.

(e) No more than 200 hours for qualification for a state-licensed credential, 500 hours for a state-certified residential credential, or 1,800 hours for a certified general credential may be earned from any combination of appraisal assignments related to:

(i) property improvement inspection;

(ii) land segregation (division);

(iii) CAMA data entry; and

(iv) sale ratio study.

(f)(i) Mass appraisal of property with a personal property component of less than 50% of value shall be awarded full credit pursuant to Appendix 3 for the type of property appraised.

(ii) Mass appraisal of property with a personal property component of 50% to 75% of value shall be awarded 50% credit pursuant to Appendix 3 for the type of property appraised.

(iii) Mass appraisal of property with a personal property component greater than 75%, but less than 100%, shall be awarded 25% credit pursuant to Appendix 3 for the type of property appraised.

(iv) Mass appraisal of property with no real property component shall be awarded no credit.

(g) The appraisals submitted for review pursuant to this Subsection (5)(d) shall be selected from the applicant's most recent work.

(6) Special circumstances - condemnation appraisals, review appraisals, supervision of appraisers, other real estate experience, and government agency experience.

(a) Condemnation appraisals. A condemnation appraisal shall be awarded an additional 50% of the hours normally awarded for the appraisal if the condemnation appraisal includes a before-and-after appraisal because of a partial taking of the property.

(b) Review appraisals.

(i) Review appraisals shall be awarded experience credit when the appraiser performs technical reviews of appraisals prepared by employees, associates, or others, provided the appraiser complies with USPAP Standards 3 and 4 when the appraiser is required to comply with the rule.

(ii) Except as provided in this Subsection (6)(e)(i), the following credit shall be awarded for review of appraisals:

(A) desk review: 30% of the hours that would be awarded if a separate written review appraisal report were prepared, up to a maximum of 500 hours; and

(B) field review: 50% of the hours that would be awarded if a separate written review appraisal report were prepared, up to a maximum of 500 hours.

(c) Supervision of appraisers. Except as provided in this Subsection (6)(e)(i), supervision of appraisers shall be awarded 20% of the hours that would be awarded to the appraisal, up to a maximum of 500 hours.

(d) Other real estate experience acceptable for certification.

(i) Provided that an applicant demonstrates to the satisfaction of the board that the applicant has the ability to arrive at a fair market value of property and to properly document value conclusions, the following activities may be used to satisfy up to 50% of the experience required for certification:

(A) preliminary valuation estimates;

(B) range of value estimates or similar studies;

(C) other real estate-related experience gained by:

(I) bankers;

(II) builders;

(III) city planners and managers; or

(IV) other individuals.

(ii) A comparative market analysis by an individual licensed under Section 61-2f et seq. may be granted up to 100% experience credit toward certification if:

(A) the analysis conforms with USPAP Standards Rules 1 and 2; and

(B) the individual demonstrates to the board that the individual uses similar techniques as appraisers to value properties and effectively utilize the appraisal process.

(iii) Except as provided in this Subsection (6)(e)(i), no more than 50% of the total experience required for certification may be earned through any combination of experience described in this Subsection (6)(b)-(d).

(e) Government agency experience.

(i) An individual who obtains experience hours in conjunction with investigation by a government agency is not subject to the hour limitations of this Subsection (6).

(ii) In addition to submitting proof of required experience, an applicant whose experience is earned primarily in conjunction with investigations by government agencies and through review of appraisals, with no opinion of value developed, shall submit proof of having complied with USPAP Standards 1 and 2 in performing appraisals as follows:

(A) if applying for state-licensed appraiser with experience reviewing residential appraisals, five appraisals of one-unit dwellings;

(B) if applying for state-certified residential appraiser with experience reviewing residential appraisals, eight appraisals of one-unit dwellings; and

(C) if applying for state-certified general appraiser with experience reviewing appraisals of property types listed in Appendix 2, at least eight appraisals of property types identified in Appendix 2.

(7) The board, at its discretion, may request the division to verify the claimed experience by any of the following methods:

(a) verification with the clients;

(b) submission of selected reports to the board; and

(c) field inspection of reports identified by the applicant at the applicant's office during normal business hours.

R162-2g-304e. Experience Review Committee.

(1) The board may appoint a committee to review the experience claimed by applicants for licensure or certification.

(2) The committee shall:

(a) review each application for completion of the experience hours required for licensure or certification;

(b) correspond with applicants concerning submissions, if necessary; and

(c) make recommendations to the division and the board for licensure or certification approval or disapproval.

(3) The committee shall be composed of appraisers selected from among the following categories:

(a) residential appraisers;

(b) commercial appraisers;

(c) farm and ranch appraisers;

(d) right-of-way appraisers; and

(e) mass appraisers.

(4) The chairperson of the committee shall be appointed by the board.

(5) Meetings may be called upon:

(a) the request of the chairperson; or

(b) the written request of a quorum of committee members.

(6) If the board denies the application on the recommendation of an experience review committee member, the applicant may, within thirty days after the denial, make a written request for board review of the applicant's experience, stating specific grounds upon which relief is requested. The board shall thereafter consider the request and issue a written decision.

R162-2g-304f. Final Application for Licensure or Certification.

(1) Within 90 days after successfully completing the exam for licensure or certification, the applicant shall return to the division:

(a) a report from the testing service indicating successful completion of the exam within 24 months of the date on which the applicant obtains authorization to sit for the exam;

(b) an application form as required by the division and including:

(i) the applicant's business, home, and e-mail addresses;

(ii) the name and business address of any appraisal entity or government agency with which the applicant is affiliated; and

(iii) if the applicant is applying for certification, the fee for the federal registry.

(2)(a) A post office box without a street address is unacceptable as a business or home address.

(b) An applicant may designate any address to be used as a mailing address.

R162-2g-306a. Renewal and Reinstatement of a Registration, License, or Certification.

(1)(a) A registration, license, or certification is valid for two years and expires unless it is renewed according to this Subsection R162-2g-306a before the expiration date printed on the registration, license, or certificate.

(b) It shall be grounds for disciplinary sanction if, after an individual's registration, license, or certification has expired, the individual continues to perform work for which the individual is required to be registered, licensed, or certified.

(2)(a) To timely renew a registration, license, or certification, an applicant shall, prior to the expiration date of the registration, license, or certification, submit to the division:

(i) a completed renewal application as provided by the division;

(ii)(A) evidence that the continuing education requirements listed in this Subsection (2)(b) have been completed; or

(B) evidence sufficient to enable the Division, in its sole discretion, to determine that a deferral of continuing education is appropriate due to the applicant's having been currently or recently:

(I) assigned to active military duty; or

(II) impacted by a state- or federally-declared natural disaster; and

(iii) the applicable non-refundable renewal fee.

(b) The continuing education required under this Subsection (2)(a)(ii)(A) shall be completed during the two-year period preceding the date of application and shall include:

(i)(A) the 7-hour National USPAP Update Course, taught

by an instructor or instructors, at least one of whom is a state-certified appraiser in good standing and is USPAP certified by the AQB; or

(B) equivalent education, as determined through the course approval program of the AQB; and

(ii)(A) 21 additional hours of continuing education:

(I) certified by the division for the appraisal industry at the time the courses are taught (see Appendix 4, Table 2 for a list of continuing education topics); or

(II) not required to be certified, pursuant to Subsection R162-2g-307d(3); or

(B) if the renewal applicant is also working toward certification, 21 hours of pre-licensing education credit applicable to the certification being sought.

(iii) An appraiser may earn continuing education credit for attendance at one meeting of the Board in each continuing education two-year cycle provided:

(A) the meeting is open to the public;

(B) the meeting is a minimum of two hours in length;

(C) the total credit for attendance at the meeting is limited to a maximum of seven hours; and

(D) the division verifies attendance to ensure that the appraiser attends the meeting for the required period of time.

(c)(i) A trainee who registered with the division prior to January 1, 2015 shall complete the Supervisory Appraiser and Appraiser Trainee course by or before December 31, 2014.

(ii) A registered trainee may count the Supervisory Appraiser and Appraiser Trainee course toward the continuing education requirement of this Subsection (2)(b)(ii)(A) during any renewal cycle in which the trainee completes the course.

(d)(i) An appraiser who supervises a trainee identified in Subsection (2)(c)(i) shall complete the Supervisory Appraiser and Appraiser Trainee course by or before December 31, 2014.

(ii) A supervising appraiser may count the Supervisory Appraiser and Appraiser Trainee course toward the continuing education requirement of Subsection (2)(b)(ii)(A) during any renewal cycle in which the appraiser completes the course.

(3)(a) In order to renew on time, an applicant shall complete continuing education hours by the 15th day of the month in which the registration, license, or certification expires.

(b) An applicant who complies with this Subsection (3)(a), but whose credits are not banked by the education provider pursuant to Subsection R162-2g-502a(5)(c), may obtain credit for the course(s) taken by:

(i) submitting to the division the original course completion certificates; and

(ii) filing a complaint against the provider.

(4) A license, certification, or registration may be renewed for a period of 30 days after the expiration date upon payment of a late fee in addition to the requirements of this Subsection (2).

(5)(a) After the 30-day period described in this Subsection (4) and until six months after the expiration date, an individual may reinstate an expired license, certification, or registration by:

(i) complying with this Subsection (2);

(ii) paying a late fee; and

(iii) paying a reinstatement fee.

(b) After the six-month period described in this Subsection (5)(a) and until one year after the expiration date, an individual may reinstate an expired license, certification, or registration by:

(i) complying with this Subsection (2);

(ii) paying a late fee;

(iii) paying a reinstatement fee; and

(iv) completing 24 hours of additional continuing education as approved by the division.

(c)(i) An individual who does not reinstate an expired license, certification, or registration within 12 months of the expiration date shall:

(A) reapply with the division as a new applicant;

(B) retake and pass the 15-hour USPAP course; and

(C) retake and pass any applicable licensing or certification examination.

(ii) An individual reapplying under this Subsection (4)(c)(i) shall receive credit for previously credited pre-licensing education if:

(A) it was completed within the five-year period prior to the date of reapplication; and

(B) it was either:

(I) completed after January 1, 2008; or

(II) certified by the division and the AQB prior to January 1, 2008, as approved, qualified pre-licensing education.

(6) If the division receives renewal documents in a timely manner, but the information is incomplete, the appraiser or trainee may be extended a 15-day grace period to complete the application.

(7) Renewal after deferment of continuing education due to active military service or the impacts of a state- or federally-declared disaster.

(a) An appraiser or trainee who is unable to complete the continuing education requirements to renew a registration, license, or certification due to active military service or because the individual has been impacted by a state- or federally-declared disaster may:

(i) submit a timely application for renewal pursuant to Subsection (2)(a)(ii)(B); and

(ii) request that the application for renewal be conditionally approved, with the expiration date of the applicant's registration, license, or certification extended pursuant to this Subsection (7)(b), pending the completion of the continuing education requirement.

(b) Upon the division's approving a deferral of continuing education, the expiration date of the applicant's registration, license, or certification shall be extended 90 days, during which time the applicant shall:

(i) complete the continuing education required for the renewal; and

(ii) submit proof of the continuing education to the division.

R162-2g-306b. Notification of Changes.

(1) An individual registered, licensed, or certified under these rules shall notify the division of any status change, including the following:

(a) creation or termination of an affiliation, except as provided in this Subsection (2);

(b) change of name; and

(c) change of business, home, mailing, or e-mail address.

(2) An individual is not required to report the creation or termination of an affiliation that:

(a) facilitates a single transaction; and

(b) is not part of an ongoing business association.

(3) Notification procedure.

(a) To report a change of name, an individual shall complete a paper change form and attach to it official documentation such as a:

(i) marriage certificate;

(ii) divorce decree; or

(iii) driver license.

(b)(i) To report a change in affiliation or address, and individual shall complete and submit an electronic change form through RELMS.

(ii) A post office box without a street address is unacceptable as a business or home address. Any address may be designated as a mailing address.

(c) All change forms shall be accompanied by a nonrefundable processing fee.

(4) Deadlines and effective dates.

(a)(i) An individual shall comply with the notification

requirements outlined in this Subsection R162-2g-306b within ten business days of making a status change.

(ii) If a deadline for notification falls on a day when the division is closed, the deadline shall be extended to the next business day.

(b) Status changes are effective on the date the properly executed forms and appropriate fees are received by the division.

R162-2g-307a. General Education Criteria Applicable to All Pre-Licensing Education and Continuing Education.

(1) A class hour is 60 minutes of which at least 50 minutes are instruction attended by the student.

(2) The prescribed number of class hours includes time for examinations.

(3) Experience may not be substituted for education, and education may not be substituted for experience.

R162-2g-307b. School Certification.

(1) Application. A school requesting certification shall:

(a) submit an application form as prescribed by the division, including:

(i) name, telephone number, email address, and address of:

(A) the school;

(B) the school director; and

(C) all owners of the school; and

(ii) as to each school director or owner, disclosure of criminal history and adverse regulatory actions;

(b) provide a description of:

(i) the type of school; and

(ii) the school's physical facilities;

(c) provide a statement outlining the:

(i) number of quizzes and examinations in each course offered;

(ii) grading system, including methods of testing and standards of grading;

(iii) requirements for attendance; and

(iv) school's refund policy.

(2) Standards for operation.

(a) All courses shall be taught in an appropriate classroom facility and not in a private residence, except for a course approved for distance education.

(b) A school shall teach the approved course of study as outlined in the state-approved outline.

(c) At the time of registration, a school shall provide to each student:

(i) the statement described in this Subsection (1)(c);

(ii) a copy of the qualifying questionnaire that the student will be required by the division to answer as part of the pre-licensing or precertification examination; and

(iii) a criminal history disclosure statement.

(d) A school shall require each student to attend 100% of the scheduled class time in order to earn credit for the course.

(e)(i) A school may not award credit to any student who fails the final examination.

(ii) A student who fails a school final examination must wait three days before retesting and may not retake the same final examination.

(iii) A student who fails a final examination a second time must wait two weeks before retesting and may not retake either exam that the student previously failed.

(iv) A student who fails a final exam a third time shall fail the course.

(f) A school may not allow a student to challenge a course or any part of a course by taking an exam in lieu of attendance.

(g) Credit hours.

(i) For a course that is taught outside of a college or university setting, one credit hour may be awarded for 50 minutes of instruction within a 60-minute period, allowing for a ten-minute break.

(ii) For a course that is taught in a college or university setting:

(A) one quarter hour is equivalent to 10 credit hours; and

(B) one semester hour is equivalent to 15 credit hours.

(iii) A school may not award more than eight credit hours per day per student.

(3) A school shall report to the division within 10 calendar days of:

(a) any change in the information provided pursuant to this Subsection (1)(a)(i); and

(b) a school director or owner being convicted, or entering a plea in abeyance or diversion agreement, as to a criminal offense, excluding class C misdemeanors.

(4)(a) A school certification is valid for two years from the date of issuance.

(b) To renew a school certification, an individual shall, prior to the date of expiration:

(i) submit a properly completed application as provided by the division; and

(ii) pay a nonrefundable applicable fee.

R162-2g-307c. Pre-licensing Course Certification.

(1) To certify a pre-licensing course, an applicant shall, at least 30 days prior to the course being taught, submit a completed application as required by the division, including:

(a) a course outline, including:

(i) a description of the course;

(ii) the length of time to be spent on each subject area, broken into segments of no more than 30 minutes each; and

(iii) three to five learning objectives for every three hours;

(b) a description of any method of instruction that will be used other than lecture method, including:

(i) webinar;

(ii) satellite broadcast; or

(iii) other form of distance education;

(c) copies of at least three final examinations administered in the course and the answer keys that will be used to determine if a student passes the course;

(d) the school procedure for maintaining the security of the final exams and answer keys;

(e) the titles, authors, and publishers of all required textbooks;

(f)(i) the instructor(s) who will teach each class; and

(ii) evidence that each instructor is:

(A) certified by the division;

(B) qualified to serve as a guest lecturer; or

(C) a college or university faculty member who has academic training or appraisal experience satisfactory to the division and the board;

(g) a nonrefundable applicable fee; and

(h) a signed statement agreeing that the course provider will, within 10 business days of completing the class, upload to the division the following information:

(i) course name;

(ii) course certificate number assigned by the division;

(iii) date the course was taught;

(iv) number of credit hours; and

(v) name and license number of each student receiving education credit.

(2) Standards for approval of traditional classroom courses. Each course shall:

(a) meet the minimum standards set forth in the state-approved course outline governing the course, including minimum hourly requirements;

(b) be approved through the AQB course approval program;

(c) allow a maximum of 10% of the required class time for testing, including review test and final examination;

(d) use texts, workbooks, supplement pamphlets, and other materials that are appropriate and current in their application to the required course outline.

(3) Standards for approval of distance education

(a) A distance education course shall:

(i) comply with this Subsection (2);

(ii) provide interaction between the student and instructor;

(iii) include a written examination personally proctored by an official approved by the presenting entity;

(iv) meet the course delivery requirements established by the AQB and the International Distance Education Certification Center; and

(v) offer at least 15 credit hours.

(b) A distance education course offered by a college or university may be deemed acceptable to meet the credit hour requirement if the course content is approved by:

(i) the AQB;

(ii) a state licensing jurisdiction; or

(iii) a college or university that:

(A) offers distance education programs in other disciplines; and

(B) is approved or accredited by:

(I) the Commission on Colleges;

(II) a regional or national accreditation association; or

(III) an accrediting agency that is recognized by the United States Secretary of Education.

(4) Within 10 business days after the occurrence of any material change in a course that could affect approval, the school shall give the division written notice of the change.

(5) A course certification is valid for no more than 24 months.

(6) Credit for non-certified pre-licensing education.

(a) Division certification is not required for a pre-licensing course that is offered by a school, as defined in Subsection R162-2g-102(17) as long as:

(i) the course content:

(A) meets the minimum standards set forth in the Utah state-approved course outline; and

(B) is approved by the AQB course approval program;

(ii) the course provides at least 15 credit hours, including examination(s);

(iii) a closed-book, closed-note final examination is administered at the end of each course;

(iv) students are not allowed to earn credit from the course provider by challenge examination without first attending the course;

(v) credit is not awarded for duplicate or highly comparable classes;

(vi) where multiple classes are offered, they represent a progression in a student's knowledge; and

(vii) in order to receive credit, a student is required to:

(A) attend 100% of the scheduled class hours;

(B) complete all required exercises and assignments; and

(C) pass the course final examination.

(b) Hourly credit for a course taken from a professional appraisal organization shall be granted according to the division approved list.

(c) An applicant who wishes to be awarded credit for non-certified pre-licensing education shall:

(i) provide to the division a list of the cours(es) taken, including:

(A) course title(s);

(B) name(s) of the sponsoring organization(s);

(C) number of classroom hours completed;

(D) date(s) of course completion; and

(E) evidence that the cours(es) meet the requirements of:

(I) the AQB; and

(II) if distance education, the International Distance Education Certification Center;

(ii) request review of the course by the division and board;

(iii) establish that the criteria outlined in this Subsection (6)(a) are met;

(iv) attest on a notarized affidavit that the courses have been completed as documented; and

(v) if requested by the division, provide proof of completion of the courses in the form of certificates, transcripts, report cards, letters of verification, or similar proof.

(7) Supervisory Appraiser and Appraiser Trainee Course. In order to obtain certification of the supervisory appraiser and appraiser trainee course, a course provider shall:

(a) comply with this Subsection (1); and

(b) sign a written attestation agreeing to provide a paper copy of the course manual to each attendee.

R162-2g-307d. Continuing Education Course Registration and Certification.

(1) The division and the board may not award continuing education credit for a course that is taught in Utah to registered, licensed, or certified appraisers unless the course is registered or certified prior to its being taught.

(2) To certify a continuing education course, an applicant shall, at least 30 days prior to the course being taught, submit a completed application as required by the division, including:

(a) name and contact information of the course sponsor and the entity through which the course will be provided;

(b) description of the physical facility where the course will be taught;

(c) the proposed number of credit hours for the course;

(d) identification of whether the method of instruction will be traditional education or distance education;

(e) title of the course;

(f) statement defining how the course will meet the objectives of continuing education by increasing the licensee's knowledge, professionalism, and ability to protect and serve the public;

(g) course outline including:

(i) a description of the subject matter covered in each 15-minute segment; and

(ii) a minimum of one learning objective for every hour of class time;

(h) the name and certification number of each certified instructor who will teach the course;

(i) copies of all materials that will be distributed to the participants;

(j) the procedure for pre-registration;

(k) the tuition or registration fee and a copy of the cancellation and refund policy;

(l) except for courses approved for distance education, the procedure for taking and maintaining control of attendance during class time;

(m) sample of the completion certificate;

(n) signed statement agreeing that the course provider will, within 10 business days of completing the class, upload to the division the following information:

(i) course name;

(ii) course certificate number assigned by the division;

(iii) date the course was taught;

(iv) number of credit hours; and

(v) names and license numbers of all students receiving continuing education credit;

(o) signed statement agreeing not to market personal sales products; and

(p) other information the division might require.

(3) Standards for approval of a certified course.

(a)(i) A distance education course shall:

(A) provide interaction between the student and instructor; and

(B) include a written examination that requires a student

to demonstrate mastery and fluency.

(ii) The division may approve a distance education course offered by a college or university if the college or university:

(A) offers distance education programs in other disciplines; and

(B)(I) is accredited by the Commission on Colleges or a regional accreditation association; or

(II) is approved by the International Distance Education Certification Center.

(b) The course topic must be AQB-approved.

(c) The procedure for taking and maintaining control of attendance shall be more extensive than having the students sign a class roll.

(d) The completion certificate shall allow for entry of:

(i) licensee's name;

(ii) type of license;

(iii) license number;

(iv) date of course;

(v) name of the course provider;

(vi) course title;

(vii) course certification number and expiration date;

(viii) credit hours awarded; and

(ix) signatures of the course sponsor and the licensee.

(e) A real estate appraisal-related field trip that is submitted for continuing education credit may not include transit time to or from the field trip location as part of the credit hours awarded.

(4) Non-certified continuing education credit. Except as provided in Subsection R162-2g-307d(1), the board may award continuing education credit on a case-by-case basis for the following:

(a) up to one-half of an individual's continuing education credit requirement for:

(i) participation, other than as a student, in appraisal educational processes and programs; or

(ii) teaching, program development, authorship of textbooks, or similar activities that are determined by the board to be equivalent to obtaining continuing education;

(b) service as a member of the experience review committee, or the technical advisory panel, if approved by the board and offered in accordance with AQB standards as a:

(i) practicum course under this Subsection (3)(a); or

(ii) course under this Subsection (3)(b); and

(c) completion of any course that:

(i) meets the continuing education objectives of increasing the licensee's knowledge, professionalism, and ability to protect and serve the public; and

(ii) is taught outside the state of Utah.

(5) Standards for approval of a registered course.

(a) A professional appraisal education organization may register a special event for continuing education, subject to the following conditions:

(i) the professional appraisal education organization shall submit a one-time application and registration fee to the division to register the organization as a qualified continuing education course provider and the special event for continuing education;

(ii) the division may grant approval of the special event based on the demonstrated experience of the professional appraisal education organization in providing, monitoring, and supervising quality professional course offerings.

(b) The registered organization is solely responsible for and accountable to the division:

(i) for the selection of appraisal instructors who are subject matter experts and industry qualified in the course(s) or segment of the course(s) they teach;

(ii) to ensure that:

(A) course instructors have subject matter expertise in the content area they are instructing; and

(B) the course content of classes taught by both appraiser and non-appraiser course instructors is directly industry pertinent, relevant, and beneficial to and enhances the professional skills of the attending appraisers, and promotes the protection and wellbeing of the industry and the general public;

(iii) to monitor the attendance of each appraiser during the presentation of the course by taking and maintaining a list of attendees actually present during the presentation to ensure that an appraiser actually attends each CE course segment before providing a CE certificate or CE credit to the appraiser; and

(iv) to ensure that the registered course complies with the general criteria applicable to continuing education set forth in sections R162-2g-307a and R162-2g-307b.

(6)(a) The special event registered course may last for a maximum of seven consecutive days.

(b) The special event registered course is a single, one-time event and may not be repeated unless the professional appraisal education organization submits to the division an application and registration fee and receives division approval for a subsequent, single, one-time event.

(c) A professional appraisal education organization shall submit a separate course application for each course taught at the special event, however, only a single application fee is required to be paid to the division for each special event.

(d) The division maintains a fee schedule based on the total number of CE hours awarded for a CE course. The application and registration fee for a special event course is the fee from the division fee schedule.

R162-2g-307e. Instructor Certification for Pre-licensing Education.

(1) To certify as a pre-licensing education instructor, an individual shall:

(a) evidence that the applicant meets the character and competency requirements outlined in Subsection R162-2g-302(2)-(3);

(b) submit a completed application as provided by the division;

(c) demonstrate knowledge of the subject matter to be taught as evidenced by:

(i) current, active licensure or certification as applicable to the pre-licensing course proposed to be taught;

(ii) a minimum of five years active experience in appraising; and

(iii)(A) college or other appropriate courses specific to the topic proposed to be taught; or

(B) other experience acceptable to the board in the topic proposed to be taught;

(d) if the individual proposes to teach a course in USPAP, evidence that the individual is an AQB-certified USPAP instructor; and

(e) pay a nonrefundable application fee.

(2) A pre-licensing instructor certification is valid for 24 months from the date of issuance.

(3) To renew a pre-licensing instructor certification, an individual shall:

(a) submit a completed application, as provided by the division;

(b) evidence having taught at least 20 hours of in-class instruction in certified course(s) during the preceding term of certification;

(c) evidence having attended a real estate instructor development workshop sponsored or approved by the division during the preceding two years; and

(d) pay a nonrefundable application fee.

(4)(a) To reinstate an expired pre-licensing instructor certification within 30 days following the expiration date, an individual shall:

(i) comply with this Subsection (3); and

(ii) pay a nonrefundable late fee.

(b) To reinstate an expired pre-licensing instructor certification after 30 days and within six months following the expiration date, an individual shall:

(i) comply with this Subsection (3);

(ii) pay a nonrefundable reinstatement fee; and

(iii) submit proof of having completed six classroom hours of education related to real estate appraisal or teaching techniques.

(c) After a pre-licensing instructor certification has been expired for six months, an individual is required to apply as an original applicant and obtain a new certification.

(5) A certified instructor shall comply with the reporting requirements of Section 61-2g-306(3).

R162-2g-307f. Instructor Certification for Continuing Education.

(1) Except for the limited circumstances provided for in Section R162-2g-307d for special continuing education events conducted by a professional appraisal education organization, a continuing education course that is required to be certified shall be taught by a certified instructor.

(2) To obtain a continuing education instructor certification, and individual shall, at least 30 days prior to the date on which instruction is proposed to begin:

(a) evidence that the applicant meets the character and competency requirements outlined in Subsection R162-2g-302(2)-(3);

(b) submit a completed application form, as provided by the division;

(c) evidence:

(i) at least three years of full-time experience in the course subject;

(ii) college-level education related to the course subject; or

(iii) a combination of experience and education acceptable to the division;

(d) evidence:

(i) at least 12 months of full-time teaching experience;

(ii) part-time teaching experience equivalent to 12 months of full-time teaching experience; or

(iii) attendance at the division's Instructor Development Workshop;

(e) provide a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the division or its representative;

(f) provide a signed statement agreeing not to market personal sales products;

(g) provide any other information the division requires; and

(h) pay a nonrefundable application fee.

(3) A continuing education instructor certification is valid for two years.

(4) To renew a continuing education instructor certification, an individual shall, prior to the date of expiration:

(a) submit a completed renewal application, as provided by the division;

(b)(i) evidence having taught a minimum of 12 continuing education credit hours during the past term of certification; or

(ii) provide a written explanation outlining the reason for not meeting the requirement having taught 12 continuing education credit hours and provide evidence satisfactory to the division that the applicant maintains an appropriate level of expertise; and

(c) pay a nonrefundable renewal fee.

(5)(a) To reinstate an expired continuing instructor certification within 30 days following the expiration date, an individual shall:

(i) comply with Subsection (4); and

(ii) pay a nonrefundable late fee.

(b) To reinstate an expired continuing instructor certification after 30 days and within six months following the expiration date, an individual shall:

(i) comply with Subsection (4); and

(ii) pay a nonrefundable reinstatement fee;

(c) After a continuing instructor certification has been expired for six months, an individual is required to apply as an original applicant and obtain a new certification.

R162-2g-308. Application for a Six-Month Temporary Permit.

(1) A non-resident of this state who is licensed or certified in another state and who wishes to apply for a six-month temporary permit to perform one or more specific appraisal assignments in Utah shall:

(a) evidence that each specific appraisal assignment is covered by a contract to provide appraisals;

(b) submit an application as provided by the division and including the following:

(i) name of the client;

(ii) specific property address(es) to be appraised;

(iii) type(s) of property being appraised; and

(iv) estimated time to complete each assignment;

(c) complete and submit a qualifying questionnaire as provided by the division;

(d) sign an irrevocable consent to service authorizing the division to receive service of any lawful process on behalf of the applicant in any non-criminal proceeding arising out of the applicant's practice as an appraiser in this state;

(e) pay a nonrefundable application fee in the amount established by the division; and

(f) provide the starting date of the appraisal assignment for which the temporary permit is being sought.

(2)(a) A non-resident is limited to two temporary permits per calendar year, each of which may be extended one time for an additional six-month period if the assignment(s) for which the permit is issued have not been completed within the original six-month term of the temporary permit.

(b) A temporary permit may be extended by submitting the forms required by the division.

R162-2g-310. Application for Licensure or Certification Through Reciprocity.

An individual who is licensed or certified as an appraiser by another state may be licensed or certified in Utah by reciprocity on the following conditions:

(1) The applicant shall provide evidence that:

(a) the state in which the applicant is licensed requires appraisal pre-licensing education that is:

(i) approved by that state; and

(ii) substantially equivalent in number to the hours required for the license or certification for which the applicant is applying in Utah;

(b) the applicant's pre-licensing education included either:

(i) the 15-hour National USPAP Course; or

(ii) equivalent education as determined through the course approval program of the AQB; and

(c) the applicant has passed an examination that has been approved by the AQB for the license or certification for which the applicant is applying.

(2) The applicant shall:

(a) obtain and study the Utah Real Estate Appraiser Licensing and Certification Act and the rules promulgated thereunder; and

(b) sign an attestation that the applicant understands and will abide by both the statute and the rules.

(3) If the applicant resides outside of the state of Utah, the applicant shall sign an irrevocable consent to service authorizing the division to receive service of any lawful process on behalf of the applicant in any noncriminal proceeding arising

out of the applicant's practice as an appraiser in this state.

(4) The board may not issue a license or certification to an applicant who has been convicted of a criminal offense involving moral turpitude relating to the applicant's ability to provide services as an appraiser.

R162-2g-311. Scope of Authority.

(1) Trainees.

(a) An individual who has properly qualified as a trainee pursuant to Subsection R162-2g-302 may perform appraisal-related duties within the competence and scope of authority of the state-certified supervisory appraiser as follows:

(i) participating in property inspections;

(ii) measuring or assisting in the measurement of properties;

(iii) performing appraisal-related calculations;

(iv) participating in the selection of comparable properties for an appraisal assignment;

(v) making adjustments to comparable properties; and

(vi) drafting or assisting in the drafting of an appraisal report.

(b) The trainee may have more than one supervisory appraiser.

(c) The supervising appraiser shall be responsible to determine the point at which a trainee is competent to participate in each of the activities identified in this Subsection (1)(a), within the following limitations:

(i) As to a minimum of the trainee's first 35 inspections of residential properties:

(A) the trainee shall be accompanied and supervised by a state-certified appraiser;

(B) both the interior and the exterior of the properties shall be inspected; and

(C) the appraisal report shall comply with the requirements of Subsection R162-2g-502a(1)(g).

(ii) After the trainee's first 35 inspections, the supervising appraiser shall determine whether the trainee has demonstrated sufficient competency to continue making inspections of residential properties without being accompanied by the supervising appraiser.

(iii) As to the trainee's first 20 inspections of non-residential properties:

(A) the trainee shall be accompanied and supervised by a state-certified general appraiser;

(B) both the interior and the exterior of the properties shall be inspected; and

(C) the appraisal report shall comply with the requirements of Subsection R162-2g-502a(1)(g).

(d) A trainee may not:

(i) solicit or accept an assignment on behalf of anyone other than:

(A) the trainee's supervisor; or

(B) the supervisor's appraisal firm;

(ii) sign an appraisal report or discuss an appraisal assignment with anyone other than:

(A) the appraiser responsible for the assignment;

(B) state enforcement agencies;

(C) third parties as may be authorized by due process of law; and

(D) a duly authorized professional peer review committee.

(e) The following are not subject to the scope of authority limitations of this Subsection (1):

(i) full-time elected county assessors; and

(ii) any person performing an appraisal for the purposes of establishing the fair market value of real estate for the assessment roll.

(2) State-licensed appraisers. In a federally-related transaction, state-licensed appraisers may appraise:

(a) non-complex one- to four-residential units having a transaction value of less than $1,000,000;

(b) complex one- to four- residential units having a transaction value of less than $250,000; and

(c) vacant or unimproved land that is utilized for one- to four-family purposes, or for which the highest and best use is one- to four-family purposes, so long as net income capitalization analysis is not required by the terms of the assignment.

(3) State-licensed appraisers and state-certified residential appraisers may not perform appraisals of the following:

(a) subdivisions for which:

(i) a development analysis/appraisal is necessary; or

(ii) a discounted cash flow analysis is required by the terms of the assignment; and

(b) vacant land if the highest and best use of the land is for five or more one- to four-family units.

R162-2g-502a. Standards of Conduct and Practice.

(1) Affirmative duties in general. A person registered, licensed, or certified by the division shall:

(a) if employing an unlicensed assistant who is not registered as a trainee pursuant to Subsection R162-2g-302:

(i) actively supervise the unlicensed assistant; and

(ii) ensure that the assistant performs only clerical duties, including:

(A) typing research notes or reports completed by a trainee or an appraiser;

(B) taking photographs of properties; and

(C) obtaining copies of public records;

(b)(i) except as provided in this Subsection (2)(a), comply with the current edition of USPAP; and

(ii) observe the advisory opinions of USPAP;

(c) in order to authorize another individual to sign an appraisal report on behalf of the individual who completes the report:

(i) grant authority to the signer in writing;

(ii) limit the signing authority to a specific property address;

(iii) explicitly disclose within the appraisal report that the signer is authorized by the appraiser to sign the report on the appraiser's behalf;

(iv) attach a copy of the written permission required pursuant to this Subsection (1)(c)(i) to the report; and

(v) ensure that the signer signs the appraiser's name, followed by the word "by," and then followed by the signer's own name;

(d) if using a digital signature in place of a handwritten signature, ensure that:

(i) the software program that generates the digital signature has a security feature; and

(ii) no one other than the appraiser has control of the signature;

(e) retain a photocopy or other exact copy of each report as it is provided to the client, including the appraiser's signature;

(f) analyze and report the sales and listing history of the subject property for the three years preceding the appraisal if such information is available to the appraiser from a multiple listing service, listing agent(s), property owner, or other verifiable source(s);

(g)(i) include in each appraisal report a statement indicating whether or not the subject property was inspected as part of the appraisal process; and

(ii) if any inspections were done, include the following information concerning each inspection:

(A) the names of all appraisers and trainees who participated in the inspection;

(B) whether the inspection was an exterior inspection only or both an exterior and an interior inspection; and

(C) the date that the inspection was performed; and

(h) unless Subsection (2)(b) applies, respond within ten business days to division notification:
(i) of a complaint against the individual; or
(ii) that information is needed from the individual.
(2) Exceptions.
(a) An individual is exempt from complying with all provisions of USPAP when acting in an official capacity as:
(i) a division staff member or employee;
(ii) a member of the experience review committee as appointed and approved by the board;
(iii) a member of the technical review panel as appointed and approved by the board;
(iv) a hearing officer;
(v) a member of a county board of equalization;
(vi) an administrative law judge;
(vii) a member of the Utah State Tax Commission; or
(viii) a member of the board.
(b) If a deadline for response under this Subsection (1)(h) falls on a day when the division is closed, the deadline shall be extended to the next business day.
(3) A trainee shall:
(a) using forms provided by the division, maintain a separate log of experience hours for each supervising appraiser with whom the trainee works; and
(b) include in each log the following information for each appraisal:
(i) file number;
(ii) report date;
(iii) subject address;
(iv) client name;
(v) type of property;
(vi) report form number or type;
(vii) number of work hours;
(viii) description of work performed by the trainee; and
(ix) scope of the review and supervision of the supervising appraiser.
(4)(a) A supervisory appraiser shall delegate to a trainee only such duties as the trainee is authorized to perform under Subsection R162-2g-311(1).
(b) A supervisory appraiser shall directly train and supervise the trainee in the performance of assigned duties by:
(i) critically observing and directing all aspects of the appraisal process;
(ii) accepting full responsibility for the appraisal and the contents of the appraisal report by signing and certifying the appraisal complies with USPAP; and
(iii) reviewing and signing the trainee appraisal reports.
(c) A supervisory appraiser shall personally inspect:
(i) each property that is appraised with a trainee until the supervisory appraiser determines the trainee is competent to inspect the property in accordance with the competency rule of USPAP for the property type, and the trainee has performed at least:
(A) 35 residential inspections as provided in Subsection R162-2g-311(1)(c)(i); and
(B) 20 non-residential inspections as provided in Subsection R162-2g-311(1)(b)(ii); and
(ii) any property for which the appraisal report scope of work or certification requires appraiser inspection.
(d) A supervisory appraiser shall be state-certified and in good standing with the division for a period of at least three years prior to being eligible to become a supervisory appraiser.
(e) An appraiser may not act as a supervisory appraiser if the appraiser has been subject to a disciplinary action in any jurisdiction:
(i) within the three year period preceding the date on which the appraiser proposes to act as a supervisor; and
(ii) where the supervisory appraiser's legal eligibility to engage in the appraisal practice was impacted or impaired.
(f) A supervisory appraiser subject to a disciplinary action will be considered to be in good standing three years after the successful completion or termination of the sanction imposed against the appraiser.
(g) A supervisory appraiser shall comply with the competency rule of USPAP for the property type and geographic location for which the trainee appraiser is being supervised.
(h) Although a trainee is permitted to have more than one supervisory appraiser, a supervisory appraiser may not supervise more than three trainees at one time, unless a division program provides for progress monitoring, supervisory certified appraiser qualifications, and supervision and oversight requirements for supervisory appraisers.
(i) An appraisal experience log shall be maintained jointly by the supervisory appraiser and the trainee. It is the responsibility of both the supervisory appraiser and the trainee to ensure the experience log is accurate, current, and complies with division requirements.
(5) A school shall:
(a) maintain a record of each student's attendance for a minimum of five years after the student enrolls;
(b) display the certification number of all continuing education courses in advertising and marketing;
(c) as to each student who provides the school with an accurate name or license number, bank course completion information:
(i) within 10 days after the end of a course offering; and
(ii) to the database specified by the division;
(d) upon request of the division, substantiate any claim made in advertising or marketing;
(e) within 15 calendar days of any material change in the information outlined in R162-2g-307b(1), provide to the division written notice of the change;
(f) with regard to the criminal history disclosure required under R162-2g-307b(2)(c)(iii):
(i) obtain each student's signature before allowing the student to participate in course instruction;
(ii) retain each signed criminal history disclosure for a minimum of two years; and
(iii) make any signed criminal history disclosure available to the division upon request;
(g) maintain a high quality of instruction;
(h) adhere to all state laws and administrative rules regarding school and instructor certification;
(i) provide the instructor(s) for each course with the required course content outline;
(j) require instructors to adhere to the approved course content;
(k) comply with a division request for information within 10 business days of the date of the request; and
(l) verify that the material is current in any course taught on:
(i) Utah statutes;
(ii) Utah administrative rules;
(iii) Federal laws; and
(iv) Federal regulations.
(6) An instructor shall adhere to the approved outline for any course taught.

R162-2g-502b. Prohibited Conduct.
(1) An individual registered, licensed, or certified by the division may not:
(a) release to a client a draft report of a one- to four-unit residential real property;
(b) release to a client a draft report of a property other than a one- to four-unit residential real property unless:
(i) the first page of the report prominently identifies the report as a draft;

(ii) the draft report is signed by the appraiser; and

(iii) the appraiser complies with USPAP in the preparation of the draft report;

(c) affix a signature to an appraisal report by means of a signature stamp; or

(d) sign a blank or partially completed appraisal report that will be completed by anyone other than the appraiser who has signed the report;

(e) sign an appraisal report containing a statement indicating that an appraiser has inspected a property if the appraiser has not inspected the property; or

(f) split appraisal fees with any person who is not a state-licensed or state-certified appraiser, except that a supervising appraiser may pay a trainee reasonable compensation proportionate to the lawful services actually performed by the trainee in connection with appraisals.

(2) A trainee may not:

(a) solicit a client to address an engagement letter directly to the trainee; or

(b) accept payment for appraisal services from anyone other than:

(i) the trainee's supervisor; or

(ii) an appraisal or government entity with which the trainee is affiliated.

(3) A supervising appraiser may not:

(a) sign a report that is completed in response to an engagement letter that is addressed to a trainee;

(b) sign an appraisal report as the supervising appraiser without having given adequate supervision to the trainee, appraiser, or assistant being supervised.

(4) A state-licensed appraiser may not place a seal on an appraisal report or use a seal in any other manner likely to create the impression that the appraiser is a state-certified appraiser.

(5) A school may not:

(a) in advertising and marketing:

(i) make a misrepresentation about any course of instruction;

(ii) make statements or implications that disparage the dignity and integrity of the appraisal profession;

(iii) disparage a competitor's services or methods of operation;

(iv) as to a continuing education course, use language that indicates division approval is pending or otherwise forthcoming;

(b) attempt by any means to obtain or use the questions on the state licensure or certification exam unless those questions have been dropped from the current exam bank;

(c) accept payment from a student without first providing to that student the information outlined in R162-2g-307b(2)(c);

(d) continue to operate after the expiration date of the school certification without renewing;

(e) continue to offer a course after its expiration date without renewing;

(f) allow an instructor whose instructor certification has expired to continue teaching;

(g) allow an individual student to earn more than eight credit hours of education in a single day;

(h) award credit to a student who has not complied with the minimum attendance requirements;

(i) allow a student to obtain credit for all or part of a course by taking an examination in lieu of attending the course;

(j) give valuable consideration to a person licensed with or certified by the division under Section 61-2g for referring students to the school;

(k) accept valuable consideration from a person licensed with or certified by the division under Section 61-2g for referring students to a licensed or certified appraiser; or

(l) require a student to attend any program organized for the purpose of solicitation.

(6) A continuing education provider may not:

(a) in advertising and marketing:

(i) make a misrepresentation about any course of instruction;

(ii) make statements or implications that disparage the dignity and integrity of the appraisal profession; or

(iii) as to a continuing education course, use language that indicates division approval is pending or otherwise forthcoming;

(b) continue to offer a course after its expiration date without renewing;

(c) allow an instructor whose instructor certification has expired to continue teaching;

(d) allow an individual student to earn more than eight credit hours of education in a single day;

(e) award credit to a student who has not complied with the minimum attendance requirements; or

(f) allow a student to obtain credit for all or part of a course by taking an examination in lieu of attending the course.

(7) An instructor may not:

(a) continue to teach any course after the course has expired and without renewing the course certification; or

(b) continue to teach any course after the individual's certification has expired and without renewing the instructor certification.

R162-2g-504. Administrative Proceedings.

(1) Formal adjudicative proceedings. An adjudicative proceeding conducted subsequent to the issuance of a cease and desist order or other emergency order shall be conducted as a formal adjudicative proceeding.

(2) Informal adjudicative proceedings.

(a) An adjudicative proceeding as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be conducted as an informal adjudicative proceeding.

(b) A hearing shall be held in an informal adjudicative proceeding only if required or permitted by the Utah Real Estate Appraiser Licensing and Certification Act or by these rules.

(3)(a) A hearing before the board will be held in:

(i) a proceeding conducted subsequent to the issuance of a cease and desist order or other emergency order;

(ii) a case where the division seeks to deny an application for original or renewed registration, licensure, or certification for failure of the applicant to meet the criteria of good moral character, honesty, integrity or truthfulness;

(iii) a case where the division seeks disciplinary action pursuant to Sections 61-2g-501 and 502 against a trainee or an appraiser; and

(iv) an appeal from an automatic revocation under Section 61-2g-302(2)(d), if the appellant requests a hearing.

(b) If properly requested by the applicant, a hearing will be held before the board to consider an application:

(i) that is denied by the division on the grounds that the instructor's attestation to upstanding moral character is false;

(ii) for an initial appraiser license or certification that is denied by the board on the recommendation of the experience review committee; and

(iii) for a temporary permit that is denied by the division for any reason.

(c) A hearing is not required and will not be held in the following informal adjudicative proceedings:

(i) the issuance, renewal, or reinstatement of a trainee registration or an appraiser license or certification by the division;

(ii) the issuance or renewal of an appraisal course, school, or instructor certification;

(iii) the issuance of any interpretation of statute, rule or order, or the issuance of any written opinion or declaratory order determining the applicability of a statute, rule or order, when enforcement or implementation of the statute, rule or

order lies within the jurisdiction of the division; and

(iv) the denial of renewal or reinstatement of a trainee registration or an appraiser license or certification for failure to complete any continuing education required by statute or rule; and

(v) the denial of an application for an original or renewed school, instructor, or course certification on the ground that it does not comply with the requirements stated in these rules.

(4)(a) Request for agency action. The following applications shall be deemed a request for agency action:

(i) registration as a trainee;

(ii) licensure or certification as an appraiser;

(iii) certification of a course, school, or instructor; and

(iv) issuance of a temporary permit.

(b) Any other request for agency action shall be in writing, signed by the requestor, and shall contain the following:

(i) the names and addresses of all persons to whom a copy of the request for agency action is being sent;

(ii) the agency's file number or other reference number, if known;

(iii) the date of mailing of the request for agency action;

(iv) a statement of the legal authority and jurisdiction under which the agency action is requested, if known;

(v) a statement of the relief or action sought from the division; and

(vi) a statement of the facts and reasons forming the basis for relief or agency action.

(c) A complaint against a trainee, an appraiser, or the holder of a temporary permit requesting that the division commence an investigation or a disciplinary action is not a request for agency action.

(5) Procedures for hearings in informal adjudicative proceedings.

(a) All informal adjudicative proceedings shall adhere to procedures as outlined in:

(i) Utah Administrative Procedures Act Title 63G, Chapter 4;

(ii) Utah Administrative Code Rule R151-4 et seq.; and

(iii) the rules promulgated by the division.

(b) Except as provided in this Subsection (6)(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.

(c) In any proceeding under this Subsection R162-2g-504, the board and division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the board and the division in conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.

(d)(i) Upon the scheduling of a hearing by the division and at least 30 days prior to the hearing, the division shall, by first class postage-prepaid delivery, mail written notice of the date, time, and place scheduled for the hearing, to the respondent at the address last provided to the division pursuant to Subsection R162-2g-306b.

(ii) The notice shall set forth the matters to be addressed in the hearing.

(e) Formal discovery is prohibited.

(f) The division may issue subpoenas or other orders to compel production of necessary evidence:

(i) on its own behalf; or

(ii) on behalf of a party where the party:

(A) makes a written request;

(B) assumes responsibility for effecting service of the subpoena; and

(C) bears the costs of the service, any witness fee, and any mileage to be paid to a witness.

(g) Upon ordering a licensee to appear for a hearing, the division shall provide to the licensee the information that the division will introduce at the hearing.

(h) Intervention is prohibited.

(i) Hearings shall be open to all parties unless the presiding officer closes the hearing pursuant to:

(i) Title 63G, Chapter 4, the Utah Administrative Procedures Act; or

(ii) Title 52, Chapter 4, the Open and Public Meetings Act.

(j) Upon filing a proper entry of appearance with the division pursuant to Utah Administrative Code Section R151-4-110(1)(a), an attorney may represent a party.

(6) Additional procedures for disciplinary proceedings.

(a) The division shall commence a disciplinary proceeding by filing and serving on the respondent:

(i) a notice of agency action;

(ii) a petition setting forth the allegations made by the division;

(iii) a witness list, if applicable; and

(iv) an exhibit list, if applicable.

(b) Answer.

(i) At the time the petition is filed, the presiding officer, upon a determination of good cause, may require the respondent to file an answer to the petition by so ordering in the notice of agency action.

(ii) The respondent may file an answer, even if not ordered to do so in the notice of agency action.

(iii) Any answer shall be filed with the division no later than 30 days following the mailing date of the notice of agency action pursuant to this Subsection (6)(a).

(c) Witness and exhibit lists.

(i) Where applicable, the division shall provide its witness and exhibit lists to the respondent at the time it mails its notice of agency action.

(ii) Any witness list shall contain:

(A) the name, address, and telephone number of each witness; and

(B) a summary of the testimony expected from the witness.

(iii) Any exhibit list:

(A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and

(B) shall be accompanied by copies of the exhibits.

(iv)(A) The presiding officer, upon a determination of good cause, may require a respondent to file a witness and exhibit list.

(B) Failure to comply with a requirement to file a witness and exhibit list may result in the exclusion of any witness or exhibit not disclosed.

(d) Pre-hearing motions.

(i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.

(ii) The division director shall receive and rule upon any pre-hearing motions.

R162-2g-601. Appendices.

Appendix 1. Residential Experience Hours Schedule. The hours shown in the following schedule shall be awarded to form appraisals. Fifteen hours may be added to the hours shown if the appraisal is a narrative appraisal instead of a form appraisal.

TABLE

Property Type	Hours that may be earned
(a) one-unit dwelling, above-grade:	
(i) living area less than 4,000 square feet, including a site	Up to 10 hours (Expected avg hrs 7.5)
Part 1	
Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5

Exterior Inspection	0.5
Interior Inspection	0.5
Market Conditions	0.75
Land Value Estimate	0.5
Improvement Cost Estimate	0.5
Income Value Estimate	2.5
Sales Comparison Value Estimate	2.5
Final Reconciliation	0.25
Appraisal Report Preparation	1.75
Restricted Appraisal Report Preparation	0.5
(ii) living area 4,000 square feet or more, including a site	Up to 10 hours

Part 2

Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Exterior Inspection	0.75
Interior Inspection	0.75
Market Conditions	0.75
Land Value Estimate	0.75
Improvement Cost Estimate	0.75
Income Value Estimate	3.0
Sales Comparison Value Estimate	3.0
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5
(b) multiple one-unit dwellings in the same subdivision or condominium project, which dwellings are substantially similar:	
(i) 1-25 dwellings	7 hours per dwelling, up to a maximum of 42 hours
(ii) over 25 dwellings	70 hours maximum
(c) two to four-unit dwelling	

Part 3

Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Exterior Inspection	0.5
Interior Inspection	0.5
Market Conditions	0.75
Land Value Estimate	0.5
Improvement Cost Estimate	0.5
Income Value Estimate	3.0
Sales Comparison Value Estimate	3.0
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5
(d) employee relocation counsel reports completed on currently accepted Employee Relocation Counsel form	Up to 10 hours
(e) residential lot, 1-4 unit	Up to 7 hours

Part 4

Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Site Inspection	0.25
Market Conditions	0.75
Sales Comparison Value Estimate	1-3
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5
(f) multiple lots in the same subdivision, which lots are substantially similar	
(i) 1-25 lots	5 hours per lot, up to a maximum of 30 hours
(ii) Over 25 lots	50 hours maximum
(g) small parcel of less than 20 acres	up to 6.5 hours

Part 5

Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Site Inspection	0.25
Market Conditions	0.75
Sales Comparison Value Estimate	1-3
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5
(h) vacant land, 20-640 acres	20-40 hours, per board decision
(i) recreational, farm, or timber acreage suitable for a house site:	
(i) up to 10 acres	10 hours
(ii) 10 acres or more	15 hours
(j) all other unusual structures or acreage which are much larger or more complex than typical properties	5-35 hours, per board decision
(k) review of residential appraisals with no opinion of value developed as part of the review performed in conjunction with investigations by government agencies	10-50 hours

Appendix 2. General Experience Hours Schedule. All appraisal reports claimed for property types identified in sections (a) through (k) of the following schedule shall be narrative appraisal reports. Experience hours listed in this schedule may be increased by 50% for unique and complex properties if the applicant notes the number of extra hours claimed on the appraiser experience log submitted by the applicant, and if the applicant maintains in the workfile for the appraisal an explanation as to why the extra hours are claimed.

TABLE

Property Type	Hours that may be earned
(a) Apartment buildings:	
(i) 5-100 units	40 hours
(ii) over 100 units	50 hours
(b) hotel or motels:	
(i) 50 units or fewer	30 hours
(ii) 51-150 units	40 hours
(iii) over 150 units	50 hours
(c) nursing home, rest home, care facilities:	
(i) fewer than 80 beds	40 hours
(ii) 80 beds or more	50 hours
(d) industrial or warehouse building:	
(i) smaller than 20,000 square feet	30 hours
(ii) 20,000 square feet or more, single tenant	40 hours
(iii) 20,000 square feet or more, multiple tenants	50 hours
(e) office buildings:	
(i) smaller than 10,000 square feet	30 hours
(ii) 10,000 square feet or more, single tenant	40 hours
(iii) 10,000 square feet or more, multiple tenants	50 hours
(f) entire condominium projects, using income approach to value:	
(i) 5- to 30-unit project	30 hours
(ii) 31- or more-unit project	50 hours
(g) retail buildings:	
(i) smaller than 10,000 square feet	30 hours
(ii) 10,000 square feet or more, single tenant	40 hours
(iii) 10,000 square feet or more, multiple tenants	50 hours
(h) commercial, multi-unit, industrial, or other nonresidential use acreage:	
(i) 1 to less than 100 acres	20-40 hours
(ii) 100 acres or more, income approach to value	50-60 hours
(i) all other unusual structures or assignments that are much larger or more complex than the properties described in (a) to (h) herein.	5 to 100 hours per board decision
(j) entire subdivisions or planned unit developments (PUDs):	
(i) 1- to 25-unit subdivision or PUD	30 hours
(ii) over 25-unit subdivision or PUD	50 hours
(k) feasibility or market analysis	5 to 100 hours, each per board decision, up to a maximum of 500 hours
(l) farm and ranch appraisals:	Form Narrative
(i) irrigated cropland, pasture other than rangeland:	

(A) 1 to less than 11 acres	10 hrs	15 hrs
(B)11-less than 40 acres	12.5 hrs	20 hrs
(C)40-less than 160 acres	15 hrs	25 hrs
(D)160-less than 1280 acres	25 hrs	40 hrs
(E) 1280 acres or more	40 hrs	50 hrs
(ii) dry farm:		
(A) 1 to less than 1280 acres	15 hrs	25 hrs
(B) 1280 acres or more	20 hrs	40 hrs
(m) Improvements on properties other than a rural residence, maximum 10 hours:		
(i) dwelling	5 hrs	5 hrs
(ii) shed	2.5 hrs	2.5 hrs
(n) cattle ranches		
(i) 0-200 head	15 hrs	20 hrs
(ii) 201-500 head	25 hrs	30 hrs
(iii) 501-1000 head	30 hrs	40 hrs
(iv) more than 1000 head	40 hrs	50 hrs
(o) sheep ranches		
(i) 0-2000 head	25 hrs	30 hrs
(ii) more than 2000 head	35 hrs	45 hrs
(p) dairy, including all improvements except a dwelling		
(i) 0-100 head	20 hrs	25 hrs
(ii) 101-300 head	25 hrs	30 hrs
(iii) more than 300 head	30 hrs	35 hrs
(q) orchards		
(i) up to 50 acres	30 hrs	40 hrs
(ii) more than 50 acres	40 hrs	50 hrs
(r) rangeland/timber		
(i) 0-640 acres	20 hrs	25 hrs
(ii) more than 640 acres	30 hrs	35 hrs
(s) poultry		
(i) 0-100,000 birds	30 hrs	40 hrs
(ii) more than 100,000 birds	40 hrs	50 hrs
(t) mink		
(i) 0-5000 cages	30 hrs	35 hrs
(ii) more than 5000 cages	40 hrs	50 hrs
(u) fish farm	40 hrs	50 hrs
(v) hog farm	40 hrs	50 hrs
(w) review of appendix 2 appraisals with no opinion of value developed as part of the review, performed in conjunction with investigations by government agencies	20-100 hours	

Appendix 3. Mass Appraisal Experience Hours Schedule.

TABLE

Property Type	Hours that may be earned
(a) one-unit dwelling, above-grade living area less than 4,000 square feet:	

Part 1

Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Exterior Inspection	0.5
Interior Inspection	0.5
CAMA Data Input and Review	0.5
Market Conditions	0.75
Land Value Estimate	0.5
Improvement Cost Estimate	0.5
Income Value Estimate	2.5
Sales Comparison Value Estimate	2.5
Final Reconciliation	0.25
Appraisal Report Preparation	1.75
Restricted Appraisal Report Preparation	0.5

(b) one-unit dwelling, above-grade living area area 4,000 square feet or more:

Part 2

Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Exterior Inspection	0.75
Interior Inspection	0.75
CAMA Data Input and Review	0.5
Market Conditions	0.75
Land Value Estimate	0.75
Improvement Cost Estimate	0.75
Income Value Estimate	3.0
Sales Comparison Value Estimate	3.0
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5

(c) two to four unit dwelling:

Part 3

Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Exterior Inspection	0.5
Interior Inspection	0.5
CAMA Data Input and Review	0.5
Market Conditions	0.75
Land Value Estimate	0.5
Improvement Cost Estimate	0.5
Income Value Estimate	3.0
Sales Comparison Value Estimate	3.0
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5

(d) commercial and industrial buildings, depending on complexity:

Part 4

Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Exterior Inspection	0.5-4.5
Interior Inspection	0.5-9.5
CAMA Data Input and Review	0.5
Market Conditions	1.5
Land Value Estimate	2.0
Improvement Cost Estimate	2.0
Income Value Estimate	2-15
Sales Comparison Value Estimate	2-15
Final Reconciliation	0.5
Appraisal Report Preparation	1-10
Restricted Appraisal Report Preparation	0.5

(e) agricultural and other improvements, depending on complexity:

Part 5

Task	Hours
Highest and Best Use Analysis	0.25-0.5
Neighborhood Description	0.5
Exterior Inspection	0.25-0.5
Interior Inspection	0.5-1
CAMA Data Input and Review	0.5
Market Conditions	0.75
Land Value Estimate	0.5-1
Improvement Cost Estimate	0.5-1
Income Value Estimate	1-3
Sales Comparison Value Estimate	1-3
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5

(f) vacant land, depending on complexity:

Part 6

Task	Hours
Highest and Best Use Analysis	0.25-0.5
Neighborhood Description	0.5
Site Inspection	0.25
Land Segregation	0.25
CAMA Data Input and Review	0.5
Inspection	0.25-2.25
Market Conditions	0.75
Income Value Estimate	1-3
Sales Comparison Value Estimate	1-3
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5

(g) land valuation guideline (development):	
(i) 25 or fewer parcels	10 hours
(ii) 26 to 500 parcels	30 hours
(iii) over 500 parcels	25 additional hours for each 500 parcels, up to a maximum of 125 hours for each guideline
(h)land valuation guideline (update):	
(i) 25 or fewer parcels	1 hour

(ii) 26 to 500 parcels	3 hours
(iii) over 500 parcels	2.5 additional hours for each 500 parcels, up to a maximum of 12.5 hours for each guideline
(i) assessment/sales ratio study, data collection, verification, sample inspection, analysis, conclusion, and implementation:	
(i) base study of 100 reviewed sales	125 hours
(ii) additional increments of 100 sales	25 additional hours for each 100 additional sales, up to a maximum of 375 hours for each study
(j) multiple regression model, development and implementation:	
(i) fewer than 5,000 parcels	100 hours
(ii) additional increments of 500 parcels	5 additional hours for each additional 500 parcels, up to a maximum of 375 hours for each regression model
(k) industry depreciation study and analysis	5 to 40 hours
(l) reviews of "land value in use" in accordance with U.C.A. Section 59-2-505:	
(i)office review only	0.25 hours
(ii) field review	0.5 hours
(m) natural resource properties, depending on complexity:	
(i) sand and gravel	1-20 hours per site
(ii) mine	1-110 hours
(iii) oil and gas	1-50 hours per site
(n) pipelines and gas distribution properties, depending on complexity	10-40 hours
(o) telephone and electrics properties, depending on complexity	5-80 hours
(p) airline and railroad properties, depending on complexity	10-80 hours
(q) appraisal review/audit, depending on complexity	2.5-125 hours
(r) capitalization rate study	10 to 100 hours
(s) mineral pricing study	10 to 100 hours
(t) effective tax rate study	10 to 100 hours
(u) Ad valorem centrally assessed property tax appeal preparation	5 to 125 hours

Appendix 4. Appraiser Education.

TABLE 1

Required Core Curriculum

Trainee Appraiser	
Basic Appraisal Principles	30 Hours
Basic Appraisal Procedures	30 Hours
15-Hour national USPAP Course or its Equivalent	15 Hours
Trainee Appraiser Education Requirements	75 Total Hours
Licensed Appraiser	
Basic Appraisal Principles	30 Hours
Basic Appraisal Procedures	30 Hours
15-Hour national USPAP Course or its Equivalent	15 Hours
Residential Market Analysis and Highest and Best Use	15 Hours
Residential Appraiser Site Valuation and Cost Approach	15 Hours
Residential Sales Comparison and Income Approaches	30 Hours
Residential Report Writing and Case Studies	15 Hours
Licensed Residential Education Requirements	150 Total Hours
Certified Residential	
Basic Appraisal Principles	30 Hours
Basic Appraisal Procedures	30 Hours
15-Hour national USPAP Course or its Equivalent	15 Hours
Residential Market Analysis and Highest and Best Use	15 Hours
Residential Appraiser Site Valuation and Cost Approach	15 Hours
Residential Sales Comparison and Income Approaches	30 Hours
Residential Report Writing and Case Studies	15 Hours
Statistics, Modeling and Finance	15 Hours
Advanced Residential Applications and Case Studies	15 Hours
Appraisal Subject Matter Electives (May include hours over minimum shown above in other modules)	20 Hours
Certified Residential Education Requirements	200 Total Hours
Certified General*	
Basic Appraisal Principles	30 Hours
Basic Appraisal Procedures	30 Hours
15-Hour national USPAP Course or its Equivalent	15 Hours
*General Appraiser Market Analysis and Highest and Best Use	30 Hours
Statistics, Modeling and Finance	15 Hours
*General Sales Comparison and Income Approaches	30 Hours
*General Appraiser Site Valuation and Cost Approach	30 Hours
General Appraiser Income Approach	60 Hours
*General Appraiser Report Writing and Case Studies	30 Hours
Appraisal Subject Matter Electives (May include hours over minimum shown above in other modules)	30 Hours
Certified General Education Requirements	300 Total Hours

*The four Certified General courses identified with an asterisk * may substitute for the equivalent four Licensed Appraiser or Certified Residential courses when a candidate provides proof of completion of these courses when applying for a Licensed or Certified Residential appraisal credential.

TABLE 2

Continuing Education Topics (Division Certification Required)

(1) Ad valorem taxation
(2) Arbitration, dispute resolution
(3) Courses related to the practice of real estate appraisal or consulting
(4) Development cost estimating
(5) Ethics and standards of professional practice, USPAP
(6) Land use planning, zoning
(7) Management, leasing, timesharing
(8) Property development, partial interests
(9) Real estate law, easements, and legal interests
(10) Real estate litigation, damages, condemnation
(11) Real estate financing and investment
(12) Real estate appraisal related computer applications
(13) Real estate securities and syndication
(14) Developing opinions of real property value in appraisals that also include personal property and/or business value
(15) Seller concessions and impact on value
(16) Energy efficient items and "green building" appraisals

KEY: real estate appraisals, school certification, instructor certification, education options

September 4, 2018	**61-2g-201(2)(h)**
Notice of Continuation August 18, 2016	**61-2g-202(1)**
	61-2g-205(5)(c)
	61-2g-307(3)
	61-2g-401(5)

R251. Corrections, Administration.
R251-103. Undercover Roles of Offenders.
R251-103-1. Authority and Purpose.

(1) This rule is authorized by Sections 63G-3-201, 64-13-6(1)(h), 64-13-10, and 64-13-14 of the Utah Code.

(2) The purpose of this rule is to provide the Department's policy and requirements governing the use of offenders in undercover roles.

R251-103-2. Definitions.

(1) "Department" means Utah Department of Corrections.

(2) "entity" means agency, department, the Board of Pardons and Parole or other criminal justice organization.

(3) "offenders" means any person under the supervision of the Department including inmates, parolees, and probationers.

R251-103-3. General Requirements.

(1) Requests to use offenders in undercover roles originating within or outside the Department must be made in writing to the Deputy Director.

(2) Decisions relating to requests from criminal investigators from the Department or other criminal justice agencies to use offenders under the supervision of the Department in undercover roles shall be made on a case-by-case basis. Factors to be considered include:

(a) risk or danger to the offender;

(b) impact of these activities on implementation and realization of correctional goals for offender;

(c) the nature of the assignment;

(d) the controls which shall exist; and

(e) the importance of the assignment to maintaining public safety.

(3) The Department shall not unlawfully coerce nor knowingly permit unlawful coercion of offenders to participate in undercover roles.

(4) Neither the Department nor any other entity shall be bound by any promises, inducements or other arrangements agreed to by the offender unless the Department or any other involved entities has agreed in writing to the promises.

(5) Final authority within the Department concerning requests shall reside with the Executive Director.

(6) Nothing in this section shall prohibit members of this Department or other criminal justice agencies from requesting or receiving information from offenders.

(7) Functions of this program shall be carried out by policies internal to the Department.

KEY: corrections, probationers, parolees
1989 64-13-6(1)f
Notice of Continuation September 12, 2018 64-13-10

R251. Corrections, Administration.
R251-105. Applicant Qualifications for Employment with Department of Corrections.
R251-105-1. Authority and Purpose.

(1) This rule is authorized by Section 63G-3-201, 64-13-10, and 64-13-25.

(2) The purpose of this rule is to provide policies and procedures for the screening, testing, interviewing, and selecting of applicants for Department of Corrections employment.

R251-105-2. Definitions.

(1) "Department" means Utah Department of Corrections.

(2) "POST" means Peace Officer Standards and Training.

R251-105-3. General Requirements.

It is the policy of the Department that applicants for employment:

(1) shall, for POST-certified positions, be a citizen of the United States;

(2) shall, for POST-certified positions, be a minimum of 21 years of age;

(3) shall, as a minimum, be the holder of a high school diploma or furnish evidence of successful completion of an examination indicating an equivalent achievement;

(4) may be required to pass pre-employment tests depending on position requirements;

(5) shall be free from any physical, emotional, or mental conditions which would prevent the applicant from performing the essential functions of the job;

(6) shall not have been convicted of a crime for which the applicant could have been imprisoned in a penitentiary of this or another state and shall not have been convicted of an offense involving dishonesty, unlawful sexual conduct, physical violence, or the unlawful use, sale or possession of a controlled substance. This subsection may not apply to all positions;

(7) shall, if required, become a POST-certified officer and maintain certification through successful completion of at least 40 hours of POST training per fiscal year; and

(8) may undergo a background investigation which may include verification of personal history, employment history and criminal records check.

R251-105-4. Disqualification of Applicants.

(1) Applicants may be disqualified for failure:

(a) to meet education or experience qualifications;

(b) to appear for testing or interviews; or

(c) to meet minimum test score requirements.

(2) Applicants may be disqualified if found to be unsuitable for Department employment as indicated by a background investigation or psychological evaluation.

(3) Falsification of application is grounds for denying employment or for terminating employment if discovered after the applicant is hired.

(4) Disqualified applicants shall be notified in writing.

KEY: corrections, employment, prisons
February 26, 2009 **63-46a-3**
Notice of Continuation September 19, 2018 **64-13-10**
64-13-25

R277. Education, Administration.
R277-412. State Capitol Visit Program.
R277-412-1. Definitions.

A. "Board" means Utah State Board of Education.

B. "State Capitol visit" means public school student field trips to the State Capitol.

C. "USOE" means the Utah State Office of Education.

R277-412-2. Authority and Purpose.

A. The rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Subsection 53F-2-509(3) which requires the Board to make rules establishing procedures for applying for and awarding grants and specifying how grant money shall be allocated among school districts and charter schools, and Subsection 53E-3-401(4), which allows the Board to make rules in accordance with its responsibilities.

B. The purpose of this rule is to provide criteria, procedures and timelines for the Board to select schools to participate in State Capitol visits.

R277-412-3. School Application Process.

A. All public schools shall be eligible for the program.

B. An applicant school shall provide a completed application for the school's State Capitol field trip that shall:

(1) indicate how the field trip will meet self-identified academic objectives;

(2) estimate the number of students served by the program; and

(3) provide additional information requested by the USOE on the application.

R277-412-4. School Selection Criteria and Timeline.

A. The USOE shall provide an application for the Capitol Visit funding by June 15, 2013.

B. The USOE shall screen all applications for compliance with all application requirements.

C. The USOE shall seek the participation and advice of the Utah Commission on Civic and Character Education in selecting the applications for consideration for funding to ensure an equitable distribution of funding to as many school districts and public charter schools within the state as possible. The Board shall make final school selections.

D. The Board shall select and notify successful applicants no later than August 15, 2013.

KEY: public schools, State Capitol visits

October 8, 2013	**Art X, Sec 3**
Notice of Continuation September 13, 2018	**53E-2-509(3)**
	53E-3-401(4)

R277. Education, Administration.
R277-527. International Guest Teachers.
R277-527-1. Definitions.

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

B. "International guest teacher (guest teacher)" means a foreign educator who has earned a public teaching credential or license in a foreign country and who is currently legally residing in the United States and the state of Utah with the specific purpose to teach in Utah public schools. For this definition to apply, the international guest teacher shall be a resident of a foreign country that has a Memorandum of Understanding with the Board.

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

D. "USOE" means the Utah State Office of Education.

R277-527-2. 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 permits the Board to adopt rules in accordance with its responsibilities, and Section 53A-1-402(1)(a) which directs the Board to establish rules and minimum standards for the qualification and licensing of educators and ancillary personnel who provide direct student services.

B. The purpose of this rule is to establish procedures for qualified international guest teachers who meet the definition of R277-527-1B to be effectively hired and placed by Utah LEAs with assistance and direction from the USOE to encourage cultural exchange and foreign language development among Utah public school students.

R277-527-3. Utah State Board of Education/USOE Responsibilities.

A. The Board shall develop and State Superintendent shall sign a Memorandum of Understanding between the Board and the appropriate government agency of the country of origin of guest teachers, as identified by the Board.

B. The USOE shall work with guest teachers and their resident countries and the United States Department of State, if necessary, to secure appropriate visas or travel and work documents for guest teachers to legally teach in the public schools in Utah.

C. The USOE shall verify that guest teachers have appropriate licenses or credentials from the guest teachers' resident countries that satisfy the requirements of Utah law and any applicable federal requirements.

D. The USOE shall work with interested LEAs to make schools aware of guest teachers with specific credentials and language skills and to inform guest teachers about openings in specific grade levels and curriculum areas in various geographic locations in Utah.

E. The USOE shall require and review a guest teacher's criminal background checks required under Section 53A-3-410 and a criminal background clearance from the guest teacher's resident country or both prior to authorizing the guest teacher to work in Utah.

F. The Board may determine that it will seek guest teachers only from foreign countries that provide transportation or per diem expenses or both for USOE representatives to screen and interview potential guest teachers.

G. Following review and approval of a guest teacher's credentials and background, a guest teacher may receive an International Guest Teacher license equivalent to a Level 1 license.

R277-527-4. International Guest Teacher Requirements.

A. Guest teachers shall have a United States issued social security number prior to an LEA processing any payment to the guest teacher.

B. Guest teachers shall cooperate with the USOE in required submission of information including criminal background check information, copies of credentials, copies of transcripts in the language and format designated by the USOE.

C. Guest teachers shall assume all responsibility for living and transportation expenses while participating in the International Guest Teachers Program.

D. Guest teachers shall be responsible for compliance with all state of Utah/Board and employing LEA professional and ethical public school educator requirements.

E. Guest teachers who violate district employment or state or district professional practices may have their employment contract terminated consistent with at will employment provisions; the conduct of individual guest teachers may influence continued participation in the International Guest Teacher Program between the Board and a guest teacher's resident country.

R277-527-5. Other Provisions.

A. The opportunity for teachers from outside the United States to be licensed to teach in Utah schools with assistance provided by the USOE under this rule shall be available only to individuals from countries with which the Board has signed a Memorandum of Understanding.

B. A business or third party may not facilitate a Memorandum of Understanding between a foreign country and the Board, but may facilitate the hiring process at the request of the LEA.

C. Internationally credentialed educators may seek appropriate licensing to teach in Utah schools. Those educators from countries that do not have Memoranda of Understanding with the Board shall be licensed under R277-502.

D. It is the responsibility of the prospective guest teacher or the guest teacher's home country to ensure that the guest teacher has the appropriate visa or authorization or both to live and teach in the United States for the agreed upon time period and teaching assignment.

KEY: international guest teachers
February 7, 2014 Art X Sec 3
Notice of Continuation September 13, 2018 53A-1-401(3)
53A-1-402(1)(a)

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-15. Standards for the Management of Used Oil.
R315-15-1. Applicability, Prohibitions, and Definitions.

1.1 APPLICABILITY

This section identifies those materials that are subject to regulation as used oil under R315-15. This section also identifies some materials that are not subject to regulation as used oil under R315-15, and indicates whether these materials may be a hazardous waste as defined under R315-261.

(a) Used oil. It is presumed that used oil is to be recycled unless a used oil handler disposes of used oil or sends used oil for disposal. Except as provided in R315-15-1.2, the requirements of R315-15 apply to used oil, and to materials identified in this section as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in R315-261-20 through 24.

(b) Mixtures of used oil and hazardous waste.

(1) Listed hazardous waste.

(i) Mixtures of used oil and hazardous waste which are listed in R315-261-30 through 33 and 35 are subject to regulation as hazardous waste under R315-261 rather than as used oil under R315-15.

(ii) Rebuttable presumption for used oil. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in R315-261-30 through 33 and 35. A person may rebut this presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Edition III, Update IV to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-261, Appendix VIII.

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in R315-15-2.5(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(B) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(2) Characteristic hazardous waste. A mixture of used oil and hazardous waste that solely exhibits one or more of the hazardous waste characteristics identified in R315-261-20 through 24 and a mixtures of used oil and hazardous waste that is listed in R315-261-30 through 33 and 35 solely because it exhibits one or more of the characteristics of hazardous waste identified in R315-261-20 through 24 are subject to:

(i) Except as provided in R315-15-1(b)(2)(iii), regulation as hazardous waste under R315-260 through 266, 268, 270, and 273 rather than as used oil under R315-15, if the resultant mixture exhibits any characteristics of hazardous waste identified in R315-261-20 through 24; or

(ii) Except as specified in R315-15-1.1(b)(2)(iii), regulation as used oil under R315-15, if the resultant mixture does not exhibit any characteristics of hazardous waste identified under R315-261-20 through 24.

(iii) Regulation as used oil under R315-15, if the mixture is of used oil and a waste which is hazardous solely because it exhibits the characteristic of ignitability, e.g., mineral spirits, provided that the mixture does not exhibit the characteristic of ignitability under R315-261-21.

(3) Very small quantity generator hazardous waste. Mixtures of used oil and very small quantity generator hazardous waste regulated under Section R315-262-14 are subject to regulation as used oil under R315-15.

(c) Materials containing or otherwise contaminated with used oil.

(1) Except as provided in R315-15-1.1(c)(2) materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material:

(i) Are not used oil and thus not subject to R315-15, and

(ii) If applicable, are subject to the hazardous waste regulations R315-260 through 266, 268, 270, and 273, and R315-101 and 102.

(2) Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under R315-15.

(3) Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under R315-15.

(d) Mixtures of used oil with products.

(1) Except as provided in (d)(2) mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under R315-15.

(2) Mixtures of used oil and diesel fuel mixed on site by the generator of the used oil for use in the generator's own vehicles are not subject to R315-15 after the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of R315-15-2.

(e) Materials derived from used oil.

(1) Materials that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal, e.g., re-refined lubricants, are:

(i) Not used oil and thus are not subject to R315-15, and

(ii) Not solid wastes and are thus not subject to the hazardous waste regulations of R315-260 through 266, 268, 270, and 273 as provided in R315-261-3(c)(2)(i).

(2) Materials produced from used oil that are burned for energy recovery, e.g., used oil fuels, are subject to regulation as used oil under R315-15.

(3) Except as provided in R315-15.1.1(e)(4), materials derived from used oil that are disposed of or used in a manner constituting disposal are:

(i) Not used oil and thus are not subject to R315-15, and

(ii) Are solid wastes and thus are subject to the hazardous waste regulations R315-260 through 266, 268, 270, and 273 if the materials are listed or identified as hazardous wastes.

(4) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to R315-15.

(f) Wastewater. Wastewater contaminated with de minimis quantities of used oil, the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act, including wastewaters at facilities that have eliminated the discharge of wastewater, are not subject to the requirements of Rule R315-15. For purposes of this paragraph only, "de minimis" quantities of used oils are defined as small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception does not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

(g) Used oil introduced into crude oil pipelines or a petroleum refining facility.

(1) Used oil mixed with crude oil or natural gas liquids, e.g., in a production separator or crude oil stock tank, for insertion into a crude oil pipeline is exempt from the requirements of R315-15. The used oil is subject to the

requirements of R315-15 prior to the mixing of used oil with crude oil or natural gas liquids.

(2) Mixtures of used oil and crude oil or natural gas liquids containing less than 1% used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point prior to crude distillation or catalytic cracking are exempt from the requirements of R315-15.

(3) Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of R315-15, provided that the used oil constitutes less than 1% of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of R315-15.

(4) Except as provided in R315-15-1.1 (g)(5), used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of R315-15 only if the used oil meets the specification of R315-15-1.2. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of R315-15.

(5) Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as part of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of R315-15. This exemption does not extend to used oil that is intentionally introduced into a hydrocarbon recovery system, e.g., by pouring collected used oil into the waste water treatment system.

(6) Tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from the requirements of R315-15.

(h) Used oil on vessels. Used oil produced on vessels from normal shipboard operations is not subject to Rule R315-15 until it is transported ashore.

(i) Used oil containing PCBs. In addition to the requirements of R315-15, marketers and burners of used oil who market used oil containing PCBs at concentrations greater than or equal to 2 ppm are subject to the requirements found in R315-15-18 and 40 CFR 761.20(e).

(j) Inspections. Any duly authorized employee of the Director, may, at any reasonable time and upon presentation of credentials, have access to and the right to copy any records relating to used oil, and inspect, audit, or sample. Any authorized employee obtaining samples shall give to the owner, operator or agent a receipt describing the sample obtained and, if requested, a portion of each sample of waste equal in volume or weight to the portion retained. The employee may also make record of the inspection by photographic, electronic, audio, video, or any other reasonable means.

(k) Violations, Orders, and Hearings. If the Director has reason to believe a person is in violation of any provision of R315-15, procedural requirements for compliance shall follow Utah Code Annotated 19-6-721 and Utah Administrative Code R305-7.

1.2 USED OIL SPECIFICATIONS

Used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment, is subject to regulation under R315-15 until:

(a) It has been demonstrated not to exceed any allowable levels of the constituents and properties shown in Table 1;

(b) The person making that claim complies with R315-15-7.3, R315-15-7.4, and R315-15-7.5(b); and

(c) The used oil is delivered to a used oil burner.

TABLE 1
USED OIL NOT EXCEEDING ANY ALLOWABLE LEVEL IS NOT SUBJECT TO R315-15-6 WHEN BURNED FOR ENERGY RECOVERY(1)

Constituent/property	Allowable level
Arsenic	5 ppm maximum
Cadmium	2 ppm maximum
Chromium	10 ppm maximum
Lead	100 ppm maximum
Flash point	100 degrees F minimum
Total halogens	4,000 ppm maximum(2)

(1) The allowable levels in Table 1 do not apply to mixtures of used oil and hazardous waste that continue to beregulated as hazardous waste. See R315-15-1.1(b).

(2) Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption described in R315-15-1.1(b)(1). Such used oil is subject to R315-266-100 through 112, rather than R315-15 when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

Note: Applicable standards for the marketing and burning of used oil containing any quantifiable level (2 ppm) of PCBs are found in 40 CFR 761.20(e), 2013 edition, incorporated by reference, and R315-15-18. Prohibition of PCB oil dilution is described in 40 CFR 279.10 and 40 CFR 761.20(e).

1.3 PROHIBITIONS

Except as authorized by the Director, a person may not place, discard, or otherwise dispose of used oil in any of the following manners:

(a) Surface impoundment and waste piles. Used oil shall not be managed in surface impoundments or waste piles unless the units are subject to regulation under R315-264 or R315-265.

(b) Use as a dust suppressant, weed suppressant, or for road oiling. The use of used oil as a dust suppressant, weed suppressant, or for road oiling or other similar use is prohibited. Any disposal of used oil on the ground is prohibited under Utah Code Annotated 19-6-706(1)(a)(iii).

(c) A person may not mix or commingle used oil with the following substances, except as incidental to the normal course of processing, mechanical, or industrial operations:

(1) Solid waste that is to be disposed of in any solid waste treatment, storage, or disposal facility, except as authorized by the Director; or

(2) Any hazardous waste so the resulting mixture may not be recycled or used for other beneficial purpose as authorized under R315-15.

(d) Used oil shall not be disposed in a solid waste treatment, storage, or disposal facility, except for the disposal of hazardous used oil as authorized under R315-261.

(e) Used oil shall not be disposed in sewers, drainage systems, septic tanks, surface or ground waters, watercourses, or any body of water.

1.4 BURNING IN PARTICULAR UNITS

Burning in particular units. Off-specification used oil fuel may be burned for energy recovery only in the devices described in R315-15-6.2(a).

1.5 DISPOSAL OF DE MINIMIS USED OIL

(a) R315-15-1.3 does not apply to release of de minimis quantities of used oil identified under Utah Code Annotated 19-6-706(4)(a) except for the requirements of 19-6-706(i) and (ii).

(b) A person may dispose of an item or substance that contains de minimis amounts of oil in disposal facilities in accordance with Utah Code Annotated 19-6-706 (2) (a) if:

(1) To the extent that all oil has been reasonably removed from the item or substance; and

(2) No free flowing oil remains in the item or substance.

1.6 USED OIL FILTERS

(a) Disposal of Used Oil Filters. A person may dispose of a nonterne plated used oil filter as a non-hazardous solid waste when that filter is gravity hot-drained by one of the methods described in R315-15-1.6(b) and is not mixed with hazardous waste defined in R315-261.

(b) "Gravity hot-drained" means drained for not less than 12 hours near operating temperature but above 60 degrees Fahrenheit. A nonterne used oil filter is a container of used oil

and is subject to R315-15 until it is gravity hot-drained by one of the following methods:

(1) puncturing the filter anti-drain back valve or the filter dome end and gravity hot-draining;

(2) gravity hot-draining and crushing;

(3) dismantling and gravity hot-draining; or

(4) any other equivalent gravity hot-draining method authorized by the Director that will remove used oil from the filter at least as effectively as the methods listed in R315-15-1.6(b)(1) through (3).

1.7 DEFINITIONS

(a) Definitions of terms used in R315-15 are found in: R315-15-1.7(b) through (h) and R315-260.

(b) The term "de minimis quantities of used oil" defined in Utah Code Annotated 19-6-706(4)(b), and 19-6-708(3)(a) means small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations and does not apply to used oil discarded as a result of abnormal operations resulting in substantial leaks, spills, or other releases. Nor does it apply to accumulations of quantities of used oil that pose a potential threat to human health or the environment.

(c) "Financial responsibility" means the mechanism by which a person who has a financial obligation satisfies that obligation.

(d) "Used oil" means any oil, refined from crude oil or synthetic oil, that has been used and as a result of that use is contaminated by physical or chemical impurities. Used oil includes engine oil, transmission fluid, compressor oils, metalworking oils, hydraulic oil, brake fluid, oils used as buoyants, lubricating greases, electrical insulating, and dialectic oils.

(e) "Polychlorinated biphenyl (PCB)" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance.

(f) "On-specification used oil" means used oil that does not exceed levels of constituents and properties specified in R315-15-1.2.

(g) "Off-specification used oil" means used oil that exceeds levels of constituents and properties specified in R315-15-1.2.

(h) "Parts per million (ppm)" means a weight-per-weight ratio used to describe concentrations. Parts per million (ppm) is the number of units of mass of a contaminant per million units of total mass (e.g., micrograms per gram).

1.8 LABORATORY ANALYSES

Laboratory analyses used to satisfy the requirements of R315-15 shall be performed by a laboratory that holds a current Utah Certification for environmental laboratories issued by the Utah Department of Health, Laboratory Improvement under R444-14 Utah Administrative Code. The laboratory shall be certified for the method(s) and analyte(s) applied to generate the environmental data.

R315-15-2. Standards for Used Oil Generators.

2.1 APPLICABILITY

(a) General. Except as provided in paragraphs (a)(1) through (a)(4) of this section, R315-15-2 applies to all used oil generators. A used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

(1) Household "do-it-yourselfer" used oil generators. Household "do-it-yourselfer" used oil generators are not subject to regulation under R315-15, except for the prohibitions of R315-15-1.3 and cleanup requirements of R315-15-9.

(2) Vessels. Vessels at sea or at port are not subject to R315-15-2. For purposes of R315-15-2, used oil produced on vessels from normal shipboard operations is considered to be generated at the time it is transported ashore. The owner or operator of the vessel and the person(s) removing or accepting used oil from the vessel are co-generators of the used oil and are both responsible for managing the used oil in compliance with R315-15-2 once the used oil is transported ashore. The co-generators may decide among themselves which party will fulfill the requirements of R315-15-2.

(3) Diesel fuel. Mixtures of used oil and diesel fuel mixed by the generator of the used oil for use in the generator's own vehicles are not subject to R315-15 once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil fuel is subject to the requirements of R315-15-2.

(4) Farmers. Farmers who generate an average of 25 gallons per month or less of used oil from vehicles or machinery used on the farm in a calendar year are not subject to the requirements of R315-15, except for the prohibitions of R315-15-1.3 and cleanup requirements of R315-15-9.

(b) Other applicable provisions. Used oil generators who conduct the following activities are subject to the requirements of other applicable provisions of R315-15 as indicated in R315-15.2.1(b)(1) through (5):

(1) Generators who transport used oil, except under the self-transport provisions of R315-15-2.5(a) and (b), shall also comply with R315-15-4.

(2)(i) Except as provided in R315-15-2.1(b)(2)(ii), generators who process or re-refine used oil must also comply with R315-15-5.

(ii) Generators who perform the following activities are not processors, provided that the used oil is generated onsite and is not being sent offsite to a burner of on- or off-specification used oil fuel.

(A) Filtering, cleaning, or otherwise reconditioning used oil before returning it for reuse by the generator;

(B) Separating used oil from wastewater generated onsite to make the wastewater acceptable for discharge or reuse in accordance with section 402 or section 307(b) of the Clean Water Act or other applicable Federal or state regulations governing the management or discharge of wastewater;

(C) Using oil mist collectors to remove small droplets of used oil from in-plant air to make plant air suitable for continued recirculation;

(D) Draining or otherwise removing used oil from materials containing or otherwise contaminated with used oil in order to remove excessive used oil to the extent possible in accordance with R315-15-1.1(c); or

(E) Filtering, separating or otherwise reconditioning used oil before burning it in a space heater in accordance with R315-15-2.4.

(3) Generators who burn off-specification used oil for energy recovery, shall also comply with R315-15-6.

(4) Generators who direct shipments of off-specification used oil from their facility to a used oil burner or first certify that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in R315-15-1.2 shall also comply with R315-15-7.

(5) Generators who dispose of used oil shall also comply with R315-15-8.

2.2 HAZARDOUS WASTE MIXING

(a) Mixtures of used oil and hazardous waste shall be managed in accordance with R315-15-1.1(b).

(b) The rebuttable presumption for used oil found in R315-15-1.1(b)(1)(ii) applies to used oil managed by generators. Under this rebuttable presumption, used oil containing greater than 1,000 ppm total halogens is presumed to be a hazardous waste and thus shall be managed as hazardous waste and not as used oil unless the presumption is rebutted. However, the rebuttable presumption does not apply to certain metalworking oil or fluids containing chlorinated paraffins, if they are processed through a tolling agreement to reclaim the metalworking oils or fluids, and certain used oils removed from

refrigeration units described in R315-15-1.1(b)(1)(ii)(B).

2.3 USED OIL STORAGE

Used oil generators are subject to all applicable Spill Prevention, Control and Countermeasures, 40 CFR 112, in addition to the requirements of R315-15-2. Used oil generators are also subject to the standards and requirements of R311-200 through R311-209, Underground Storage Tanks, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste. In addition, used oil generators are subject to the requirements of R315-15-2.

(a) Storage units. Used oil generators shall not store used oil in units other than tanks, containers, or units subject to regulation under R315-264 and R315-265.

(b) Condition of units. Containers and aboveground tanks used to store used oil at generator facilities shall be:

(1) In good condition, with no severe rusting, apparent structural defects or deterioration; and

(2) Not leaking.

(3) Tanks and containers for storage of used oil must be closed during storage except when adding or removing used oil.

(4) Tanks and containers storage areas shall be managed to prevent releases of used oil to the environment.

(c) Labels.

(1) Containers and aboveground tanks used to store used oil at generator facilities shall be labeled or marked clearly with the words "Used Oil".

(2) Fill pipes used to transfer used oil into underground storage tanks at generator facilities shall be labeled or marked clearly with the words "Used Oil."

(d) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of Section R311-202-1, which incorporates by reference 40 CFR 280, Subpart F, a generator shall comply with Section R315-15-9.

2.4 ON-SITE BURNING

On-site burners shall comply with R315-15-6 and, if applicable, shall obtain an Air Quality permit.

(a) Generators may burn used oil in used oil-fired space heaters without a used oil permit provided that:

(1) The heater burns only used oil that the owner or operator generates;

(2) The heater is designed to have a maximum capacity of not more than 0.5 million Btu per hour;

(3) The combustion gases from the heater are vented to the outside ambient air;

(4) The generator has knowledge that the used oil has not been mixed with hazardous waste; and

(5) The used oil is being legitimately burned to utilize its energy content.

(b) Used Oil Collection Center(UOCC). If it is registered as a Used Oil Collection Center as authorized in R315-15-3, the UOCC may burn used oil in used oil fired space heaters without a used oil permit under the provision described in R315-15-2.4(a) provided that the used oil is received from household do-it-yourselfer generators or farmers described in R315-15-2.1(a)(4) or the used oil is received from other generators and has been certified to meet the used oil fuel specifications of R315-15-1.2 by a registered used oil marketer in accordance with R315-15-7.

2.5 OFF-SITE SHIPMENTS

Except as provided in R315-15-2.5(a) through (c), a generator shall ensure that its used oil is transported only by a transporter who has obtained a Utah used oil transporter permit and has a current used oil handler certificate issued by the Director and an EPA identification number.

(a) Self-transportation of small amounts to approved collection centers. A generators may transport, without an EPA identification number, a used oil transporter permit, or a current used oil handler certificate, used oil that is generated at the generator's site and used oil collected from household do-it-yourselfers to a used oil collection center provided that:

(1) The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;

(2) The generator transports no more than 55 gallons of used oil at any time; and

(3) The generator transports the used oil to a used oil collection center that is registered or permitted to manage used oil.

(b) Self-transportation of small amounts to aggregation points owned by the generator. A generator may transport, without an EPA identification number, a used oil transporter permit, or used oil handler certificate, used oil that is generated at the generator's site to an aggregation point provided that:

(1) The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;

(2) The generator transports no more than 55 gallons of used oil at any time; and

(3) The generator transports the used oil to an aggregation point that is owned, operated, or both by the same generator.

(c) Tolling arrangements. Used oil generators may arrange for used oil to be transported by a transporter without an EPA identification number, a used oil transporter permit, or a current used oil handler certificate if the used oil is reclaimed under a contractual agreement under which reclaimed oil is returned by the processor/re-refiner to the generator for use as a lubricant, cutting oil, or coolant. The contract, known as a "tolling arrangement," shall indicate:

(1) The type of used oil and the frequency of shipments;

(2) That the vehicle used to transport the used oil to the processing/re-refining facility and to deliver recycled used oil back to the generator is owned and operated by the used oil processor/re-refiner; and

(3) That reclaimed oil will be returned to the generator.

R315-15-3. Standards for Used Oil Collection Centers and Aggregation Points.

3.1 DO-IT-YOURSELFER USED OIL COLLECTION CENTERS TYPES A and B

(a) Applicability. R315-15-3.1 applies to owners or operators of Type A and B used oil collection centers:

(1) Type A used oil collection center. Type A and B is any site or facility that accepts/aggregates and stores used oil collected only from household do-it-yourselfers (DIYers) in quantities not exceeding five gallons per visit.

(2) Type B used oil collection center. Type B used oil collection center is any site or facility that accepts/aggregates and stores used oil collected from farmers as required by R315-15-2.1(a)(4) in quantities not exceeding 55 gallons per visit from farmers and not exceeding five gallons per visit from household do-it-yourselfers.

(b) Type A or B used oil collection center requirements. Owners or operators of Type A or B used oil collection centers shall:

(1) Comply with the generator standards in R315-15-2.

(2) Be registered with the Division of Waste Management and Radiation Control to manage used oil as a used oil collection center as required by R315-15-13.1; and

(3) Keep records of used oil collected by the collection center. This does not include used oil generated on site from maintenance and servicing operations. These records shall be kept for a minimum of three years and shall contain the following information:

(i) Name and address of generator or if unavailable, a written description of how the used oil was received;

(ii) Quantity of used oil received;

(iii) Date the used oil is received; and

(iv) Volume of used oil picked up by a permitted transporter and the transporter's name and EPA identification number.

(4) A Type A or B used oil collection center shall not accept used oil from generators other than those specified in R315-15-3.1(1) and (2).

(c) Reimbursements. Type A or B used oil collection centers are classified as DIYer used oil collection centers and may be reimbursed as described in R315-15-14.

3.2 USED OIL COLLECTION CENTERS - TYPES C AND D

(a) Applicability. R315-15-3.2 applies to owners or operators of Type C and D used oil collection centers.

(1) Type C used oil collection center is any site or facility that accepts/aggregates and stores used oil collected from used oil generators regulated under R315-15-2 who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of R315-15-2.5(a). Type C used oil collection centers may also accept used oil from household do-it-yourselfers and farmers described in R315-15-2.1(a)(4).

(2) A Type D used oil collection center is any site or facility that only accepts/aggregates and stores used oil collected from used oil generators regulated under R315-15-2 who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of R315-15-2.5(a). Type D used oil collection centers do not qualify for reimbursement.

(b) Used oil collection center Type C and D requirements. Owners or operators of Types C and D used oil collection centers shall:

(1) Comply with the generator standards in R315-15-2;

(2) Be registered with the Division of Waste Management and Radiation Control to manage used oil; and

(3) Keep records of used oil received from off-site sources and transported from the collection center. This does not include used oil generated onsite from maintenance and servicing operations. These records shall be kept for a minimum of three years and shall contain the following information:

(i) Name and address of generator or, if unavailable, a written description of how the used oil was received;

(ii) Quantity of used oil received;

(iii) Date the used oil is received; and

(iv) Volumes of used oil collected by a permitted transporter and the transporter's name and federal EPA identification number.

(c) Reimbursements. Type C used oil collection centers may be reimbursed as described in R315-15-14 for household do-it-yourselfer and used oil generated by farmers as defined in R315-15-3.1. Other generator used oil does not meet the reimbursement criteria as do-it-yourselfer used oil and does not qualify for reimbursement.

3.3 USED OIL AGGREGATION POINTS OWNED BY THE GENERATOR

(a) Applicability. R315-15-3.3 applies to owners or operators of all used oil aggregation points. A used oil aggregation point is any site or facility that accepts, aggregates, or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of 55 gallons or less under the provisions of R315-15-2.5(b). Used oil aggregation points may also accept used oil from household do-it-yourselfers as long as they register as do-it-yourselfer collection centers, as described in R315-15-13.1, and comply with do-it-yourselfer collection center standards in R315-15-3.1. Used oil aggregation points that accept used oil from other generators shall register as collection centers, as described in R315-15-13.2, and comply with collection center standards in R315-15-3.2.

(b) Used oil aggregation point requirements. Owners or operators of all used oil aggregation points shall comply with the generator standards in R315-15-2.

R315-15-4. Standards for Used Oil Transporter and Transfer Facilities.

4.1 APPLICABILITY

(a) General. R315-15-4 applies to all used oil transporters, except as provided in R315-15-4.1(a)(1) through (4). Persons who transport used oil, persons who collect used oil from more than one generator and transport the collected used oil, and owners and operators of used oil transfer facilities are used oil transporters. Except as provided by R315-15-13.4(f), used oil transporters or operators of used oil transfer facilities shall obtain a permit from the Director prior to accepting any used oil for transportation or transfer. The application for a permit shall include the information required by R315-15-13.4. Used oil transporters and operators of used oil transfer facilities shall obtain and maintain a used oil handler certificate in accordance with R315-15-13.8.

(1) R315-15-4 does not apply to on-site transportation.

(2) R315-15-4 does not apply to generators who transport shipments of used oil totaling 55 gallons or less from the generator to a used oil collection center as specified in Subsection R315-15-2.5(a).

(3) R315-15-4 does not apply to generators who transport shipments of used oil totaling 55 gallons or less from the generator to a used oil aggregation point owned or operated by the same generator as specified in R315-15-2.5(b).

(4) R315-15-4 does not apply to transportation of used oil from household do-it-yourselfers to a regulated used oil generator, collection center, aggregation point, processor/re-refiner, or burner subject to the requirements of R315-15. Except as provided in R315-15-4.1(a)(1) through (a)(3), R315-15-4 does, apply to transportation of collected household do-it-yourselfer used oil from regulated used oil generators, collection centers, aggregation points, or other facilities where household do-it-yourselfer used oil is collected.

(b) Imports and exports. Transporters are subject to the requirements of R315-15-4 from the time the used oil enters and until the time it exits Utah.

(c) Vehicles used to transport hazardous waste. Unless vehicles previously used to transport hazardous waste are emptied as described in R315-261-7 prior to transporting used oil, the used oil is considered to have been mixed with the hazardous waste and shall be managed as hazardous waste unless, under the provisions of R315-15-1.1(b), the hazardous waste/used oil mixture is determined not to be hazardous waste.

(d) Vehicles used to transport PCB-contaminated material. Unless vehicles previously used to transport PCB-contaminated material are decontaminated as described in 40 CFR 761 Subpart S, (2013 edition, incorporated by reference), prior to transporting used oil, the used oil is considered to have been mixed with PCB-contaminated material and shall be managed as PCB-contaminated material in accordance with R315-15-18 and 40 CFR 761.

(e) Tanks, containers, and piping that contained PCB-contaminated material. Unless tanks, containers, and piping that previously contained PCB-contaminated material are decontaminated as described in 40 CFR 761 Subpart S prior to transferring used oil, the used oil is considered to have been mixed with PCB-contaminated material in accordance with R315-15-18 and 40 CFR 761 Subpart S.

(f) Other applicable provisions. Used oil transporters who conduct the following activities are also subject to other applicable provisions of R315-15 as indicated in R315-15-4.1 (f)(1) through (5):

(1) Transporters who generate used oil shall also comply with R315-15-2;

(2) Transporters who process or re-refine used oil, except as provided in R315-15-4.2, shall also comply with R315-15-5;

(3) Transporters who burn off-specification used oil for energy recovery shall also comply with R315-15-6;

(4) Transporters who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in R315-15-1.2 shall also comply with R315-15-7; and

(5) Transporters who dispose of used oil shall also comply with R315-15-8.

4.2 RESTRICTIONS ON TRANSPORTERS WHO ARE NOT ALSO PROCESSORS OR RE-REFINERS

(a) Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation. However, except as provided in R315-15-4.2(b), used oil transporters may not process used oil unless they also comply with the requirements for processors/re-refiners in R315-15-5.

(b) Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation, e.g., settling and water separation, but that are not designed to produce, or make more amenable for production of, used oil derived products unless they also comply with the processor/re-refiner requirements in R315-15-5.

(c) Transporters of used oil that is removed from oil-bearing electrical transformers and turbines and filtered by the transporter or at a transfer facility prior to being returned to its original use are not subject to the processor/re-refiner requirements in R315-15-5.

4.3 NOTIFICATION

(a) Identification numbers. Used oil transporters who have not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) Mechanics of notification. A used oil transporter who has not received an EPA identification number may obtain one by notifying the Director of his used oil activity by submitting either:

(1) A completed EPA Form 8700-12 or

(2) A letter to the Division requesting an EPA identification number. The letter shall include the following information:

(i) Transporter company name;

(ii) Owner of the transporter company;

(iii) Mailing address for the transporter;

(iv) Name and telephone number for the transporter point of contact;

(v) Type of transport activity, i.e., transport only, transport and transfer facility, transfer facility only;

(vi) Location of all transfer facilities at which used oil is stored; and

(vii) Name and telephone number for a contact at each transfer facility.

4.4 USED OIL TRANSPORTATION

(a) Deliveries. A used oil transporter shall deliver all used oil received to:

(1) Another used oil transporter, provided that the transporter has obtained an EPA identification number transporter, permit number, and current used oil handler certificate issued by the Director;

(2) A used oil processing/re-refining facility that has obtained an EPA identification number, processing/refining permit, and current used oil handler certificate issued by the Director;

(3) An off-specification used oil burner facility that has obtained an EPA identification number, off-specification used oil burner permit, and current used oil handler certificate issued by the Director;

(4) A used oil transfer facility that has obtained an EPA identification number, transfer facility permit, and current used oil handler certificate issued by the Director; or

(5) An on-specification used oil burner facility.

(b) DOT Requirements. Used oil transporters shall comply with all applicable requirements under the U.S. Department of Transportation regulations in 49 CFR 171 through 180. Persons transporting used oil that meets the definition of a hazardous material in 49 CFR 171.8 shall comply with all applicable regulations in 49 CFR 171 through 180.

(c) Used oil discharges. In the event of a used oil discharge, a transporter shall comply with R315-15-9.

(d) The words "Used Oil" shall be clearly visible, in letters at least two inches high, on all vehicles transporting bulk used oil.

4.5 REBUTTABLE PRESUMPTION FOR USED OIL

(a) To ensure that used oil is not a hazardous waste under the rebuttable presumption of R315-15-1.1(b)(1)(ii), the used oil transporter shall determine whether the total halogen content of used oil being transported or stored at a transfer facility is below 1,000 ppm.

(b) The transporter shall make this determination by:

(1) Testing the used oil; or

(2) Applying and documenting generator knowledge of the halogen content of the used oil in light of the materials or processes used.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in R315-261-30 through 33 and 35. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Edition III, update IV to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-261 Appendix VIII.

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in R315-15-2.5(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(2) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units if 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.

(d) Record retention. Records of analyses conducted or information used to comply with R315-15-4.5(a), (b), and (c) shall be maintained by the transporter for at least three years.

4.6 USED OIL STORAGE AT TRANSFER FACILITIES

Used oil transporters are subject to all applicable Spill Prevention, Control and Countermeasures, in accordance with 40 CFR 112, in addition to the requirements of R315-15-4. Used oil transporters are also subject to the standards of R311, which incorporates by reference 40 CFR 280, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of R315-15-4.

(a) Applicability. R315-15-4 applies to used oil transfer facilities. Used oil transfer facilities are transportation-related facilities including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than 24 hours during the normal course of transportation and not longer than 35 days. Transfer facilities that store used oil for more than 35 days are subject to the processor/re-refiner requirements found in R315-15-5.

(b) Storage units. Owners or operators of used oil transfer facilities may not store used oil in units other than tanks, containers, or units subject to regulation under R315-264 or R315-265.

(c) Condition of units. Containers and aboveground tanks and tank systems, including their associated pipes and valves, used to store used oil at transfer facilities shall be:

(1) In good condition, with no severe rusting, apparent structural defects, or deterioration; and

(2) Not leaking.

(3) Tanks and containers for storage of used oil must be closed during storage except when adding or removing used oil.

(4) Tanks and container storage areas shall have a containment system that is designed and operated in accordance with R315-264-170 through 178.

(d) Secondary containment. Containers and aboveground tanks used to store used oil at transfer facilities, including their pipe connections and valves, shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of:

(i) Dikes, berms, or retaining walls; and

(ii) A floor. The floor shall cover the entire area within the dikes, berms, or retaining walls except areas where existing portions of existing aboveground tanks meet the ground.

(iii) An equivalent secondary containment system approved by the Director.

(2) The entire containment system, including walls and floors, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(3) The secondary system shall be of sufficient extent to prevent any used oil releases from tanks and containers in R315-15-4.6(b), from migrating out of the system to the soil, groundwater, or surface water.

(4) Water, used oil, or other liquids shall be removed from secondary containment, including sumps, within 24 hours of discovery.

(5) Used oil shall not be stored or allowed to accumulate in sumps and similar water containment structures at the facility. Any used oil in such sumps beyond a surface sheen shall be removed within 24 hours of discovery.

(6) Transporters loading to or from rail tanker cars shall also comply with secondary containment requirements of R315-15-4.10.

(e) Labels.

(1) Containers and aboveground tanks used to store used oil at transfer facilities shall be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer used oil into underground storage tanks at transfer facilities shall be labeled or marked clearly with the words "Used Oil."

(f) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of R311-202-1, which incorporates by reference 40 CFR 280, Subpart F, the owner/operator of a transfer facility shall comply with R315-15-9.

4.7 TRACKING

(a) Acceptance. Used oil transporters and transfer facilities shall keep a written record of each used oil shipment accepted for transport. These records shall take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Written records for each shipment shall include:

(1) The name and address of the generator, transporter, transfer facility, burner, or processor/re-refiner who provided the used oil for transport;

(2) The EPA identification number, if applicable, of the generator, transporter, or processor/re-refiner who provided the used oil for transport;

(3) Documentation demonstrating the transporter has met the halogen determination requirements of R315-15-4.5 and, where applicable, the PCB testing requirements of R315-15-18;

(4) The quantity of used oil accepted;

(5) The date of acceptance; and

(6)(i) Except as provided in R315-15-4.7(a)(6)(ii), the signature, dated upon receipt of the used oil, of a representative of the generator, transporter, transfer facility, burner, or processor/re-refiner who provided the used oil for transport.

(ii) Intermediate rail transporters are not required to sign the record of acceptance.

(b) Deliveries. Used oil transporters and transfer facilities shall keep a written record of each shipment of used oil that is delivered to another used oil transporter, a transfer facility, burner, processor/re-refiner, or disposal facility. Records of each delivery shall include:

(1) The name and address of the receiving facility or transporter;

(2) The EPA identification number of the receiving facility or transporter;

(3) The quantity of used oil delivered;

(4) The date of delivery; and

(5)(i) Except as provided in R315-15-4.7(a)(6)(ii), the signature, dated upon receipt of the used oil, of a representative of the receiving facility or transporter.

(ii) Intermediate rail transporters are not required to sign the record of delivery.

(c) Exports of used oil. Used oil transporters shall maintain the records described in R315-15-4.7(b)(1) through (b)(4) for each shipment of used oil exported outside of Utah.

(d) Record retention. The records described in R315-15-4.7(a), (b), and (c) shall be maintained for at least three years at a specified facility approved by the Director.

(e) Reporting. Used oil transporter and transfer facilities shall report annually by March 1 to the Director. The report shall be consistent with the requirements of R315-15-13.4(d).

4.8 MANAGEMENT OF RESIDUES

Transporters who generate residues from the storage or transport of used oil shall manage the residues as specified in R315-15-1.1(e).

4.9 ACCEPTANCE OF OFF-SITE USED OIL

Used oil transporters and transfer facilities accepting used oil from off-site shall ensure that the transporters delivering the used oil have obtained a current used oil transporter permit and an EPA identification number.

4.10 TRANSFER OF USED OIL TO OR FROM RAIL CARS

(a) Spill prevention. Facilities or transporters loading or unloading used oil from rail cars shall:

(1) Use spill pans beneath rail cars being loaded or unloaded with used oil. These spill pans shall be placed inside and outside of the track below the rail car loading port in such a way as to capture releases that might occur during the loading and unloading operations;

(2) Securely park used oil transportation trucks on a loading pad during the loading and unloading of used oil between those trucks and the rail tanker car. The loading pad shall be constructed of asphalt or concrete, or an equivalent system approved by the Director, and shall be sloped or bermed in such a way as to contain used oil spills;

(3) Be loaded and unloaded through a valve or port located on top of the rail car unless otherwise approved by the Director; and

(4) Transporter personnel shall actively monitor the transfer during the entire loading and unloading process.

(b) Storage at rail loading and unloading facilities. If, during the normal course of transportation, used oil remains at the loading and unloading facility for more than 24 hours but less than 35 days, the facility is subject to regulation as a used oil transfer facility as defined in R315-15-4.6 and is required to apply for a permit as a used oil transfer facility as defined in R315-15-13.4. A transfer facility that stores used oil for more than 35 days is subject to the processor/re-refiner requirements as defined in R315-15-5.

R315-15-5. Standards for Used Oil Processors and Re-Refiners.

5.1 APPLICABILITY

(a) The requirements of R315-15-5 apply to owners and operators of facilities that process used oil. Processing means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived products. Processing includes: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining. The requirements of R315-15-5 do not apply to:

(1) Transporters that conduct incidental processing operations that occur during the normal course of transportation as provided in R315-15-4.2; or

(2) Burners that conduct incidental processing operations that occur during the normal course of used oil management prior to burning as provided in R315-15-6.2(b).

(b) Other applicable provisions. Used oil processors/re-refiners who conduct the following activities are also subject to the requirements of other applicable provisions of R315-15 as indicated in R315-15-5.1(b)(1) through (b)(7).

(1) Processors/re-refiners who generate used oil shall also comply with R315-15-2.

(2) Processors/re-refiners who transport used oil shall also comply with R315-15-4.

(3) Processor/re-refiners who burn off-specification used oil for energy recovery shall also comply with R315-15-6 except where:

(i) The used oil is only burned in an on-site space heater that meets the requirements of R315-15-2.4; or

(ii) The used oil is only burned for purposes of processing used oil, which is considered burning incidentally to used oil processing.

(4) Processors/re-refiners who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in R315-15-1.2 shall also comply with R315-15-7.

(5) Processors/re-refiners who dispose of used oil shall also comply with R315-15-8.

(6) Tanks, containers, and piping that contained hazardous waste. Unless tanks, containers, and piping that previously contained hazardous waste are emptied as described in R315-261-7 prior to storing or transferring used oil, the used oil is considered to have been mixed with the hazardous waste and shall be managed as hazardous waste unless, under the provisions of R315-15-1.1(b), the hazardous waste and used oil mixture is determined not to be hazardous waste.

(7) Tanks, containers, and piping that previously contained PCB-contaminated material. Unless tanks, containers, and piping that previously contained PCB-contaminated material are decontaminated as described in 40 CFR 761 Subpart S prior to storing or transferring of used oil, the used oil is considered to have been mixed with the PCB-contaminated material and shall be managed in accordance with R315-15-18 and 40 CFR 761 Subpart S, as applicable.

(c) Processors/re-refiners shall obtain a permit from the Director prior to processing or re-refining used oil. An application for a permit shall contain the information required by R315-15-13.5.

5.2 NOTIFICATION

(a) Identification numbers. Used oil processors/re-refiners who have not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) Mechanics of notification. A used oil processor or re-refiner who has not received an EPA identification number may obtain one by notifying the Director of their used oil activity by submitting either:

(1) A completed EPA Form 8700-12; or

(2) A letter to the Division requesting an EPA identification number. The letter shall include the following information:

(i) Processor or re-refiner company name;

(ii) Owner of the processor or re-refiner company;

(iii) Mailing address for the processor or re-refiner;

(iv) Name and telephone number for the processor or re-refiner point of contact;

(v) Type of used oil activity, i.e., process only, process and re-refine;

(vi) Location of the processor or re-refiner facility.

5.3 GENERAL FACILITY STANDARDS

(a) Preparedness and prevention. Owners and operators of used oil processor/re-refiner facilities shall comply with the following requirements:

(1) Maintenance and operation of facility. Facilities shall be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of used oil to air, soil, surface water, or groundwater that could threaten human health or the environment.

(2) Required equipment. All facilities shall be equipped with the following:

(i) An internal communications or alarm system capable of providing immediate emergency instruction, voice and signal, to facility personnel;

(ii) 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;

(iii) 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

(iv) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(3) 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. Records of such testing and maintenance shall be kept for three years.

(4) Access to communications or alarm system.

(i) Whenever used oil 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 in R315-15-5.3(a)(2).

(ii) If there is ever just one employee on the premises while the facility is operating, the employee 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 in R315-15-5.3(a)(2).

(5) Required aisle space. The owner or operator 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.

(6) Arrangements with local authorities.

(i) The owner or operator shall attempt to make the following arrangements, as appropriate for the type of used oil handled at the facility and the potential need for the services of these organizations:

(A) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of used oil 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;

(B) 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;

(C) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and

(D) Arrangements to familiarize local hospitals with the properties of used oil handled at the facility and the types of injuries or illnesses that could result from fires, explosions, or releases at the facility.

(ii) Where State or local authorities decline to enter into such arrangements, the owner or operator shall document the refusal in the facility's operating record.

(b) Contingency plan and emergency procedures. Owners and operators of used oil processor and re-refiner facilities shall comply with the following requirements:

(1) Purpose and implementation of contingency plan.

(i) Each owner or operator shall have a contingency plan for the facility. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of used oil to air, soil, groundwater, or surface water.

(ii) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of used oil that could threaten human health or the environment.

(2) Content of contingency plan.

(i) The contingency plan shall describe the actions facility personnel shall take to comply with R315-15-5.3(b)(1) and (6) in response to fires, explosions, or any unplanned sudden or non-sudden release of used oil to air, soil, groundwater, or surface water at the facility.

(ii) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR 112 or some other emergency or contingency plan, the owner or operator need only amend that plan to incorporate used oil management provisions necessary to comply with the requirements of R315-15.

(iii) 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, in accordance with R315-15-5.3(a)(6).

(iv) The plan shall list names, addresses, and phone numbers, of all persons qualified to act as 24-hour emergency coordinator. This list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they will assume responsibility as alternates. See also R315-15-5.3(b)(5).

(v) 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.

(vi) 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 used oil or fires.

(3) Copies of contingency plan. A copy of the contingency plan and all revisions to the plan shall be:

(i) Maintained at the facility; and

(ii) 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.

(4) Amendment of contingency plan. The contingency plan shall be reviewed, and immediately amended, if necessary, whenever:

(i) Applicable regulations are revised;

(ii) The plan fails in an emergency;

(iii) The facility changes its design, construction, operation, maintenance, or other circumstances in a way that materially increases the potential for fires, explosions, or releases of used oil, or changes the response necessary in an emergency;

(iv) The list of emergency coordinators changes; or

(v) The list of emergency equipment changes.

(5) 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 characteristic of used oil handled, the location of all records within the facility, and facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan.

(6) Emergency procedures.

(i) Whenever there is an imminent or actual emergency situation, the emergency coordinator, or the designee when the emergency coordinator is on call, shall immediately:

(A) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(B) Notify appropriate State or local agencies with designated response roles if their help is needed.

(ii) 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 of manifests and, if necessary, by chemical analysis.

(iii) Concurrently, the emergency coordinator shall assess possible hazards to human health and to 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.

(iv) If the emergency coordinator determines that the facility has had a release, fire, or explosion that could threaten human health, or the environment, outside the facility, the coordinator shall report the findings as follows:

(A) If the emergency coordinator assessment indicates that evacuation of local areas may be advisable, he shall immediately notify appropriate local authorities. The coordinator shall be available to help appropriate officials decide whether local areas should be evacuated; and

(B) The emergency coordinator shall implement the actions as required in Section R315-15-9.

(v) 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 used oil or hazardous waste at the facility. These measures shall include, where applicable, stopping processes and operation, collecting and containing released used oil, and removing or

isolating containers.

(vi) If the facility stops operation 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.

(vii) Immediately after an emergency, the emergency coordinator shall provide for recycling, storing, or disposing of recovered used oil, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

(viii) The emergency coordinator shall ensure that, in the affected area(s) of the facility:

(A) No waste or used oil that may be incompatible with the released material is recycled, treated, stored, or disposed of until cleanup procedures are completed; and

(B) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(C) The owner or operator shall notify the Director, and appropriate local authorities that the facility is in compliance with R315-15-5.3(b)(6)(viii)(A) and (B) before operations are resumed in the affected area(s) of the facility.

(ix) The owner or operator shall note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, the owner or operator shall submit a written report on the incident to the Director. The report 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, e.g., fire, explosion;

(D) Name and quantity of material(s) involved;

(E) The extent of injuries, if any;

(F) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(G) Estimated quantity and disposition of recovered material that resulted from the incident.

5.4 REBUTTABLE PRESUMPTION FOR USED OIL

(a) To ensure that used oil managed at a processing/re-refining facility is not hazardous waste under the rebuttable presumption of R315-15-1.1(b)(1)(ii), the owner or operator of a used oil processing/re-refining facility shall determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm.

(b) The owner or operator shall make this determination by:

(1) Testing the used oil; or

(2) Applying and documenting generator knowledge of the halogen content of the used oil in light of the materials and processes used.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in R315-261-30 through 33 and 35. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from EPA SW-846, Edition III, Update IV to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-261 Appendix VIII.

(1) 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.

(2) 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.

5.5 USED OIL MANAGEMENT

Used oil processor/re-refiners are subject to all applicable Spill Prevention, Control and Countermeasures, found in 40 CFR 112, in addition to the requirements of R315-15-5. Used oil processors/re-refiners are also subject to the standards and requirements found in R311-200 through R311-209, Underground Storage Tanks, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of R315-15-5.

(a) Management units. Used oil processors/re-refiners may not store used oil in units other than tanks, containers, or units subject to regulation under R315-264 or R315-265.

(b) Condition of units. Containers and aboveground tanks including their associated pipes and valves used to store or process used oil at processing and re-refining facilities shall be:

(1) In good condition, with no severe rusting, apparent structural defects, or deterioration;

(2) Not leaking; and

(3) Closed during storage except when used oil is being added or removed.

(c) Secondary containment. Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities including their pipe connections and valves shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of:

(i) Dikes, berms, or retaining walls; and

(ii) A floor. The floor shall cover the entire area within the dike, berm, or retaining wall, except areas where existing portions of aboveground tanks meet the ground; or

(iii) An equivalent secondary containment system approved by the Director.

(2) The entire containment system, including walls and floors, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(3) The secondary containment system shall be of sufficient size and volume to prevent any used oil released from tanks and containers described in R315-15-5.5(a), from migrating out of the system to the soil, groundwater, or surface water.

(4) Water, used oil, or other liquids shall be removed from secondary containment within 24 hours of their discovery.

(5) Used oil shall not be stored or allowed to accumulate in sumps and similar water-containment structures at the facility. Any used oil in such sumps shall be removed within 24 hours of its discovery.

(d) Labels.

(1) Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities shall be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer used oil into underground storage tanks at processing and re-refining facilities shall be labeled or marked clearly with the words "Used Oil."

(e) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of R311-202-1, which incorporates by reference 40 CFR 280, Subpart F, an owner/operator shall comply with R315-15-9.

(f) Closure.

(1) Aboveground tanks. Owners and operators who store or process used oil in aboveground tanks shall comply with the following requirements:

(i) At closure of a tank system, the owner or operator shall remove or decontaminate used oil residues in tanks, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are

not hazardous waste under this chapter. Nonhazardous solid waste must be managed in accordance with R315-301-4.

(ii) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in R315-15-5.5(f)(1)(i), then the owner or operator shall close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to hazardous waste landfills, 40 CFR 265.310 which is adopted by reference.

(2) Containers. Owners and operators who store used oil in containers shall comply with the following requirements:

(i) At closure, containers holding used oils or residues of used oil shall be removed from the site;

(ii) The owner or operator shall remove or decontaminate used oil residues, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under R315-261.

5.6 ANALYSIS PLAN

Owners or operators of used oil processing/re-refining facilities shall develop and follow a written used oil analysis plan describing the procedures that will be used to comply with the analysis requirements of R315-15-5.4, R315-15-18, and, if applicable, the marketer requirements in R315-15-7.3. The owner or operator shall keep the plan at the facility.

(a) Rebuttable presumption for used oil in R315-15-5.4. The plan shall specify the following:

(1) Whether sample analyses documented generator knowledge of the halogen content of the used oil, or both, will be used to make this determination.

(2) If sample analyses are used to make this determination, the plan shall specify:

(i) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

(A) One of the sampling methods in R315-261 Appendix I; or

(B) A method shown to be equivalent under R315-260-21;

(ii) The frequency of sampling to be performed, and whether the analysis will be performed onsite or offsite; and

(iii) The methods used to analyze used oil for the parameters specified in R315-15-5.4; and

(3) The type of information that will be used to determine the halogen content of the used oil.

(b) On-specification used oil fuel in R315-15-7.3. At a minimum, the plan shall specify the following if R315-15-7.3 is applicable:

(1) Whether sample analyses or other information will be used to make this determination;

(2) If sample analyses are used to make this determination:

(i) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

(A) One of the sampling methods in R315-261, Appendix I; or

(B) A method shown to be equivalent under R315-260-21;

(ii) Whether used oil will be sampled and analyzed prior to or after any processing/re-refining;

(iii) The frequency of sampling to be performed, and whether the analysis will be performed on-site or off-site; and

(iv) The methods used to analyze used oil for the parameters specified in R315-15-7.3.

(3) The type of information that will be used to make the on-specification used oil fuel determination.

5.7 TRACKING

(a) Acceptance. Used oil processors/re-refiners shall keep a written record of each used oil shipment accepted for processing/re-refining. These records shall take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment shall include the following information:

(1) The name and address of the transporter who delivered the used oil to the processor/re-refiner;

(2) The name and address of the generator or processor/re-refiner from whom the used oil was sent for processing/re-refining;

(3) The EPA identification number of the transporter who delivered the used oil to the processor/re-refiner;

(4) The EPA identification number, if applicable, of the generator or processor/re-refiner from whom the used oil was sent for processing/re-refining;

(5) The quantity of used oil accepted;

(6) The date of acceptance; and

(7) Written documentation that the processor/re-refiner has met the rebuttable presumption requirements of R315-15-5.4 and the PCB testing requirements of R315-15-18.

(b) Delivery. Used oil processor/re-refiners shall keep a written record of each shipment of used oil that is shipped to a used oil burner, processor/re-refiner, or disposal facility. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment shall include the following information:

(1) The name and address of the transporter who delivers the used oil to the burner, processor/re-refiner, or disposal facility;

(2) The name and address of the burner, processor/re-refiner, or disposal facility that will receive the used oil;

(3) The EPA identification number of the transporter who delivers the used oil to the burner, processor/re-refiner, or disposal facility;

(4) The EPA identification number of the burner, processor/re-refiner, or disposal facility that will receive the used oil;

(5) The quantity of used oil shipped; and

(6) The date of shipment.

(c) Record retention. The records described in paragraphs (a) and (b) of this section shall be maintained for at least three years at the permitted facility or other location approved by the Director.

5.8 OPERATING RECORD AND REPORTING

(a) Operating record.

(1) The owner or operator of the processor/re-refiner facility shall keep a written operating record at the facility.

(2) The following information shall be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

(i) Records and results of used oil analyses performed as described in the analysis plan required under R315-15-5.6;

(ii) Summary reports and details of all incidents that require implementation of the contingency plan as specified in R315-15-5.3(b); and

(iii) Records detailing the mass balance of wastewater entering and leaving the facility. This includes wastewater discharge records. This does not include water used in non-contact cooling processes.

(b) Reporting. A used oil processor/re-refiner shall report annually March 1 to the Director. The report shall be consistent with the requirements of R315-15-13.5(d).

5.9 OFF-SITE SHIPMENTS OF USED OIL

Used oil processors/re-refiners who initiate shipments of used oil offsite shall ship the used oil using a used oil transporter who has obtained an EPA identification number, a permit, and current used oil handler certificate issued by the Director.

5.10 ACCEPTANCE OF OFF-SITE USED OIL

Processors accepting used oil from off site shall ensure that transporters delivering used oil to their facility have obtained a

current used oil transporter permit and an EPA identification number.

5.11 MANAGEMENT OF RESIDUES

Owners and operators who generate residues from the storage, processing, or re-refining of used oil shall manage the residues as specified in R315-15-1.1(e).

R315-15-6. Standards for Used Oil Burners Who Burn Used Oil for Energy Recovery.

6.1 APPLICABILITY

(a) General. A used oil burner is a person who burns used oil for energy recovery. An on-specification used oil burner is a person who only burns used oil that meets the specifications of R315-15-1.2. Used oil that has not been determined to be on-specification used oil by a Utah-registered marketer shall be managed as off-specification used oil except as described R315-15-2.4. An off-specification used oil burner is a person who burns used oil not meeting the specifications found in R315-15-1.2 for energy recovery. Facilities burning used oil for energy recovery under the following conditions are subject to R315-15-6.1(a) and (b) and R315-15-6.2(b) and (c), but not other portions of R315-15-6:

(1) The used oil is burned by the generator in an on-site space heater under the provisions of R315-15-2.4;

(2) The used oil is burned by a processor/re-refiner for purposes of processing used oil, which is considered burning incidentally to used oil processing; or

(3) The used oil burned by the facility is obtained from a Utah-registered marketer who claims and has demonstrated that the used oil meets the used oil fuel specifications set forth in R315-15-1.2 and who delivers the used oil in the manner set forth in R315-15-7.5(b).

(b) Other applicable provisions. In addition to the requirements of R315-15-6.1(a), used oil burners who conduct the following activities are subject to the requirements of R315-15 as indicated below.

(1) Burners who generate used oil shall comply with R315-15-2;

(2) Burners who transport used oil shall comply with R315-15-4;

(3) Except as provided in R315-15-6.2(b)(2), burners who process or re-refine used oil shall comply with Section R315-15-5;

(4) Burners who direct shipments of off-specification used oil from their facility to an off-specification used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in R315-15-1.2 shall comply with R315-15-7 and R315-15-13.7;

(5) Burners who dispose of used oil shall comply with R315-15-8; and

(6) Burners who collect used oil shall also comply with the collection center requirements in R315-15-3. Burners may only burn used oil collected from other generators if that used oil has been certified to be on-specification used oil by a Utah-registered used oil marketer in compliance with R315-15-7. Burners who collect and burn used oil that is not "do-it-yourselfer" or farmer-generated as described in R315-15-2.1(a)(1) and (4), shall obtain a used oil marketer registration before burning such oil and shall comply with the provisions of R315-15-7.

(7) Tanks, containers, and piping that previously contained listed hazardous waste. Unless tanks, containers, and piping that previously contained listed hazardous waste are decontaminated as described in R315-261-7 prior to storing used oil, the used oil is considered to have been mixed with the hazardous waste and shall be managed as hazardous waste unless, under the provisions of R315-15-1.1(b), the hazardous waste and used oil mixture is determined not to be hazardous waste.

(8) Tanks, containers, and piping that previously contained PCB-contaminated material. Unless tanks, containers, and piping that previously contained PCB-contaminated material are decontaminated as described in 40 CFR 761 Subpart S prior to transfer of used oil, the used oil is considered to have been mixed with the PCB-contaminated material and shall be managed as PCB-contaminated material in accordance with R315-15-18.

(c) Off-specification used oil burner permit. Off-specification used oil burners shall obtain a permit from the Director prior to burning off-specification used oil unless exempted by R315-15-13.6(b)(5). An application for a permit shall contain the information required by R315-15-13.6(b). Off-specification used oil burners shall also obtain a used oil handler certificate in accordance with R315-15-13.8.

(d) Testing of used oil fuel for PCBs. Used oil to be burned for energy recovery is presumed to contain quantifiable levels, 2 ppm or greater, of PCBs unless a used oil marketer obtains laboratory analyses that the used oil fuel does not contain quantifiable levels of PCBs. The person who first claims that the used oil fuel does not contain a quantifiable level of PCBs shall obtain analyses or other information to support the claim, as described in R315-15-18.

6.2 RESTRICTIONS ON BURNING

(a) Off-specification used oil fuel may be burned for energy recovery in only the following devices:

(1) Industrial furnaces identified in R315-260-10;

(2) Boilers, as defined in R315-260-10, that are identified as follows:

(i) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes;

(ii) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale;

(iii) Used oil-fired space heaters provided that the burner meets the provisions of R315-15-2.4; or

(3) Hazardous waste incinerators subject to regulation under R315-264-340 through 351 or 40 CFR 265.340 through 352 which are adopted by reference.

(b)(1) With the exception of the aggregation activity described in R315-15-6.2(b)(2), used oil burners may not process used oil unless they also comply with R315-15-5.

(2) Off-specification used oil burners may aggregate off-specification used oil with virgin oil or on-specification used oil for purposes of burning, but may not aggregate for purposes of marketing on-specification used oil without also complying with the processor/re-refiner requirements in R315-15-5.

(c) Burning of hazardous waste. Used oil burners may only burn hazardous waste if they are permitted to do so by the Director.

6.3 NOTIFICATION FOR OFF-SPECIFICATION USED OIL BURNERS

(a) Identification numbers. Off-specification used oil burners who have not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) Mechanics of notification. An off-specification used oil burner who has not received an EPA identification number may obtain one by notifying the Director of their used oil activity by submitting either:

(1) A completed EPA Form 8700-12.; or

(2) A letter to the Director requesting an EPA identification number. The letter shall include the following information:

(i) Burner company name;

(ii) Owner of the burner company;

(iii) Mailing address for the burner;

(iv) Name and telephone number for the burner point of

contact;

(v) Type of used oil activity; and

(vi) Location of the burner facility.

6.4 REBUTTABLE PRESUMPTION FOR USED OIL

(a) To ensure that used oil managed at a used oil burner facility is not hazardous waste under the rebuttable presumption of Subsection R315-15-1.1(b)(1)(ii), a used oil burner shall determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm.

(b) The used oil burner shall determine if the used oil contains above or below 1,000 ppm total halogens by

(1) Testing the used oil;

(2) Applying documented generator knowledge of the halogen content of the used oil in light of the materials and processes used; or

(3) Using information provided by the processor/re-refiner, if the used oil has been received from a processor/re-refiner subject to regulation under R315-15-5.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in R315-261-30 through 33 and 35. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Edition III update IV, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-261 Appendix VIII.

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed through a tolling arrangement, as described in R315-15-2.5(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner or disposed.

(2) 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.

(d) Record retention. Records of analyses conducted or information used to comply with R315-15-6.4(a), (b), and (c) shall be maintained at the burner facility or another facility approved by the Director for at least 3 years.

6.5 USED OIL STORAGE AT OFF-SPECIFICATION USED OIL BURNER FACILITIES

Off-specification used oil burners are subject to all applicable Spill Prevention, Control and Countermeasures, 40 CFR part 112, in addition to the requirements of R315-15-6. Used oil burners are also subject to the standards and requirements of R311-200 through R311-209, Underground Storage Tanks, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of R315-15-6.

(a) Storage units. Off-specification used oil burners may not store used oil in units other than tanks, containers or units subject to regulation under R315-264 and R315-265.

(b) Condition of units. Containers and aboveground tanks used to store oil at off-specification used oil burner facilities shall be:

(1) In good condition, with no severe rusting, apparent structural defects, or deterioration; and

(2) Not leaking.

(c) Secondary containment. Containers and aboveground tanks used to store off-specification used oil at burner facilities, including their pipe connections and valves, shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of:

(i) Dikes, berms, or retaining walls; and

(ii) A floor. The floor shall cover the entire area within the dike, berm, or retaining wall, except areas where existing portions of aboveground tanks meet the ground.

(iii) Other equivalent secondary containment approved by the Director.

(2) The entire containment system, including walls and floor, shall be of sufficient extent and sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(3) Any accumulation of water, used oil, or other liquid shall be removed from secondary containment within 24 hours of discovery.

(4) Used oil shall not be stored or allowed to accumulate in sumps and similar water-containment structures at the facility. Any used oil in sumps and similar water-containment structures shall be removed within 24 hours of its discovery.

(d) Labels.

(1) Containers and aboveground tanks used to store off-specification used oil at burner facilities shall be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer off-specification used oil into underground storage tanks at burner facilities shall be labeled or marked clearly with the words "Used Oil."

(e) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of R311-202-1, a burner shall comply with R315-15-9.

6.6 TRACKING FOR OFF-SPECIFICATION USED OIL FACILITIES

(a) Acceptance. Off-specification used oil burners shall keep a record of each off-specification used oil shipment accepted for burning. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment shall include the following information:

(1) The name and address of the transporter who delivered the used oil to the burner;

(2) The name and address of the generator or processor/re-refiner from whom the used oil was sent to the burner;

(3) The EPA identification number of the transporter who delivered the used oil to the burner;

(4) The EPA identification number, if applicable, of the generator or processor/re-refiner from whom the used oil was sent to the burner;

(5) The quantity of used oil accepted;

(6) The date of acceptance; and

(7) Documentation demonstrating that the transporter has met the rebuttable presumption requirements of R315-15-6.4 and, where applicable, the PCB testing requirements of R315-15-18;

(b) Record retention. The records described in paragraph (a) of this section shall be maintained for at least three years.

6.7 NOTICES

(a) Certification. Before a burner accepts the first shipment of off-specification used oil fuel from a generator, transporter, or processor/re-refiner, the burner shall provide to the generator, transporter, or processor/re-refiner a one-time written and signed notice certifying that:

(1) The burner has notified the Director of the location and general description of the burner's used oil management activities; and

(2) The burner will burn the off-specification used oil only in an industrial furnace or boiler identified in R315-15-6.2(a).

(b) Certification retention. The certification described in R315-15-6.7(a) shall be maintained, at the permitted facility or other location approved by the Director, for three years from the date the burner last receives shipment of off-specification used oil from that generator, transporter, or processor/re-refiner.

6.8 MANAGEMENT OF RESIDUES AT OFF-

SPECIFICATION USED OIL BURNER FACILITIES

Off-specification used oil burners who generate residues from the storage or burning of used oil shall manage the residues as specified in R315-15-1.1(e).

6.9 ACCEPTANCE OF OFF-SITE USED OIL

Off-specification used oil burners accepting used oil from off-site shall ensure that transporters delivering used oil to their facility have obtained a current used oil transporter permit and an EPA identification number.

R315-15-7. Standards for Used Oil Fuel Marketers.

7.1 APPLICABILITY

(a) Any person who conducts either of the following activities is a used oil fuel marketer and is subject to the requirements of R315-15-7 and R315-15-13.7:

(1) Directs a shipment of off-specification used oil from their facility to a used oil burner; or

(2) First determines and claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in R315-15-1.2.

(b) The following persons are not used oil fuel marketers subject to R315-15-7:

(1) Used oil generators, and transporters who transport used oil received only from generators, unless the generator or transporter directs a shipment of off-specification used oil from their facility to a used oil burner. However, processors/re-refiners who burn some used oil fuel for purposes of processing are considered to be burning incidentally to processing. Thus, generators and transporters who direct shipments of off-specification used oil to processors/re-refiners who incidentally burn used oil are not marketers subject to R315-15-7;

(2) Persons who direct shipments of on-specification used oil and who are not the first person to claim the oil meets the used oil fuel specifications of R315-15-1.2.

(c) Any person subject to the requirements of R315-15-7 shall also comply with one of the following:

(1) R315-15-2 - Standards for Used Oil Generators;

(2) R315-15-4 - Standards for Used Oil Transporters and Transfer Facilities;

(3) R315-15-5 - Standards for Used Oil Processors and Re-refiners; or

(4) R315-15-6 - Standards for Used Oil Burners who Burn Off-Specification Used Oil for Energy Recovery.

(d) A person may not act as a used oil fuel marketer without receiving a registration number and a used oil handler certificate, both issued by the Director as required by R315-15-13.7 and R315-15-13.8.

7.2 PROHIBITIONS

A used oil fuel marketer may initiate a shipment of off-specification used oil only to a used oil burner who:

(a) Has an EPA identification number; and

(b) Burns the used oil in an industrial furnace or boiler identified in R315-15-6.2(a).

7.3 ON-SPECIFICATION USED OIL FUEL

(a) Analysis of used oil fuel. A used oil fuel marketer who is a used oil generator, transporter, transfer facility, processor/re-refiner, or burner may determine that used oil that is to be burned for energy recovery meets the fuel specifications of R315-15-1.2 and the PCB requirements of R315-15-18 by performing analyses or obtaining copies of analyses or other information approved by the Director documenting that the used oil fuel meets the specifications. Used oil is not considered to be on-specification until it has been certified as such by a registered used oil fuel marketer in accordance with the used oil fuel marketer's analysis plan, approved by the Director.

(b) Record retention. A generator, transporter, transfer facility, processor/re-refiner, or burner who first certifies that used oil that is to be burned for energy recovery meets the specifications for used oil fuel under R315-15-1.2 and the PCB requirements of R315-15-18 shall keep copies of analyses of the used oil, or other information used to make the determination, for three years.

7.4 NOTIFICATION

(a) Identification numbers. A used oil fuel marketer subject to the requirements of R315-15-7 who has not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) A marketer who has not received an EPA identification number may obtain one by notifying the Director of their used oil activity by submitting either:

(1) A completed EPA Form 8700-12; or

(2) A letter to the Director requesting an EPA identification number. The letter shall include the following information:

(i) Marketer company name;

(ii) Owner of the marketer;

(iii) Mailing address for the marketer;

(iv) Name and telephone number for the marketer point of contact; and

(v) Type of used oil activity, e.g., generator directing shipments of off-specification used oil to a burner.

7.5 TRACKING

(a) Off-specification used oil delivery. Any used oil marketer who directs a shipment of off-specification used oil to a burner shall keep a record of each shipment of used oil to a used oil burner. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment shall include the following information:

(1) The name and address of the transporter who delivers the used oil to the burner;

(2) The name and address of the burner who will receive the used oil;

(3) The EPA identification number of the transporter who delivers the used oil to the burner;

(4) The EPA identification number of the burner;

(5) The quantity of used oil shipped; and

(6) The date of shipment.

(b) On-specification used oil delivery. A generator, transporter, transfer facility, processor/re-refiner, or burner who first certifies that used oil that is to be burned for energy recovery meets the fuel specifications under R315-15-1.2 shall keep a record of each shipment of used oil to an on-specification used oil burner. Records for each shipment shall include the following information:

(1) The name and address of the facility receiving the shipment;

(2) The quantity of used oil fuel delivered;

(3) The date of shipment or delivery; and

(4) A cross-reference to the record of used oil analysis or other information used to make the determination that the oil meets the specifications required under R315-15-7.3(a) and the PCB requirements of R315-15-18.

(c) Record retention. The records described in R315-15-7.5(a) and (b) shall be maintained for at least three years.

7.6 NOTICES

(a) Certification. Before a used oil generator, transporter, transfer facility, or processor/re-refiner directs the first shipment of off-specification used oil fuel to a burner, he shall obtain a one-time written and signed notice from the burner certifying that:

(1) The burner has notified the Director stating the location and general description of used oil management activities; and

(2) The burner has obtained an EPA identification number and, if the off-specification used oil is burned in Utah, an off-specification used oil burner permit and current used oil handler

certificate from the Director; and

(3) The burner will burn the off-specification used oil only in an industrial furnace or boiler identified in R315-15-6.2(a).

(b) Certification retention. The certification described in R315-15-7.6(a) of this section shall be maintained for three years, at the permitted facility or other location approved by the Director, from the date the last shipment of off-specification used oil is shipped to the burner.

7.7 LABORATORY ANALYSES

Used oil marketers shall use a Utah-certified laboratory, as specified in R315-15-1.8, to satisfy the analytical requirements of R315-15-7.

R315-15-8. Standards for the Disposal of Used Oil.

8.1 APPLICABILITY

The requirements of R315-15-8 apply to all used oils that cannot be recycled and are therefore being disposed.

8.2 DISPOSAL

(a) Disposal of hazardous used oils. Used oils that are identified as a hazardous waste and that cannot be recycled in accordance with R315-15 shall be managed in accordance with the hazardous waste management requirements of R315-260 through 266, 268, 270, and 273.

(b) Disposal of nonhazardous used oils. Used oils that are not hazardous wastes and cannot be recycled under Rule R315-15 shall be disposed in a solid waste disposal facility meeting the applicable requirements of Rules R315-301 through R315-318.

8.3 USE AS A DUST SUPPRESSANT, WEED SUPPRESSANT, OR FOR ROAD OILING

The use of used oil as a dust suppressant, weed suppressant, or for road oiling or other similar use is prohibited.

R315-15-9. Emergency Controls.

9.1 IMMEDIATE ACTION

In the event of a release of used oil, the person responsible for the material at the time of the release shall immediately:

(a) Take appropriate action to minimize the threat to human health and the environment.

(1) Stop the release;

(2) Contain the release;

(3) Clean up and manage properly the released material as described in R315-15-9.3; and

(4) If necessary, repair or replace any leaking used oil tanks, containers, and ancillary equipment prior to returning them to service.

(b) Notify the Utah State Department of Environmental Quality, 24-hour Answering Service, 801-536-4123 for used oil releases exceeding 25 gallons, or smaller releases that pose a potential threat to human health or the environment. Small leaks and drips from vehicles are considered de minimis and are not subject to the release clean-up provisions of R315-15-9.

(c) Provide the following information when reporting the release:

(1) Name, phone number, and address of person responsible for the release.

(2) Name, title, and phone number of individual reporting.

(3) Time and date of release.

(4) Location of release--as specific as possible including nearest town, city, highway, or waterway.

(5) Description contained on the manifest and the amount of material released.

(6) Cause of release.

(7) Possible hazards to human health or the environment and emergency action taken to minimize that threat.

(8) The extent of injuries, if any.

(d) An air, rail, highway, or water transporter who has discharged used oil shall:

(1) Give notice, if required by 49 CFR 171.15 to the National Response Center, http://nrc.uscg.mil/nrchp.html, 800-424-8802 or 202-426-2675; and

(2) Report in writing as required by 49 CFR 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590.

(e) A water, bulk shipment, transporter who has discharged used oil shall give the same notice as required by 33 CFR 153.203 for oil and hazardous substances.

9.2 EMERGENCY CONTROL VARIANCE

If a release of used oil requires immediate removal to protect human health or the environment, as determined by the Director, a variance to the used oil transporter permit and used oil handler certificate requirement and the US EPA identification number requirement for used oil transporters may be granted by the Director until the released material and any residue or contaminated soil, water, or other material resulting from the release no longer presents an immediate hazard to human health or the environment, as determined by the Director.

9.3 RELEASE CLEAN-UP

The person responsible for the material at the time of the release shall clean up all the released material and any residue or contaminated soil, water or other material resulting from the release or take action as may be required by the Director so that the released material, residue, or contaminated soil, water, or other material no longer presents a hazard to human health or the environment. The Director may require releases to be cleaned up to standards found in US EPA Regional Screening Levels. The cleanup or other required actions shall be at the expense of the person responsible for the release.

9.4 REPORTING

Within 15 days after any release of used oil that is reported under R315-15-9.1(b), the person responsible for the material at the time of the release shall submit to the Director a written report that contains the following information:

(a) The person's name, address, and telephone number;

(b) Date, time, location, and nature of the incident;

(c) Name and quantity of material(s) involved;

(d) The extent of injuries, if any;

(e) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(f) The estimated quantity and disposition of recovered material that resulted from the incident.

R315-15-10. Financial Requirements.

(a) Used oil activities. An owner or operator of an off-specification burner facility, transportation facility, processing/re-refining facility, or transfer facility, or a group of such facilities, is financially responsible for:

(1) cleanup and closure costs;

(2) general liabilities, including operation of motor vehicles, worker compensation and contractor liability; and

(3) environmental pollution legal liability for bodily injury or property damage to third parties resulting from sudden or non-sudden used oil releases.

(i)(A) The owner or operator of a permitted used oil facility or operation shall present evidence satisfactory to the Director of its ability to meet these financial requirements.

(B) The owner or operator shall present with its permit application the information the Director requires to demonstrate its general comprehensive liability coverage.

(C) The owner or operator shall use the financial mechanisms described in R315-15-12 to demonstrate its ability to meet the financial requirements of R315-15-10(a)(1) and (a)(3).

(ii) In approving the financial mechanisms used to satisfy the financial requirements, the Director will take into account existing financial mechanisms already in place by the facility if

required by R315-264-140 through 151, R315-265-140 through 150, and R311-201-6. Additionally, the Director will consider other relevant factors in approving the financial mechanisms, such as the volumes of used oil handled and existing secondary containment.

(iii) Financial responsibility, environmental pollution legal liability and general liability coverage shall be provided to the Director as part of the permit application and approval process and shall be maintained until released by Director.

(iv) Changes in extent, type, or amount of the environmental pollution legal liability and financial responsibility shall be considered a permit modification requiring notification to and approval from the Director.

(b)(1) Environmental pollution legal liability coverage for third party damages at used oil facilities. Each used oil processor, re-refiner, transfer facility, and off-specification burner shall obtain and maintain environmental pollution liability coverage for bodily injury and property damage to third parties resulting from sudden accidental releases, non-sudden accidental releases, or both, of used oil at its facility. This liability coverage shall be maintained for the duration of the permit or until released by the Director as provided for in R315-15-10.

(2) Changes in extent, type, or amount of the financial mechanism will be considered a permit modification requiring notification to and approval from the Director. The minimum amount of environmental pollution legal liability coverage using an assurance mechanism as specified in this section for third-party damages shall be:

(i) For operations where individual volumes of used oil are greater than 55 gallons, such as tanks, storage vessels, used oil processing equipment, and that are raised above grade-level sufficiently to allow for visual inspection of the underside for releases shall be required to obtain coverage in the amount of $1 million per occurrence for sudden releases, with an annual aggregate coverage of $2 million, exclusive of legal defense costs; and

(ii) For operations in whole or part that do not qualify under Subsection R315-15-10(b)(2)(i), coverage shall be in the amount of $1 million per occurrence for sudden releases, with an annual aggregate coverage of $2 million, and $3 million per occurrence for non-sudden releases, with an annual aggregate coverage of $6 million, exclusive of legal defense costs;

(iii) For operations covered under Subsection R315-15-10(b)(2)(ii), the owner or operator may choose to use a combined liability coverage for sudden and non-sudden accidental releases in the amount of $4 million per occurrence, with an annual aggregate coverage of $8 million, exclusive of legal defense costs.

(c) Used oil transporter environmental pollution legal liability coverage for third party damages. Each used oil transporter shall obtain environmental pollution legal liability coverage for bodily injury and property damage to third parties covering sudden accidental releases of used oil from its vehicles and other equipment and containers used during transit, loading, and unloading in Utah, and shall maintain this coverage for the duration of the permit or until released by the Director as provided for R315-15-10. The minimum amount of the coverage for used oil transporters shall be $1 million per occurrence for sudden releases, with an annual aggregate coverage of $2 million, exclusive of legal defense costs. Changes in extent, type, or amount of the liability coverage shall be considered a permit modification requiring notification to and approval from the Director.

(d) An owner or operator responsible for cleanup and closure under R315-15-11 or environmental pollution legal liability for bodily injury and property damage to third parties under R315-15-10(b) and (c) shall demonstrate its ability to satisfy its responsibility to the Director through the use of an acceptable financial assurance mechanism indicated under R315-15-12.

(e) Used Oil Collection Centers. Except for DIYers, who are subject to Utah Code Annotated 19-6-718, an owner of a used oil collection center shall be subject to the same liability requirements as a permitted facility under R315-15-10(a) and (b) unless these requirements are waived by the Director. In accordance with Utah Code Annotated 19-6-710, the Director may waive the requirement of proof of liability insurance or other means of financial responsibility that may be incurred in collecting or storing used oil if the following criteria are satisfied:

(1) The used oil storage tank or container is in good condition with no severe rusting, apparent structural defects or deterioration, and no visible leaks;

(2) There is adequate secondary containment for the tank or container that is impervious to used oil to prevent any used oil released into the secondary containment system from migrating out of the system;

(3) The storage tank or container is clearly labeled with the words "Used Oil";

(4) DIYer log entries are complete including the name and address of the generator, date and quantity of used oil received; and

(5) Oil sorbent material is readily available on site for immediate cleanup of spills.

(f) The Director shall waive an owner or operator from its existing financial responsibility mechanism as described in R315-15-10 when:

(1) The Director approves an alternative mechanism;

(2) The owner or operator has achieved cleanup and closure according to R315-15-11; or

(3) The Director determines that financial responsibility is no longer applicable under R315-15.

(g) State of Utah and Federal government used oil permittees are exempt from the requirements of R315-15-10.

R315-15-11. Cleanup and Closure.

11.1 The owner or operator of a used oil collection, aggregation, transfer, processing/re-refining, or off-specification used oil burning facility shall remove all used oil and used oil residues from the site of operation and return the site to a post-operational land use in a manner that:

(a) Minimizes the need for further maintenance;

(b) Controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of used oil, used oil constituents, leachate, contaminated run-off, or used oil decomposition products to the ground or surface waters, or to the atmosphere; and

(c) Complies with the closure requirements of R315-15-11 or supplies evidence acceptable to the Director demonstrating a closure mechanism meeting the requirements of R315-264-140 through 151 and R315-265-140 through 150.

(d) The permittee shall be responsible for used oil, used oil contaminants, or used oil residual materials that have been discharged or migrate beyond the facility property boundary. The permittee is not relieved of all or any responsibility to cleanup, remedy or remediate a release that has discharged or migrated beyond the facility boundary where off-site access is denied. When off-site access is denied, the permittee shall demonstrate to the satisfaction of the Director that, despite the permittee's best efforts, the permittee was unable to obtain the necessary permission to undertake the actions to cleanup, remedy or remediate the discharge or migration. The responsibility for discharges or migration beyond the facility property boundary does not convey any property rights of any sort, or any exclusive privilege to the permittee.

11.2 CLEANUP AND CLOSURE PLAN

(a) Written plan.

(1) The owner or operator of a used oil transfer, off-specification burner, or processing/re-refining facility shall have a written cleanup and closure plan. The cleanup and closure plan shall be submitted to the Director for approval as part of the permit application.

(2) When physical or operational conditions at the facility change that result in a change in the nature or extent of cleanup and closure or an increase in the estimated costs of cleanup and closure, the owner or operator shall submit a modified plan for review and approval by the Director.

(3) Changes in the amount or face value of a financial mechanism that are the result of the annual inflation update from the application of the implicit price deflator multiplier to a permit cleanup and closure plan cost estimate shall not require approval by the Director.

(4) The adjustment shall be made by recalculating the cleanup closure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross Domestic Product published by the U.S. Department of Commerce, Bureau of Economic Analysis in its Survey of Current Business as specified in R315-264-145(b)(1) and (2). The inflation factor is the incremental increase of the latest published annual Deflator to the Deflator for the previous year divided by the previous year Deflator. The first adjustment is made by multiplying the cleanup closure cost estimate by the inflation factor. The result is the adjusted cleanup closure cost estimate. Subsequent adjustments are made by multiplying the latest adjusted cleanup closure cost estimate by the latest inflation factor.

(b) Content of plan. The plan shall identify steps necessary to perform partial or final cleanup and closure of the facility at any point during its active life.

(1) The cleanup and closure plan shall be based on third-party, direct-estimated costs or on third-party costs using RS Means methods, applications, procedures, and use cost values applicable to the location of the facility and include, at least:

(i) A description of how each used oil management unit at the facility will be closed.

(ii) A description of how final cleanup and closure of the facility will be conducted. The description shall identify the maximum extent of the operations that will be cleaned, closed, or both during the active life of the facility.

(iii) The highest cost estimate of the maximum inventory of used oil to be stored onsite at any one time during the life of the facility and a detailed description of the methods to be used during partial cleanup and closure final cleanup and closure, or both, including, but not limited to, methods for removing, transporting, or disposing of all used oil, and identification of the off-site used oil facilities to be used, if applicable.

(iv) A detailed description of the steps needed to remove or decontaminate all used oil and used oil residues and contaminated containment system components, equipment, structures, and soils during partial or final cleanup and closure, including procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy closure. This description shall address the management and disposal of all residues resulting from the decontamination activity, including, but not limited to, rinse waters, rags, personal protective equipment, small hand implements, vehicles, and mechanized equipment.

(v) A detailed description of other activities necessary during the cleanup and closure period to ensure that all partial closures shall satisfy the final cleanup and closure plan.

(vi) A cleanup and closure cost estimate and a mechanism for financial responsibility to cover the cost of cleanup and closure

(vii) State of Utah and Federal government used oil permittees are exempt from the requirements of R315-15-11(b)(1)(vi).

(2) The owner or operator shall update its cleanup and closure plan cost estimate and provide the updated estimate to the Director, in writing, within 60 days following a facility modification that causes an increase in the amount of the financial responsibility required under R315-15-10. Within 30 days of the Director's approval of a permit modification for the cleanup and closure plan that would result in an increased cost estimate, the owner or operator shall provide to the Director:

(i) evidence that the financial assurance mechanism amount or value includes the cleanup and closure cost estimate increase; or

(ii) other mechanisms covering the increased closure plan cost estimate and a summary document indicating the multiple financial mechanisms, by mechanism name, account number, and the amounts to satisfy R315-15-10 and 11.

(c) The owner or operator shall update the cleanup and closure cost estimate to adjust for inflation and include the updated estimate in the permitted facility's annual report due by March 1st of each year, using either:

(1) the multiplier formed from the gross domestic product implicit price deflator ratio of the current calendar year to the past calendar year as published by the federal government Bureau of Economic Analysis; or

(2) new cleanup and closure cost estimate from the recalculation of the cleanup and closure plan costs to account for all changes in scope and nature of the facility or facilities, in current dollars.

11.3 TIME ALLOWED TO INITIATE CLOSURE

(a) The owner or operator shall initiate closure in accordance with the approved cleanup and closure plan and notify the Director that closure has been initiated:

(1) Within 90 days after the owner or operator receives the final volume of used oil; or

(2) Within 90 days after the Director revokes the facility's used oil permit.

(b) During the cleanup and closure period or at any other time, if the Director determines that the owner or operator has failed to comply with R315-15, the Director may, after 30 days following written notice to the owner or operator, draw upon the financial mechanism associated with the cleanup and closure plan for the facility or facilities covered by the financial responsibility requirements of R315-15-10.

11.4 CERTIFICATION OF CLOSURE

(a) Within 60 days of completion of cleanup and closure, the owner or operator of a permitted used oil facility shall submit to the Director, by registered mail, a certification that the used oil facility has been cleaned and closed in accordance with the specifications in the approved cleanup and closure plan. The certification shall be signed by the owner or operator and by an independent, Utah-registered professional engineer.

(b) The Director shall make the determination of whether cleanup and closure has been completed according to the cleanup and closure plan and R315-15.

R315-15-12. Financial Assurance.

12.1 DEFINITIONS

For the purposes of R315-15-12, the following definitions apply:

(a) "Existing used oil facility" means any used oil transfer facility, off-specification burner, or used oil processing/re-refining facility in operation on July 1, 1993 under a used oil operating permit issued by the Division of Oil, Gas and Mining and in effect on or before June 30, 1993. An existing used oil facility is also required to obtain a permit from the Director in accordance with R315-15-13.

(b) "New used oil facility" means any used oil transfer, off-specification burner, or used oil processing/re-refining facility that was not in operation as a used oil facility on July 1,

1993, and received an operating permit in accordance with R315-15-13 from the Director after July 1, 1993.

(c) "Financial assurance mechanism" means "reclamation surety" as used in Utah Code Annotated 19-6-709 and 19-6-710 of the Used Oil Management Act.

12.2 APPLICABILITY

(a) The owner or operator of an existing or new used oil facility requiring a permit under R315-15-13 shall establish a financial assurance mechanism as evidence of financial responsibility under R315-15-10 sufficient to assure cleanup and closure of the facility in conformance with R315-15-11.1 with one or more of the financial assurance mechanisms of R315-15-12.3 prior to receiving a permit from the Director.

(b) Any increase in capacity to store or process used oil at a used oil facility permitted by the Director, above the storage or processing capacity identified in the permit application approved by the Director, shall require the owner or operator of the permitted used oil facility to increase the amount or face value of the financial assurance mechanism to meet the additional capacity. The additional amount or increase in face value of financial assurance mechanism shall be in place and effective before operation of the increased storage or processing capacity and shall meet the requirements of R315-15-12.3 and R315-15-12.4.

(c) DIYer used oil collection centers, generator used oil collection centers, and used oil aggregation points are not required to post a financial assurance mechanism, but are subject to the cleanup and closure requirements of R315-15-10 and R315-15-11 unless they have received a waiver in writing from the Director as identified in R315-15-10(e).

12.3 FINANCIAL ASSURANCE MECHANISMS

(a) Any financial assurance mechanism used to show financial responsibility under R315-15-10 and 11 for an existing or new used oil facility shall:

(1) be legally valid, binding, and enforceable under Utah and federal law;

(2) be approved by the Director;

(3) ensure that funds will be available in a timely fashion for:

(i) completing all cleanup and closure activities indicated in the closure plan of the permit approved by the Director; and

(ii) environmental pollution legal liability for third party damages for bodily injury and property damage resulting from a sudden or non-sudden accidental release of used oil from or arising from permitted operations; and

(4) require a written notice sent by certified mail to the Director 120 days prior to cancellation or termination of the financial mechanism.

(5) be updated each year to adjust for inflation, using either:

(i) the gross domestic product implicit price deflator ratio of the increase of the current calendar year to the past calendar year or

(ii) a new estimated cleanup and closure cost estimate recalculated to account for all changes in scope and nature of the permitted operation.

(b) The owner or operator of an existing or new used oil facility shall establish a financial assurance mechanism for cleanup and closure by one of the following mechanisms and shall submit a signed original or an original signed duplicate of the financial assurance mechanism to the Director for approval as part of the permit application:

(1) Trust Fund.

(i) The trustee shall be an entity that has the authority to act as a trustee and whose operations are regulated and examined by a federal or state agency.

(ii) A signed original or an original signed duplicate of the trust agreement and accompanied by a formal certification of acknowledgement shall be submitted to the Director.

(iii) For trust funds that are fully funded at the time of permit approval, an annual trust valuation shall be certified and submitted to the Director. The permittee shall provide evidence annually, upon the anniversary of the trust agreement, that the trust remains fully funded.

(iv) For trust funds not fully funded at the time of permit approval by the Director, incremental payments into the trust fund shall be made annually by the owner or operator to fully fund the trust within five years of the Director's approval of the permit as follows:

(A) initial payment value shall be the initial cleanup and closure cost estimate value divided by the pay-in period, not to exceed five years, and

(B) next payment value shall be the difference of the approved current cleanup and closure cost estimate less the trust fund value, all divided by the remaining number of years in the pay-in period, and

(C) subsequent next payments shall be made into the trust fund annually on or before the anniversary date of the initial payment made into the trust fund and reported in accordance with the approved trust agreement, and

(D) no later than 30 days after the last incremental payment to fully fund the trust, the permittee shall provide proof to the Director that the trust fund has been fully funded according to the current permitted cleanup and closure cost estimate.

(E) The facility shall submit an annual valuation of the trust to the Director on or before the anniversary date of the trust.

(v) For a new used oil facility, the payment into the trust fund shall be made before the initial receipt of used oil.

(vi) The owner or operator, or other person authorized to conduct cleanup and closure activities may request reimbursement from the trustee for cleanup and closure completed when approved in writing by the Director.

(vii) The request for reimbursement may be granted by the trustee as follows:

(A) only if sufficient funds exist to cover the reimbursement request; and

(B) if justification and documentation of the cleanup and closure expenditures are submitted to and approved by the Director in writing prior to the trustee granting reimbursement.

(viii) The Director may cancel the incremental trust funding option at any time and require the permittee to provide either a fully funded trust or other cleanup and closure financial mechanism as provided in R315-15-12 under the following conditions:

(A) upon the insolvency of the permittee, or

(B) when a violation of R315-15-10, 11 or 12 has been determined.

(ix) The trust agreement shall follow the wording provided by the Director as identified in R315-15-17.2.

(2) Surety Bond Guaranteeing Payment.

(i) The bond shall be effective before the initial receipt of used oil.

(ii) The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury and the owner or operator shall notify the Director that a copy of the bond has been placed in the operating record.

(iii) The penal sum of the bond shall be in an amount at least equal to the cleanup and closure cost estimate developed under R315-15-11.2.

(iv) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(v) The owner or operator shall establish a standby trust agreement at the time the bond is established.

(A) The standby trust agreement shall meet the

requirements of R315-15-12.3(b)(1), except for R315-15-12.3(b)(1)(iii), (viii), and (ix) and the standby trust agreement shall follow the wording provided by the Director as identified in R315-15-17.14.

(B) Payment made under the terms of the bond shall be deposited by the surety directly into the standby trust agreement and payments from the standby trust fund shall be approved by the trustee with the written concurrence of the Director.

(vi) The surety bond shall automatically be renewed on the expiration date unless cancelled by the surety company 120 days in advance by sending both the bond applicant and the Director a written cancellation notice by certified mail.

(vii) The bond applicant may terminate the bond for nonpayment of fee by providing written notice, by certified mail, to the Director 120 days prior to termination.

(viii) Any change to the form or content of the surety bond shall be submitted to the Director for approval and acceptance.

(ix) The surety bond shall follow the language provided by the Director found in R315-15-17.3.

(3) Letter of Credit

(i) The letter of credit shall be effective before the initial receipt of used oil

(ii) The financial institution issuing the letter of credit shall be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a state or federal agency.

(iii) The letter of credit shall be issued in an amount at least equal to the cleanup and closure cost estimate developed under R315-15-11.2.

(iv) The owner or operator shall establish a standby trust agreement at the time the letter of credit is established.

(A) The standby trust agreement shall meet the requirements of R315-15-12.3(b)(1), except for Subsections R315-15-12.3(b)(1)(iii), (viii), and (ix) and the standby trust agreement shall follow the language incorporated by reference in R315-15-17.14.

(B) Payment made under the terms of the letter of credit shall be deposited by the surety directly into the standby trust and payments from the standby trust fund shall be approved by the trustee with the written concurrence of the Director.

(v) The letter of credit shall follow the wording provided by the Director as identified in R315-15-17.4.

(4) Insurance.

(i) The insurance shall be effective before the initial receipt of used oil.

(A) Insurance coverage period shall be the earliest date of permit issuance or a retroactive date established by the earliest period of coverage for any financial assurance mechanism.

(ii) At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

(iii) The insurance policy shall guarantee that funds will be available to perform the cleanup and closure activities approved by the Director.

(iv) The policy shall guarantee that the insurer will be responsible for the paying out of funds to the owner or operator or person authorized to conduct the cleanup and closure activities, as approved by the Director, up to an amount equal to the face amount of the policy. Payment of any funds by the insurer shall be made with the written concurrence of the Director.

(A) The Insurer shall establish at a standby trust agreement for only the benefit of the Director when the Director notifies the Insurer that the Director is making a claim, as provided for in R315-15, for cleanup and closure of a permitted used oil transfer, processor, re-refiner, or off-specification burner facility.

(B) The Insurer shall place the face value of the applicable coverage in the trust within 30 days of establishing the standby trust agreement.

(C) The standby trust agreement shall meet the requirements of R315-15-12.3(b)(1), except for R315-15-12.3(b)(1)(iii), (iv), (v), (viii), and (xi), and the standby trust agreement shall follow the language provided by the Director incorporated by reference in R315-15-17.14.

(v) The insurance policy shall be issued for a face amount at least equal to the cleanup and closure cost estimate developed under R315-15-11.2.

(vi) An owner or operator, or other person authorized by the Director, may receive reimbursements for cleanup and closure activities completed if:

(A) the value of the policy is sufficient to cover the reimbursement request; and

(B) justification and documentation of the cleanup and closure expenditures are submitted to and approved by the Director, prior to receiving reimbursement.

(vii) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator.

(viii) The insurance policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and the Director 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator shall obtain an alternate financial assurance mechanism meeting the requirements for financial responsibility under R315-15-10 and of this subsection within 60 days of notice of cancellation of the policy.

(ix) The policy coverage amount for cleanup and closure is exclusive of legal and defense costs.

(x) Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy.

(xi) The Insurer as first-payer is liable for the payment of amounts within any deductible, retention, self-insured retention (SIR), or reserve applicable to the policy, with a right of reimbursement by the Insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible, retention, self-insured retention, or reserve for which coverage is otherwise demonstrated as specified in R315-15-12.

(xii) Whenever requested by the Director, the Insurer agrees to furnish to the Director a signed duplicate original of the policy and all endorsements.

(xiii) Cancellation of the policy, whether by the Insurer, the Insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the used oil management facility, will be effective only upon written notice and only after the expiration of 120 days after a copy of such written notice is received by the Director for those facilities that are located in Utah.

(xiv) Any other termination of the policy will be effective only upon written notice and only after the expiration of 120 days after a copy of such written notice is received by the Director for those facilities that are located in Utah.

(xv) All policy provisions related to R315-15 shall be construed in accordance with the laws of the State of Utah. In the event of the failure of the Insurer to pay any amount claimed to be due hereunder, the Insurer and the Insured will submit to the jurisdiction of the appropriate court of the State of Utah, and will comply with all the requirements necessary to give such court jurisdiction. All matters arising hereunder, including questions related to the interpretation, performance and enforcement of this policy, shall be determined in accordance with the law and practice of the State of Utah (notwithstanding Utah conflicts of law rules).

(xvi) Endorsement(s) added to, or removed from the

policy that have the effect of affecting the environmental pollution liability language, directly or indirectly, shall be approved in writing by the Director before said endorsement(s) become effective.

(xvii) Neither the Insurer nor the Insured shall contest the state of Utah's use of the drafting history of the insurance policy in a judicial interpretation of the policy or endorsement(s) to said policy.

(xviii) The Insurer shall establish a standby trust fund for the benefit of the Director at the time the Director first makes a claim against the insurance policy.

(A) The standby trust fund shall meet the requirements of R315-15-12.3(b)(1), except for item R315-15-12.3(b)(1)(iii), (iv), (v), (viii), and (ix) and the standby trust agreement shall follow the wording found in R315-15-17.14.

(B) Payment made under the terms of the insurance policy shall be deposited by the Insurer as grantor directly into the standby trust fund and payments from the trust fund shall be approved by the trustee with the written concurrence of the Director.

(5) The owner or operator of an existing or new used oil facility may establish a financial assurance mechanism by a combination of the above mechanisms as approved by the Director.

(c) The owner or operator of an existing or new used oil facility or operation shall establish a financial assurance mechanism for bodily injury and property damage to third parties resulting from sudden and/or non-sudden accidental releases of used oil from a permitted used oil facility or operation as follows:

(1) An owner or operator that is a used oil processor, transfer facility, or off-specification burner, or a group of such facilities regulated under R315-15 shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden and/or non-sudden accidental release of used oil arising from operations or operations of the facility or group of facilities shall have and maintain liability coverage in the amount as specified in R315-15-10(b). This liability coverage shall be demonstrated by one or more of the financial mechanisms in R315-15-12.3(c)(3).

(2) An owner or operator that is a used oil transporter regulated under R315-15, must demonstrate financial responsibility for bodily injury and property damage to third-parties resulting from sudden release of used oil arising from transit, loading and unloading, to or from facilities within Utah. The owner or operator shall maintain liability coverage for sudden accidental occurrences in the amount specified in R315-15-10(c). This liability coverage shall be demonstrated by one or more of the financial mechanisms in R315-15-12.3(c)(3).

(3) The owner or operator shall demonstrate compliance with R315-15-10(b) or (c) by using one or more of the following financial assurance mechanisms:

(i) Insurance. The owner or operator shall follow the wording provided by the Director identified in R315-15-17.5 through R315-15-17.9, as may be applicable.

(ii) Trust. The owner or operator shall follow the wording provided by the Director identified in R315-15-17.12.

(iii) Surety Bond. The owner or operator shall follow the wording provided by the Director identified in R315-15-17.11.

(iv) Letter of Credit. The owner or operator shall follow the wording provided by the Director identified in R315-15-17.10.

(d) Adjustments by the Director. If the Director determines that the levels of financial responsibility required by R315-15-10(b) or (c), as applicable are not consistent with the degree and duration of risk associated with used oil operations or facilities, the Director may adjust the level of financial responsibility required under R315-15-10(b) or (c), as applicable, as may be necessary to protect human health and the environment. This adjusted level will be based on the Director's assessment of the degree and duration of risk associated with the used oil operations or facilities. In addition, if the Director determines that there is a significant risk to human health and the environment from non-sudden release of used oil resulting from the used oil operations or facilities, the Director may require that an owner or operator of the used oil facility or operation comply with R315-15-10(b) and (c), as applicable. An owner or operator must furnish, within a reasonable time to the Director when requested in writing, any information the Director requests to determine whether cause exists for an adjustment to the financial responsibility under R315-15-10(b) or (c) with the used oil operations or facilities. Failure to provide the requested information as and when requested under this section may result in the Director revoking the owner's or operator's used oil permit(s). Any adjustment of the level or type of coverage for a facility that has a permit will be treated as a permit modification.

(e) When the owner or operator of a permitted used oil facility or operation believes that its responsibility for cleanup and closure or for environmental pollution liability as described in R315-15-10(d) has changed, it may submit a written request to the Director to modify its permit to reflect the changed responsibility.

(f) The Director may release the requirement for cleanup and closure financial assurance after the owner or operator has clean-closed the facility according to R315-15-11.

(g) The owner or operator of a permitted used oil facility or operation may request the Director to modify its permit to change its financial assurance mechanism or mechanisms as described in R315-15-12.

(h) The Director may modify the permit to change financial assurance mechanism or mechanisms after the owner or operator has established a replacement financial assurance mechanism or mechanisms acceptable to the Director.

(i) Incapacity of owners or operators, guarantor, or financial institution. An owner or operator of a permitted used oil facility or operation shall notify the Director by certified mail within ten days of the commencement of a bankruptcy proceeding naming the owner or operator as debtor.

(1) An owner or operator who fulfills the financial responsibility requirements by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be considered to be without the required financial responsibility or liability coverage in the event of:

(i) bankruptcy of the trustee or issuing institution; or

(ii) a suspension or revocation of the authority of the trustee institution to act as trustee; or

(iii) a suspension or revocation of the authority of the institution to issue a surety bond, a letter of credit, or an insurance policy.

(2) The owner or operator of a permitted used oil facility or operation must establish other financial responsibility or liability coverage within 60 days after such an event.

12.4 ANNUAL UPDATE OF CLOSURE COST ESTIMATE AND FINANCIAL ASSURANCE MECHANISM

(a) The financial responsibility information required by R315-15-10, 11, and 12 and submitted to the Director with the initial permit application for a used oil facility or operation, or information provided as part of subsequent modifications to the permit made thereafter, shall be updated annually.

(b) The following annual updated financial responsibility information for the previous calendar year shall be submitted to the Director by March 1 of each year for each permitted facility or operation:

(1) The cleanup and closure cost estimate shall be based on a third party performing cleanup and closure of the facility to a post-operational land use in accordance with R315-15-11.1.

(2) The financial assurance mechanism shall be adjusted

to reflect the new cleanup and closure cost estimate.

(3) The type of financial assurance mechanism, its current face value, and corresponding financial institution's instrument control number shall be provided.

(4) The type of environmental pollution liability financial responsibility for third-party damage mechanism shall be provided, including:

(i) policy number or other mechanism control number,

(ii) effective date of policy or other mechanism, and

(iii) coverage types and amounts.

(5) The type of general liability insurance information shall be provided, including:

(i) policy number,

(ii) date of policy, effective date of policy, retroactive date of coverage, if applicable, and

(iii) coverage types and amounts.

(c) Other type of information deemed necessary to evaluate compliance with a permitted used oil facilities or operations and R315-15-10, 11, and 12, shall be provided upon request by the Director.

R315-15-13. Registration and Permitting of Used Oil Handlers.

13.1 DO-IT-YOURSELFER USED OIL COLLECTION CENTERS TYPES A AND B

(a) Applicability. A person may not operate a do-it-yourselfer (DIYer) Type A or B used oil collection center without holding a registration number issued by the Director.

(b) General. The application for a registration number shall include the following information regarding the DIYer used oil collection center:

(1) the name and address of the operator;

(2) the location of the center;

(3) the type of storage and secondary containment to be used;

(4) the status of the business, zoning, or other licenses and permits if required by federal, state and local governmental entities;

(5) a spill containment plan in the event of a release of used oil; and

(6) proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil.

(c) Waiver of proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil. In accordance with Utah Annotated 19-6-710, the Director may waive the requirement of proof of liability insurance or other means of financial responsibility if the following criteria are satisfied:

(1) The used oil storage tank or container is in good condition with no severe rusting, apparent structural defects or deterioration, and no visible leaks;

(2) There is adequate secondary containment for the tank or container that is impervious to used oil to prevent any used oil released into the secondary containment system from migrating out of the system to the soil, groundwater or surface water;

(3) The storage tank or container is clearly labeled with the words "Used Oil;"

(4) DIYer log entries are complete including the name and address of the generator, date and quantity of used oil received;

(5) EPA-approved test kits for total halogens are readily available and operators are trained to perform halogen tests on any used oil received that may have been mixed with hazardous waste; and

(6) Oil sorbent material is readily available on site for immediate clean-up of spills.

(d) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a registration number within 20 days of the change.

13.2 GENERATOR USED OIL COLLECTION CENTERS TYPES C AND D

(a) Applicability. A person may not operate a generator used oil collection center Type C or D without holding a registration number issued by the Director.

(b) General. The application for registration shall include the following information regarding the generator used oil collection center:

(1) the name and address of the operator;

(2) the location of the center;

(3) whether the center will accept DIYer used oil;

(4) the type of storage and secondary containment to be used;

(5) the status of the business, zoning, or other licenses and permits if required by federal, state and local governmental entities;

(6) a spill containment plan in the event of a release of used oil; and

(7) proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil.

(c) Permit. Waiver of proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil. In accordance with Utah Code Annotated 19-6-710, the Director may waive the requirement of proof of liability insurance or other means of financial responsibility if the following criteria are satisfied:

(1) The used oil storage tank or container is in good condition with no severe rusting, apparent structural defects or deterioration, and no visible leaks;

(2) There is adequate secondary containment for the tank or container that is impervious to used oil to prevent any used oil released into the secondary containment system from migrating out of the system to the soil, groundwater or surface water;

(3) The storage tank or container is clearly labeled with the words "Used Oil;"

(4) DIYer log entries are complete including the name and address of the generator, date and quantity of used oil received;

(5) EPA-approved test kits for total halogens are readily available and operators are trained to perform halogen tests on any used oil received that may have been mixed with hazardous waste; and

(6) Oil sorbent material is readily available on site for immediate clean up of spills.

(d) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a registration number within 20 days of the change.

13.3 USED OIL AGGREGATION POINTS

(a) Applicability. A person may operate a used oil aggregation point without holding a registration number issued by the Director unless that aggregation point also accepts used oil from household do-it-yourselfers (DIYers) or other generators.

(b) If an aggregation point accepts used oil from household DIYers, it must register with the Director as a DIYer collection center and comply with the DIYer standards in Section R315-15-3.1.

(c) If an aggregation point accepts used oil from other generators it must register with the Director as a generator collection center and comply with the standards in R315-15-3.2.

13.4 USED OIL TRANSPORTERS AND USED OIL TRANSFER FACILITIES

(a) Applicability. Except as provided by R315-15-13.4(f), a person may not operate as a used oil transporter without holding a used oil transporter permit issued by the Director. A

person shall not operate a used oil transfer facility without holding a used oil transfer facility permit specific to that facility, issued by the Director.

(b) General. The application for a permit shall include the following information:

(1) The name and address of the operator;

(2) The location of the transporter's base of operations and the location of any transfer facilities, if applicable;

(3) Maps of all transfer facilities, if applicable;

(4) The methods to be used for collecting, storing, and delivering used oil;

(5) The methods to be used to determine if used oil received by the transporter or facility is on-specification or off-specification and how the transporter will comply with the rebuttable requirements of R315-15-4.5;

(6) The type of containment and the volume, including type and number of storage vessels to be used and the number and type of transportation vehicles, if applicable;

(7) The methods of disposing of any waste by-products;

(8) The status of business, zoning, and other applicable licenses and permits if required by federal, state, and local government entities;

(9) An emergency spill containment plan, including a list of spill containment equipment to be carried in vehicles used to transport used oil and spill containment equipment maintained at the used oil transfer facility, and how the transporter shall comply with the requirements of R315-15-9;

(10) Proof of liability insurance or other means of financial responsibility for liabilities that may be incurred in collecting, transporting, or storing used oil;

(11) Proof of form and amount of reclamation surety for any facility used in conjunction with transportation or storage of used oil;

(12) A closure plan meeting the requirements of R315-15-11;

(13) Proof of applicant's ownership of any property and facility used for storage of used oil or, if the property and facility is not owned by the applicant, the owners' written statement acknowledging the activities specified in the application;

(14) For transfer facility permit applications, tank certification in accordance with R315-264-190 through 200 for used oil storage tanks at the transfer facility;

(15) For transfer facility permit applications, a facility piping and instrument drawing certified by a Professional Engineer;

(16) If rail transport is part of the application, a loading/off-loading plan for rail tanker cars used to transport used oil. This plan shall include detailed procedures to be followed to minimize the potential for releases and on-site accidents. At a minimum, the following items shall be addressed:

(i) Personal safety equipment;

(ii) Coordination with railroad to ensure exclusive rights to the loading track during the entire period of loading/offloading;

(iii) A minimum number and qualification of workers involved in the loading or off-loading operations;

(iv) Braking and blocking of rail car wheels;

(v) Procedures for Depressurizing tank car prior to opening manhole covers and outlet valves;

(vi) The sequence of valve openings and closings on any hosing or piping involved in the loading or off-loading process,

(vii) A description of how and where pipe and hose fitting will be attached, including a description of which rail car valves/openings will be used;

(viii) Use of catchment container to collect any used oil released from hoses, valves, and pipes during and following the loading/offloading operation;

(ix) Measures to insure ignition sources are not present;

(x) Procedures for cleanup of any spills that occur during the loading/offloading operations; and

(xi) Other site-specific requirements required by the Director to protect human health and the environment.

(c) Permit fees. Registration and permitting fees are established under the terms and conditions of Utah Code Annotated 63J-1-504. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of permit approvals and annual used oil handler certificates.

(d) Annual Reporting. Each transporter and transfer facility shall submit an annual report to the Director of its activities during the calendar year. The annual report shall be submitted to the Director no later than March 1, of the year following the reported activities. The Annual report shall either be submitted on a form provided by the Director or shall contain the following information:

(1) the EPA identification number, name, and address of the transporter/transfer facility;

(2) the calendar year covered by the report;

(3) the total amount of used oil transported;

(4) the itemized amounts and types of used oil transferred to permitted transporters and transfer facilities, used oil processors/re-refiners, off-specification used oil burners, and used oil fuel marketers; and

(5) the itemized amounts and types of used oil transferred inside and outside the state, indicating the state to which used oil is transferred, and the specific name, address and telephone number of the operations or facility to which used oil was transferred.

(e) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

(f) Transporter and Transfer Facility Permit by rule. Notwithstanding any other provisions of R315-15-13.4, a used oil generator who self-transports used oil generated by that generator at a non-contiguous operation to a central collection facility in the generator's own service vehicles in quantities exceeding 55 gallons shall be deemed to have an approved used oil transporter permit or used oil transfer facility permits, or both if the generator meets all applicable requirements of R315-15-13.4(f)(1) through (4).

(1) All used oil transporters or transfer facilities who qualify for a permit by rule shall submit a notification to the Director of their intent to operate under R315-15-13.4(f) and comply with the following conditions:

(i) The generator's facility is defined under the North American Industry Classification System (NAICS), published, in 2017 Revision, by the US Economic Classification Policy Committee, with a NAICS code of 21 (Mining), 22 (Utilities), 23 (Construction), 485111 (Mixed Mode Transit Systems), or 541360 (Geophysical Surveying and Mapping Services);

(ii) The generator self-transports and delivers the used oil to facilities that the generator owns, operates, or both.

(iii) The generator notifies the Director with the information required by R315-15-13.4(b)(1) through (10); and

(iv) The generator complies with R315-15-4.3, R315-15-4.4(b) through (d), R315-15-4.6(b) through (f), R315-15-4.7(b) and (d), and R315-15-4.8.

(2) A generator who self-transports used oil in accordance with R315-15-13.4(f)(1)and who burns all the collected used oil for energy recovery is deemed to be approved by rule to operate as a used oil transporter for that activity if the following additional conditions are met:

(i) The generator only burns the self-collected used oil for energy recovery at that generator's own central collection facility.

(ii) The generator registers as a used oil fuel marketer in accordance with R315-15-13.7 and complies with R315-15-7.

(3) A generator who self-transports used oil in accordance with R315-15-13.4(f)(1) and only stores the used oil for subsequent collection by permitted used oil transporters is deemed to be approved by rule to operate as a used oil transporter and transfer facility for that activity if the following additional conditions are met:

(i) The generator arranges for permitted used oil transporters to collect the generator's used oil.

(ii) The self-transported used oil is not stored at the generator's facility longer than 35 days. If the self-transported used oil is stored longer than 35 days, the generator becomes a used oil processor in accordance with R315-15-4.6(a) and shall obtain a used oil processor permit in accordance with R315-15-13.5.

(4) A generator who self-transports used oil in accordance with R315-15-13.4(f)(1), and who both burns their collected used oil for energy recovery and arranges for permitted use oil transporters to collect that used oil, is deemed to be approved by rule to operate as a used oil transporter and transfer facility for that activity if the following additional conditions are met:

(i) The self-transported used oil burned for energy recovery is only burned at the generator's central collection facility;

(ii) The generator registers as a used oil fuel marketer in accordance with R315-15-13.7 and complies with R315-15-7; and

(iii) The generator arranges for permitted used oil transporters to collect the generator's used oil not burned on site.

(iv) The self-transported used oil is not stored at the generator's facility longer than 35 days. If the self-transported used oil is stored longer than 35 days, the generator becomes a used oil processor in accordance with R315-15-4.6(a) and shall obtain a used oil processor permit in accordance with R315-15-13.5.

(g) All used oil transporters and transfer facilities shall obtain and maintain a used oil handler certificates in accordance with R315-15-13.8.

13.5 USED OIL PROCESSORS/RE-REFINERS

(a) Applicability. A person may not operate as a used oil processing/re-refining facility without holding a permit issued by the Director.

(b) General. The application for a permit shall include the following information:

(1) The name and address of the operator;

(2) The location of the facility;

(3) A map of the facility;

(4) The grades of oil to be produced;

(5) The methods to be used to determine if used oil received by the transporter or facility is on-specification or off-specification;

(6) The type of containment and the volume, including type and number of storage vessels to be used and the number and type of transportation vehicles, if applicable;

(7) The methods of disposing of any waste by-products;

(8) The status of business, zoning, and other applicable licenses and permits if required by federal, state, and local government entities;

(9) An emergency spill containment plan, including a list of spill containment equipment to be maintained at the used oil processor facility;

(10) Proof of liability insurance or other means of financial responsibility for liabilities that may be incurred in processing or rerefining used oil;

(11) Proof of form and amount of reclamation surety for any facility used in conjunction with transportation or storage of used oil;

(12) Any other information the Director finds necessary to ensure the safe handling of used oil;

(13) A closure plan meeting the requirements of R315-15-11.

(14) A contingency plan meeting the requirements of R315-15-5.3(b);

(15) Proof of applicant's ownership of the property and facility or, if the property and facility is not owned by the applicant, the owner's written statement acknowledging the activities specified in the application;

(16) Tank certification in accordance with R315-264-190 through 200 for used oil storage tanks at the processor facility; and

(17) A facility piping and instrument drawing certified by a Professional Engineer.

(c) Permit fees. Registration and permitting fees are established under the terms and conditions of Department fee schedule 63J-1-504. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of permit approvals and annual used oil handler certificates.

(d) Annual Reporting. Each used oil processing or rerefining facility shall submit an annual report to the Director of its activities during the calendar year. The annual report shall be submitted to the Director no later than March 1 of the year following the reported activities. The annual report shall either be submitted on a form provided by the Director or shall contain the following information:

(1) the EPA identification number, name, and address of the processor/re-refiner facility;

(2) the calendar year covered by the report;

(3) the quantities of used oil accepted for processing/rerefining and the manner in which the used oil is processed/rerefined, including the specific processes employed;

(4) the average daily quantities of used oil processed at the beginning and end of the reporting period;

(5) an itemization of the total amounts of used oil processed or rerefined during the reporting period year specifying the type and amounts of products produced, i.e., lubricating oil, fuel oil, etc.; and

(6) the amounts of used oil prepared for reuse as a lubricating oil, as a fuel, and for other uses, specifying each type of use, the amounts of used oil consumed or used in the process of preparing used oil for reuse, specifying the amounts and types of waste by-products generated including waste, water, and the methods and specific locations utilized for disposal.

(e) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

(f) Used oil processors and re-refiners shall obtain and maintain a current used oil handler certificate in accordance with R315-15-13.8.

13.6 USED OIL BURNERS

(a) On-specification used oil fuel burners. Facilities burning only on-specification used oil fuel are not required to register as used oil burners with the Director for the purpose of R315-15-13.6, if they hold a valid air quality operating order or are exempt under R315-15-2.4.

(b) Off-specification used oil fuel burners

(1) Applicability. The permitting requirements of this section apply to used oil burners who burn off-specification used oil for energy recovery except as specified in R315-15-6.1(a)(1) through (3). A person may not burn off-specification used oil fuel for energy recovery without holding a permit issued by the Director.

(2) Permit application. The application for a permit shall include the following information regarding the facility:

(i) The name and address of the operator;

(ii) The location of the facility;

(iii) The type of containment and type and capacity of storage;

(iv) The type of burner to be used;

(v) The methods of disposing of any waste by-products;

(vi) The status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities;

(vii) An emergency spill containment plan; including a list of spill containment equipment to be maintained at the used oil processor facility.

(viii) Proof of insurance or other means of financial responsibility for liabilities that may be incurred in storing and burning off-specification used oil fuels.

(ix) Proof of form and amount of reclamation surety for any facility receiving and burning off-specification used oil.

(x) A closure plan meeting the requirements of R315-15-11;

(xi) Proof of applicant's ownership of the property and facility or, if the property and facility is not owned by the applicant, the owner's written statement acknowledging the activities specified in the application;

(xii) Tank certification in accordance with R315-264-190 through 200 for used oil storage tanks at the processor facility; and

(xiii) A facility piping and instrument drawing certified by a Professional Engineer.

(3) Permit fees. Registration and permitting fees are established under the terms and conditions of Utah Code Annotated 63J-1-504. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of permit approvals and annual used oil handler certificates.

(4) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted during permit application within 20 days of the change.

(5) Permits by rule. Any facility permitted by rule is not required to obtain a permit as required by R315-15-13.6(b)(1), but may be required to follow operational practices, as determined by the Director, to minimize risk to human health or the environment. A permit by rule is conditional upon continued compliance with the requirements of R315-15-13.6(b), as determined by the Director. Notwithstanding any other provisions of R315-15-13.6, a hazardous waste incinerator facility that has been issued a final permit under R315-270-1, and that implements the requirements of R315-264-340 through 351, shall be deemed to have an approved off-specification used oil burner permit if that facility meets all of the following conditions:

(i) It burns off-specification used oil only in devices specified in R315-15-6.2(a);

(ii) It stores used oil in the manner described in R315-15-6.5;

(iii) It tracks off-specification used oil shipments as described in R315-15-6.6;

(iv) It complies with R315-15-6.3 and R315-15-6.7;

(v) It modifies its closure plan required under R315-264-110 through 120 (Closure and Post Closure), to include used oil storage and burning devices, taking into account any used oil activities at this facility;

(vi) It modifies its financial mechanism or mechanisms required R315-264-140 Through 151 (Financial Requirements), using a mechanism other than a corporate financial test/corporate written guarantee, to reflect the used oil activities at the facility; and

(vii) It submits to the Director the information required by R315-15-13.6(b)(2)(i) through (vi), and a one-time declaration that the facility intends to burn off-specification used oil.

(6) Annual Reporting. Each off-specification used oil burner, including those permitted by rule under R315-15-13.6(b)(5), shall submit an annual report to the Director of their activities during the calendar year. The annual report shall be submitted to the Director no later than March 1, of the year following the reported activities. The annual report shall either be submitted on a form provided by the Director or shall contain the following information:

(i) The EPA identification number, name, and address of the burner facility;

(ii) The calendar year covered by the report; and

(iii) The total amount of used oil burned.

(c) Off-specification used oil burners shall obtain and maintain a current used oil handler certificate in accordance with R315-15-13.8.

13.7 USED OIL FUEL MARKETERS

(a) Applicability. A person may not act as a used oil fuel marketer, as defined in R315-15-7, without holding a registration number issued by the Director.

(b) General. The application for a registration number shall include the following information regarding the facility acting as a used oil fuel marketer:

(1) The name and address of the marketer.

(2) The location of any facilities used by the marketer to collect, transport, process, or store used oil subject to separate permits, or registrations under this section.

(3) The status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities, including registrations or permits required under this part to collect, process/re-refine, transport, or store used oil.

(4) Sampling and Analysis Plan. Marketers shall develop and follow a written analysis plan describing the procedures that will be used to comply with the analysis requirements of R315-15, including the applicable portions of R315-15-1.2, R315-15-5.4, R315-15-7.3, and R315-15-18. The owner or operator shall keep the plan at the facility. The plan shall address at a minimum the following:

(i) Specification used oil fuel. The analysis plan shall describe how the marketer will comply with R315-15-1.2, R315-15-5.6, and R315-15-7.3, as applicable.

(ii) Analytical methods. The plan shall specify the preparation and analytical methods for each parameter.

(iii) PCBs. The analysis plan shall describe how the marketer will comply with R315-15-18.

(iv) Generator knowledge. The plan shall describe the requirements for generator knowledge, if applicable.

(v) Sample Quality Control. The plan shall specify the quality control parameters and acceptance limits.

(vi) Rebuttable presumption for used oil. The analysis plan shall describe how the marketer will comply with R315-15-1.1(b)(ii) and R315-15-5.4, if applicable.

(vii) Sampling. The analysis plan shall describe the sampling protocol used to obtain representative samples, including:

(A) Sampling methods. The marketer shall use one of the sampling methods in R315-261 Appendix I, or a method shown to be equivalent under R315-260-21.

(B) Sample frequency. The plan shall specify the frequency of sampling to be performed, and whether the analysis will be performed on site or off site.

(c) Registration fees. Registration and permitting fees are established under the terms and conditions of Utah Code Annotated 63J-1-504. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of registration numbers and annual used oil handler certificates.

(d) A person who acts as used oil fuel marketer shall annually obtain a used oil handler certificate in accordance with R315-15-13.8. A used oil fuel marketer shall not operate

without a used oil handler certificate.

(e) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a registration within 20 days of the change.

13.8 USED OIL HANDLER CERTIFICATES

(a) Applicability. As well as obtaining permits and registration described in R315-15-13.4 through 13.7, a person shall not act as a used oil transporter, operator of a transfer facility, processor/re-refiner, off-specification burner, or marketer without applying for, receiving, and maintaining a current used oil handler certificate issued by the Director for each applicable activity. Each used oil permit and marketer registration described in R315-15-13.4 through 13.7 above requires a separate used oil handler certificate.

(b) General. Each application for a used oil handler certificate shall include the following information:

(1) business name;

(2) address to include:

(i) mailing address; and

(ii) site address if different from mailing address

(3) telephone number

(4) name of business owner;

(5) name of business operator;

(6) permit/registration number; and

(7) type of permit/registration number (i.e., processor, transporter, transfer facility, off-specification burner, or marketer).

(c) Changes in information. A used oil handler certificate holder shall notify the Director of any changes in the information provided in Subsection R315-15-13.8(b) within 20 days of implementation of the change.

(d) A used oil handler certificate will be issued to an applicant following the:

(1) completion and approval of the application required by R315-15-13.8(a); and

(2) payment of the fee required by the Annual Appropriations Act.

(e) A used oil handler certificate is not transferable and shall be valid January 1 through December 31 of the year issued. The certificate shall become void if the permit or registration associated with the used oil activity described in the certificate, in accordance with R315-15-13.8(b)(6) in the application, is revoked under R315-15-15.2 or if the Director, upon the written request of the permittee or registration holder, cancels the certificate.

(f) The certificate registration fee shall be paid prior to operation within any calendar year.

R315-15-14. DIYer Reimbursement.

14.1 DIYER USED OIL COLLECTION CENTER INCENTIVE PAYMENT APPLICABILITY

(a) The Director shall pay a quarterly recycling fee incentive to registered DIYer used oil collection centers and curbside programs approved by the Director for each gallon of used oil collected from DIYer used oil generators, and transported by a permitted used oil transporter to a permitted used oil processor/re-refiner, burner, registered marketer or burned in accordance with R315-15-2.4(b).

(b) All registered DIYer used oil collection centers can qualify for a recycling incentive payment of up to $0.16 per gallon, subject to availability of funds and the priorities of Utah Code Annotated 19-6-720.

14.2 REIMBURSEMENT PROCEDURES

In order for DIYer collection centers to qualify for the recycling incentive payment they are required to comply with the following procedures.

(a) Submit a copy of all records and receipts of DIYer and farmer, as defined in R315-15-2.1(a)(4), used oil collected during the quarter for which the reimbursement is requested. These records shall be submitted within 30 days following the end of the calendar quarter in which the DIYer oil was collected and for which reimbursement is requested.

(b) Reimbursements will be issued by the Director within 30 days following the report filing period.

(c) Reports received later than 30 days after the end of the calendar quarter for which reimbursement is requested will be paid during the next quarterly reimbursement period.

(d) Any reimbursement requests outside the timeframe outlined in R315-15-14.2(a) will not be granted unless approved by the Director.

R315-15-15. Issuance, Renewal, and Revocation of Permits and Registrations.

15.1 PUBLIC COMMENTS AND HEARING.

(a) The Director shall:

(1) determine if the permit application or modification request is complete and meets all requirements of R315-15-13;

(2) publish notice of the proposed permit in a newspaper of general circulation in the state and also in a newspaper of general circulation in the county in which the proposed permitted facility is located;

(3) provide a 15-day public comment period from the date of publication to allow the public time to submit written comments;

(4) consider submitted public comments received within the comment period; and

(5) send a written decision to the applicant and to persons submitting comments,

(b) The Director's decision under R315-15-15.1(a) may be appealed in accordance with Utah Administrative Code R305-7.

(c) Duration of Permits. Used oil permits shall be effective for a fixed term not to exceed ten years. Any Permittee holding a permit issued on or before January 1, 2005 who wants to continue operating shall submit an application for a new permit not later than 180 days after January 1, 2015. The term of a permit shall not be extended by modification to the permit.

(d) 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 R315-15-13, at least 180 days prior to the expiration date of the current permit. The permit application shall contain all the materials required by R315-15-13.

(2) The Director, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).

(e) Effect. Permits continued under this section remain fully effective and enforceable.

(f) 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 that has been continued;

(2) Issue a notice of intent to deny the new permit under R315-15-15.2. If the permit is denied, the owner or operator is 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 R315-15-15.2 with appropriate conditions;

(4) Take other actions authorized by these rules

(g) Five-Year Review of Permit. Each used oil permit, including the costs of closure and post closure care issued under R315-15-13, shall be reviewed by the Director five years after the permit's issuance, or when the Director determines that a permit requires review and modification.

15.2 MODIFICATION AND REVOCATION OF

PERMITS, REGISTRATIONS AND HANDLER CERTIFICATES.

(a) A permit may be considered for modification, renewal, or termination at the request of any interested person, including the permittee, or upon the Director's initiative as a result of new information or changes in statues or rules. Requests for modification, reissuance, or termination shall be submitted in writing to the Director and shall contain facts or reasons supporting the request. The permit modification requests shall not be implemented until approval of the Director.

Violation of any permit or registration conditions or failure to comply with any provisions of the applicable statutes and rules, shall be grounds for imposing statutory sanctions, including denial of an application for permit, registration, or used oil handler certificate.

(b) Request for agency action. The owner or operator of a facility may contest an order associated with modification, renewal, or termination in accordance with Utah Administrative Code R305-7.

R315-15-16. Grants.

16.1 STATUTORY AUTHORITY.

Utah Code Annotated 19-6-720 authorizes the Division of Waste Management and Radiation Control to award grants, as funds are available, for the following:

(a) Used oil collection centers;

(b) Used oil collection events;

(c) Curbside used oil collection programs, including costs of retrofitting trucks, curbside containers, and other costs of collection programs; and

(d) Public education programs and outreach.

16.2 ELIGIBILITY AND APPLICATION.

(a) The establishment of new or the enhancement of existing used oil collection centers or curbside collection programs that address the proper management of used lubricating oil may be eligible for grant assistance.

(b) A Used Oil Recycling Block Grant Application Package, made available by the Director, shall be completed and submitted to the Director for consideration.

16.3 LIMITATIONS.

(a) The grantee shall commit to perform the permitted used oil handling activity for a minimum of two years.

(b) If the two-year commitment is not fulfilled, the grantee may be required to repay all or a portion of the grant amount.

16.4 USED OIL TRANSPORTATION COSTS FROM USED OIL COLLECTION CENTERS

(a) Grant funds may be used for costs for a permitted used oil transporter to collect and transport used oil from a used oil collection center (UOCC) located within a rural area that meets the following criteria:

(1) accepts only:

(i) DIYER used oil, Type A UOCC; or

(ii) both DIYER and farmer used oil, Type B UOCC

(2) is located in a Class 4 municipality, as described in Section 10-2-301, or in an area with a population less than that of a Class 4 municipality;

(3) stays active with the Used Oil Program for at least two years after receiving the grant or the grant funds shall be reimbursed;

(4) completes a grant application that is signed by the owner of the collection center; and

(5) obtains a minimum of one transportation bid from a permitted used oil transporter in accordance with Section R33-5-104.

(b) Grant funds may be used for costs for a permitted used oil transporter to collect and transport used oil from a Type C Used Oil Collection Center if the UOCC meets the following criteria:

(1) Is a Utah municipal landfill that is registered as a Type C used oil collection center with the Division of Waste Management and Radiation Control;

(2) Only allows small businesses that qualify as a Very Small Quantity Generator (VSQGs) of hazardous waste, to deliver used oil in a volume of less than 55 gallons per visit per day; and

(3) One transportation bid from a permitted used oil transporter is submitted for requests less than $1,000.00, or three bids if over $1,000.00.

(c) Grant funds may be considered for costs for a permitted used oil transporter to collect and transport used oil from a Used Oil Collection Center that does not meet the criteria outlined in Subsections R315-15-16.4(a) or (b)on a case-by-case basis.

16.5 FUNDING

(a) An applicant is not required to provide matching funds.

(b) The Director may withhold 10 percent of the funds from a grant recipient until the grant is completed and the final documentation submitted.

(c) The Director may approve a request for advance payment based upon justification offered by the applicant.

(d) A grant application shall include all bids for expenses to be paid by the grant in accordance with Rule R33-5.

16.6 APPLICATION CONTENTS

(a) A grant application form is part of the grant application package available from the Director and consists of the following sections:

(1) Applicant Information. The applicant shall include basic information regarding the applicant and the individual or entity responsible for the project implementation.

(2) Used Oil Project Request for Funding. The project funding request shall include the following:

(i) Background. The background information shall include a description of:

(A) The absence or existence of used oil collection opportunities in the area to be served by the used oil project; and

(B) The population of the proposed project area.

(ii) Project Description and Goals; and

(iii) Funding Sources.

(3) Project Budget. The project budget may include a cost breakdown of the following categories:

(i) Used oil transportation and disposal expenses.

(ii) Contractor or consultant expenses.

(iii) Construction expenses.

(iv) Equipment.

(v) Materials and supplies.

(vi) Public education and outreach.

(4) Eligibility summary. The applicant shall include, as applicable, the following information for each:

(i) Used oil collection center:

(A) Name of the facility;

(B) Physical address; and

(C) Phone number; and

(ii) Curbside collection program:

(A) Name, address, and phone number of the program operator;

(B) Number of residents served by the program; and

(C) Collection schedule

(5) Certification Statement and Signature.

16.7 APPLICATION SUBMISSION

Applicants shall submit an original application using the application package of Subsection R315-15-16.2(b) to the Director.

16.8 AUDIT REQUIREMENTS

(a) A grant may be subject to a desk or field audit.

(b) The grantee is responsible for maintaining source documents substantiating the expenditures claimed and shall make them available at the time of an audit.

(c) Records relating to the implemented program may include:

(1) Expenditure ledger;

(2) Paid warrants;

(3) Contracts;

(4) Change orders;

(5) Invoices; and

(6) Cancelled checks.

(c) Records shall be maintained for a period of three years from the date of final payment by the State.

16.9 ADMINISTRATIVE PROCEDURES

(a) A grantee shall submit a final report within one month of completion of the project or by a later date specified by the Director. The report shall include the following information:

(1) A description of the completed used oil collection program, including any amendments;

(2) The estimated number of participants in the program;

(3) A description of the program's public education efforts;

(4) A description of measures taken to continue the program; and

(5) A complete and final itemization of how grant funds were expended.

16.10 FAILURE TO COMPLY

Failure to comply with the agreement requirements may result in the Director terminating, suspending, or requiring the grantee to repay some or all of the grant.

16.11 GRANT PAYMENTS

(a) General Requirements.

(1) The Director shall reimburse the grantee for performing only those services as specified in the grant application. Any deviations from the use of funds specified in the application shall be approved by the Director before an expenditure for that item is made.

(2) Payment shall be made to the grantee only. It shall be the responsibility of the grantee to pay all contractors and subcontractors for purchased goods and services.

(3) The Director may withhold and retain ten percent of the grant award until the grant is completed and the final documentation submitted.

(4) Requests for advance payment shall be submitted in writing to the Director and demonstrate that the grantee will incur a specific expenditure(s) prior to or shortly after payment for the State. Suggested documentation includes:

(i) Purchase orders; and

(ii) Invoices.

(5) The Director may partially or fully deny advance payment requests.

(b) Submittal of payment requests.

(1) All payment requests shall be submitted using the completed Payment Request Form of the grant application package of Subsection R315-15-16.2(b) and signed by the individual authorized in the grant application.

(2) Payment requests shall include an itemization of all expenses by budget expense type.

(3) Payment requests shall include copies of documents supporting the claimed expenses, such as bids, receipts, canceled checks, and sole source justifications. Supporting documents shall contain sufficient information to establish purchases made or costs incurred. At a minimum, the documentation should include the name, amount, and date of purchase for the expense.

(4) All payment requests shall be submitted to the Director.

16.12 RELEASE OF FUNDS

(a) The Director shall review and approve all payment requests before payment is made. The grantee shall meet the following conditions before the Director shall process a payment request during the project term:

(1) The grantee has submitted any required project reports and the Director has deemed them to be satisfactory;

(2) The Director has received copies of applicable contracts and/or subcontracts; and

(3) The grantee has received applicable permits or permit waivers from governmental agencies and the Director has received copies of such documentation.

(b) After Director approval, payment requests shall be forwarded to the Division of Finance for issuance of pay warrants.

(c) If ten percent of the total grant was previously withheld, the Director shall release the remaining ten percent upon receipt and acceptance of the final report and final payment request.

16.13 GRANT CLOSEOUT

(a) The Director shall close out the grant when it is determined that all applicable administrative actions and all required work of the grant have been completed.

(b) Upon receipt of the final report, the Director shall ensure all work has been completed and all unexpended funds are refunded to the State.

(c) The grantee's obligations under the Terms and Conditions of the grant application package of Subsection R315-15-16.2(b) shall be deemed discharged only upon acceptance of the final report by the Director.

(d) The grantee shall retain all financial and project records, supporting documents, statistical records and other records of projects funded by this program. The Director, or his authorized representative, shall have access to all related records during progress of the project and for at least three years after completion.

R315-15-17. Wording of Financial Assurance Mechanisms.

17.1 APPLICABILITY

R315-15-17 presents the standard wording forms to be used for the financial assurance mechanisms found in R315-15-12. The following forms are hereby incorporated by reference and are available at the Division of Waste Management and Radiation Control located at 195 North 1950 West, Salt Lake City, Utah, during normal business hours or on the Division's web site, http://www.hazardouswaste.utah.gov/.

(a) The Division requires that the forms described in R315-15-17.2 through R315-15-17.14 shall be used for all financial assurance filings and shall be signed original documents. The wording of the forms shall be identical to the wording specified in R315-15-17.2 through R315-15-17.14.

(b) The Director may substitute new wording for the wording found in any of the financial assurance mechanism forms when such language changes are necessary to conform to applicable financial industry changes, when industry-wide consensus language changes are submitted to the Director.

17.2 TRUST AGREEMENTS

The trust agreement for a trust fund must be worded as found in the Trust Agreement Form approved by the Director.

17.3 SURETY BOND GUARANTEEING PAYMENT INTO A STANDBY TRUST AGREEMENT TRUST FUND

The surety bond guaranteeing payment into a standby trust agreement trust fund must be worded as found in the Surety Bond Guaranteeing Payment into a Standby Trust Agreement Trust Fund Form approved by the Director.

17.4 IRREVOCABLE STANDBY LETTER OF CREDIT WITH STANDBY TRUST AGREEMENT

The letter of credit must be worded as found in the Irrevocable Standby Letter of Credit with Standby Trust Agreement Form approved by the Director.

17.5 UTAH USED OIL POLLUTION LIABILITY INSURANCE ENDORSEMENT FOR CLEANUP AND CLOSURE

The insurance endorsement of cleanup and closure must be worded as found in the Utah Used Oil Pollution Liability

Insurance Endorsement for Cleanup and Closure Form approved by the Director.

17.6 UTAH USED OIL TRANSPORTER POLLUTION LIABILITY ENDORSEMENT FOR SUDDEN OCCURRENCE

The used oil transporter pollution liability endorsement for sudden occurrence must be worded as found in the Utah Used Oil Transporter Pollution Liability Endorsement for Sudden Occurrence Form approved by the Director.

17.7 UTAH USED OIL POLLUTION LIABILITY ENDORSEMENT FOR SUDDEN OCCURRENCE

The used oil pollution liability endorsement for sudden occurrence for permitted facilities other than permitted transporters must be worded as found in the Utah Used Oil Pollution Liability Endorsement for Sudden Occurrence Form approved by the Director.

17.8 UTAH USED OIL POLLUTION LIABILITY ENDORSEMENT FOR NON-SUDDEN OCCURRENCE

The used oil pollution liability endorsement for non-sudden occurrence must be worded as found in the Utah Used Oil Pollution Liability Endorsement Non-Sudden Occurrence Form approved by the Director.

17.9 UTAH USED OIL POLLUTION LIABILITY ENDORSEMENT FOR COMBINED SUDDEN AND NON-SUDDEN OCCURRENCES

The used oil pollution liability endorsement combined for sudden and non-sudden occurrence must be worded as found in the Utah Used Oil Pollution Liability Endorsement for Combined Sudden and Non-Sudden Occurrences Form approved by the Director.

17.10 LETTER OF CREDIT FOR THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY WITH OPTIONAL STANDBY TRUST AGREEMENT TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

The letter of credit must be worded as found in the Letter of Credit for Third Party Damages from Environmental Pollution Liability with Optional Standby Trust Agreement to be used by Transfer/Processor/Re-refiner/Off-specification Burner Facility Form approved by the Director.

17.11 PAYMENT BOND FOR THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

A surety bond must be worded as found in the Payment Bond for Third Party Damages from Environmental Pollution Liability to be used by Transfer/Processor/Re-refiner/Off-specification burner Facility Form approved by the Director.

17.12 TRUST AGREEMENT FOR THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

A trust agreement must be worded as found in the Trust Agreement for Third Party Damages from Environmental Pollution Liability to be used by Transfer/Processor/Re-refiner/Off-specification Burner Facility Form approved by the Director.

17.13 STANDBY TRUST AGREEMENT ASSOCIATED WITH THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY REQUIRING A STANDBY TRUST AGREEMENT TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

A standby trust agreement must be worded as found in the Standby Trust Agreement Associated with Third Party Damages from Environmental Pollution Liability Requiring Standby Trust Agreement to be used by Transfer/Processor/Re-refiner/Off-specification Burner Facility Form approved by the Director.

17.14 STANDBY TRUST AGREEMENT, OTHER THAN LIABILITY, FOR TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

The standby trust agreement for a trust fund must be worded as found in the Standby Trust Agreement, other than Liability for Transfer/Processor/Re-refiner/Off-specification Burner Facility Form approved by the Director.

R315-15-18. Polychlorinated Biphenyls (PCBs).

(a) Used oil containing polychlorinated biphenyl (PCB) concentrations of 50 ppm and above is subject to TSCA regulations in 40 CFR 761. Used oil containing PCB concentrations greater than or equal to 2 ppm but less than 50 ppm is subject to both R315-15 and 40 CFR 761.

(b) Used oil transporter PCB testing. Used oil transporters shall determine the PCB content of used oil being transported is less than 50 ppm prior to transferring the oil into the transporter's vehicles. The transporter shall make this determination as follows:

(1) Used dielectric oil. Dielectric oil used in transformers and other high voltage devices shall be certified to be less than 50 ppm prior to loading to the transporter's vehicle through laboratory testing following the procedures described in R315-15-18(d).

(2) Other used oils shall be certified to be less than 50 ppm prior to transfer through either:

(A) Laboratory testing following the procedures described in R315-15-18(d) below, or

(B) Written certification from the generator that the PCB content of the used oil is less than 50 ppm based on manufacturing specifications and process knowledge.

(c) Used oil marketer PCB testing. To ensure that used oil destined to be burned for energy recovery is not a regulated waste under the TSCA regulations, used oil fuel marketers shall determine whether the PCB content of used oil being burned for energy recovery is below 2 ppm. A marketer shall make this determination in a manner consistent with the used oil marketer's sampling and analysis plan.

(d) Laboratory testing for PCBs. Used oil testing for total PCBs shall include the following Aroclors: 1016, 1221, 1232, 1242, 1248, 1254, and 1260. If plasticizers (used in polyvinyl chloride plastic, neoprene, chlorinated rubbers, laminating adhesives, sealants and caulk and joint compounds etc.) are present, then the used oil shall also be analyzed for Aroclors 1262 and 1268. If other Aroclors are known or suspected to be present, then the used oil shall be analyzed for those additional Aroclors.

(e) The following Utah Certified Laboratory SW-846 methodologies shall be used for PCBs:

(1) Preparation method 3580A, clean up method 3665A, and analytical method 8082A.

(2) Individual Aroclors shall be reported with a reporting limit of 1 ppm or less.

(3) If the source of the PCBs is known to be an Aroclor, and the Aroclor is unlikely to be significantly altered in homologue composition such as weathering, Aroclors listed in R315-15-18(d) shall be reported. Analytical results from all 209 individual congeners or ten homologue groups shall be submitted for any sample that has an altered homologue composition such as weathering unless prior approval is obtained from the Director.

KEY: grants, registration, recycling, used oil
September 14, 2018 19-6-704
Notice of Continuation March 10, 2016 19-6-720

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-260. Hazardous Waste Management System.
R315-260-1. Purpose, scope, and applicability.

(a) Rule R315-260 provides definitions of terms, general standards, and overview information applicable to Rules R315-260 through 265 and 268.

R315-260-2. Availability of Information and Confidentiality of Information.

(a) Any information provided to The Director under Rules R315-15 and 101; Rules R315-260 through 266, 268, 270 and 273 will be made available to the public to the extent and in the manner authorized by Sections 63G-2-101 through 901.

(b) Except as provided under Subsection R315-260-2(c), any person who submits information to the Director in accordance with Rules R315-15 and 101; Rules R315-260 through 266, 268, 270 and 273 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 except that information required by Subsection R315-262-53(a) and Subsection R315-262-83 that is submitted to EPA in a notification of intent to export a hazardous waste shall be provided to the U.S. Department of State and the appropriate authorities in the transit and receiving or importing countries regardless of any claims of confidentiality. 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)(1) After August 6, 2014, no claim of business confidentiality may be asserted by any person with respect to information entered on a Hazardous Waste Manifest, EPA Form 8700-22, a Hazardous Waste Manifest Continuation Sheet, EPA Form 8700-22A, or an electronic manifest format that may be prepared and used in accordance with Subsection R315-262-20(a)(3).

(2) EPA shall make any electronic manifest that is prepared and used in accordance with Subsection R315-262-20(a)(3), or any paper manifest that is submitted to the system under Subsection R315-264-71(a)(6) or Subsection 40 CFR 265.71(a)(6), which is adopted by reference, available to the public under Section R315-260-2 when the electronic or paper manifest is a complete and final document. Electronic manifests and paper manifests submitted to the system are considered by EPA to be complete and final documents and publicly available information after 90 days have passed since the delivery to the designated facility of the hazardous waste shipment identified in the manifest.

R315-260-4. References to Other Statutes and Regulations.

(a) Federal statutes and regulations that are cited in Rules R315-260 through 266, 268, 270, 273 and 124 that are not specifically adopted by reference shall be used as guidance in interpreting the Rules R315-260 through 266, 268, 270, 273 and 124.

(b) Any reference to the "Department of Transportation" or "DOT" in Rules R315-260 through 266, 268, 270, 273 and 124 shall mean the "U.S. Department of Transportation".

R315-260-5. Inspections.

Any duly authorized officer, employee or representative of the Department or the Director may, in accordance with Section 19-6-109, enter upon and inspect any property, premise, or place on or at which solid or hazardous wastes are generated, transported, stored, treated or disposed of for the purpose of ascertaining the compliance with Rules R315-15, R315-101, R315-124, R315-260 through 266, R315-268, R315-270, and R315-273. Inspectors may also inspect any waste and obtain samples thereof, including samples from any vehicle in which wastes are being transported or samples of any containers or labels. Inspectors may also have access to and the right to make copies of any records, either in hard copy or electronic format, relating to compliance with Rules R315-15, R315-101, R315-124, R315-260 through 266, R315-268, R315-270, and R315-273. Inspectors may also take photographs and make video and audio recordings while conducting authorized activities.

R315-260-10. Definitions.

(a) Terms used in Rules R315-15, R315-260 through 266, R315-268, R315-270, R315-273, and Rule R315-101 are defined in Sections 19-1-103 and 19-6-102.

(b) Terms used in Rule R315-15 are also defined in Sections 19-6-703 and 19-6-706(b).

(c) Additional terms used in Rules R315-260 through 266, R315-268, R315-270, R315-273, and Rule R315-101 are defined as follows:

(1) "Above ground tank" means a device meeting the definition of "tank" in Section R315-260-10 and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank, including the tank bottom, is able to be visually inspected.

(2) "Acute hazardous waste" means hazardous wastes that meet the listing criteria in Subsection R315-261-11(a)(2) and therefore are either listed in Section R315-261-31 with the assigned hazard code of (H) or are listed in Subsection R315-261-33(e).

(3) "Active life" of a facility means the period from the initial receipt of hazardous waste at the facility until the Director receives certification of final closure.

(4) "Active portion" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after November 19, 1980 and which is not a closed portion. See also "closed portion" and "inactive portion."

(5) "Approved hazardous waste management facility" or "approved facility" means a hazardous waste treatment, storage, or disposal facility which has received an EPA permit in accordance with federal requirements, has been approved under Section 19-6-108 and Rule R315-270, or has been permitted or approved under any other EPA authorized hazardous waste state program.

(6) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to a storage or treatment tank(s), between hazardous waste storage and treatment tanks to a point of disposal onsite, or to a point of shipment for disposal off-site.

(7) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.

(8) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit, i.e., part of a facility, e.g., the plant manager, superintendent or person of equivalent responsibility.

(9) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections, electrical and mechanical, as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(10) "Boiler" means an enclosed device using controlled

flame combustion and having the following characteristics:

(i)(A) The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(B) The unit's combustion chamber and primary energy recovery sections(s) shall be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s), such as waterwalls and superheaters, shall be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment, such as economizers or air preheaters, need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters, units that transfer energy directly to a process stream, and fluidized bed combustion units; and

(C) While in operation, the unit shall maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(D) The unit shall export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps; or

(ii) The unit is one which the Board has determined, on a case-by-case basis, to be a boiler, after considering the standards in Section R315-260-32

(11) "Carbon dioxide stream" means carbon dioxide that has been captured from an emission source, e.g., power plant, plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process.

(12) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

(13) "Cathode ray tube" or "CRT" means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released.

(14) "Central accumulation area" means any on-site hazardous waste accumulation area with hazardous waste accumulating in units subject to either Section R315-262-16, for small quantity generators, or Section R315-262-17, for large quantity generators. A central accumulation area at an eligible academic entity that chooses to operate under Sections R315-262-200 through 216 is also subject to Section R315-262-211 when accumulating unwanted material or hazardous waste, or both.

(15) "Certification" means a statement of professional opinion based upon knowledge and belief.

(16) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. See also "active portion" and "inactive portion".

(17) "Component" means either the tank or ancillary equipment of a tank system.

(18) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined ground water.

(19) "Contained" means held in a unit, including a land-based unit as defined in R315-260-10, that meets the following criteria:

(i) The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit, such as a permit to discharge to water or air, and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures;

(ii) The unit is properly labeled or otherwise has a system, such as a log, to immediately identify the hazardous secondary materials in the unit; and

(iii) The unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.

(iv) Hazardous secondary materials in units that meet the applicable requirements of Rules R315-264 or 265 are presumptively contained.

(20) "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

(21) "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of Subsections R315-264-1100 through 1102 or 40 CFR 265.1100 through 1102, which are adopted and incorporated by reference.

(22) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

(23) "Corrosion expert" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person shall be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

(24) "CRT collector" means a person who receives used, intact CRTs for recycling, repair, resale, or donation.

(25) "CRT glass manufacturer" means an operation or part of an operation that uses a furnace to manufacture CRT glass.

(26) "CRT processing" means conducting all of the following activities:

(i) Receiving broken or intact CRTs; and

(ii) Intentionally breaking intact CRTs or further breaking or separating broken CRTs; and

(iii) Sorting or otherwise managing glass removed from CRT monitors.

(27) "Designated facility" means:

(i) A hazardous waste treatment, storage, or disposal facility which:

(A) Has received a permit, or interim status, in accordance with the requirements of Rule R315-270 and 124;

(B) Has received a permit, or interim status, from a State authorized in accordance with 40 CFR 271; or

(C) Is regulated under Subsection R315-261-6(c)(2) or Section R315-266-70; and

(D) That has been designated on the manifest by the generator pursuant to Section R315-262-20.

(ii) "Designated facility" also means a generator site designated on the manifest to receive its waste as a return

shipment from a facility that has rejected the waste in accordance with Subsections R315-264-72(f) or 40 CFR 265.72(f), which is adopted and incorporated by reference.

(iii) If a waste is destined to a facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving State to accept such waste.

(28) "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Subsection R315-273-13(a) and (c) and Section R315-273-33. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

(29) "Dike" means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(30) "Dioxins and furans (D/F)" means tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

(31) "Discharge" or "hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land or water.

(32) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(33) "Division" means the Division of Waste Management and Radiation Control.

(34) "Drip pad" is an engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(35) "Elementary neutralization unit" means a device which:

(i) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Section R315-261-22, or they are listed in Sections R315-261-30 through 35 only for this reason; and

(ii) Meets the definition of tank, tank system, container, transport vehicle, or vessel in Sections R315-260-10.

(36) "Electronic manifest, or e-Manifest" means the electronic format of the hazardous waste manifest that is obtained from EPA's national e-Manifest system and transmitted electronically to the system, and that is the legal equivalent of EPA Forms 8700-22, Manifest, and 8700-22A, Continuation Sheet.

(37) "Electronic Manifest System, or e-Manifest System" means EPA's national information technology system through which the electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.

(38) "EPA hazardous waste number" means the number assigned by EPA to each hazardous waste listed in Sections R315-261-30 through 35 and to each characteristic identified in Sections R315-261-20 through 24.

(39) "EPA identification number" means the number assigned by EPA to each generator, transporter, and treatment, storage, or disposal facility.

(40) "EPA region" means the states and territories found in any one of the following ten regions:

(i) Region I-Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island.

(ii) Region II-New York, New Jersey, Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

(iii) Region III-Pennsylvania, Delaware, Maryland, West Virginia, Virginia, and the District of Columbia.

(iv) Region IV-Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, and Florida.

(v) Region V-Minnesota, Wisconsin, Illinois, Michigan, Indiana and Ohio.

(vi) Region VI-New Mexico, Oklahoma, Arkansas, Louisiana, and Texas.

(vii) Region VII-Nebraska, Kansas, Missouri, and Iowa.

(viii) Region VIII-Montana, Wyoming, North Dakota, South Dakota, Utah, and Colorado.

(ix) Region IX-California, Nevada, Arizona, Hawaii, Guam, American Samoa, Commonwealth of the Northern Mariana Islands.

(x) Region X-Washington, Oregon, Idaho, and Alaska.

(41) "Equivalent method" means any testing or analytical method approved by the Director under Sections R315-260-20 and 21.

(42) "Existing hazardous waste management (HWM) facility" or "existing facility" means a facility which was in operation or for which construction commenced on or before November 19, 1980. A facility has commenced construction if:

(i) The owner or operator has obtained the Federal, State and local approvals or permits necessary to begin physical construction; and either

(ii)(A) A continuous on-site, physical construction program has begun; or

(B) The owner or operator has entered into contractual obligations-which cannot be cancelled or modified without substantial loss-for physical construction of the facility to be completed within a reasonable time.

(43) "Existing portion" means that land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(44) "Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986, or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of R315. A non-HSWA existing tank system or non-HSWA tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1. Installation shall be considered to have commenced if the owner or operator has obtained all Federal, State, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(i) a continuous on-site physical construction or installation program has begun; or

(ii) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(45) "Facility" means:

(i) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(ii) For the purpose of implementing corrective action under Section R315-264-101, all contiguous property under the control of the owner or operator seeking a permit under Section 19-6-108. This definition also applies to facilities implementing corrective action under Section R315-263-31 and Rule R315-

101.

(iii) Notwithstanding Subsection R315-1-10(43)(ii), a remediation waste management site is not a facility that is subject to Section R315-264-101, but is subject to corrective action requirements if the site is located within such a facility.

(46) "Federal agency" means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.

(47) "Federal, State and local approvals or permits necessary to begin physical construction" means permits and approvals required under Federal, State or local hazardous waste control statutes, regulations or ordinances.

(48) "Final closure" means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Rules R315-264 and 265 are no longer conducted at the facility unless subject to the provisions in Section R315-262-34.

(49) "Food-chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(50) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(51) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

(52) "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in Rule R315-261 or whose act first causes a hazardous waste to become subject to regulation.

(53) "Ground water" means water below the land surface in a zone of saturation.

(54) "Hazard class" means:

(i) The DOT hazard class identified in 49 CFR 172; and

(ii) If the DOT hazard class is "OTHER REGULATED MATERIAL," ORM, the EPA hazardous waste characteristic exhibited by the waste and identified in Sections R315-261-20 through 24.

(55) "Hazardous secondary material" means a secondary material, e.g., spent material, by-product, or sludge, that, when discarded, would be identified as hazardous waste under Rule R315-261.

(56) "Hazardous secondary material generator" means any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of Subsection R315-260-10(c)(58), "generating facility" means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator. For the purposes of Subsections R315-261-2(a)(2)(ii) and R315-261-4(a)(23), a facility that collects hazardous secondary materials from other persons is not the hazardous secondary material generator.

(57) "Hazardous waste constituent" means a constituent that caused the Board to list the hazardous waste in Sections R315-261-30 through 35, or a constituent listed in table 1 of Section R315-261-24.

(58) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

(59) "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(60) "Inactive portion" means that portion of a facility which is not operated after November 19, 1980. See also "active portion" and "closed portion".

(61) "Incinerator" means any enclosed device that:

(i) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(ii) Meets the definition of infrared incinerator or plasma arc incinerator.

(62) "Incompatible waste" means a hazardous waste which is unsuitable for:

(i) Placement in a particular device or facility because it may cause corrosion or decay of containment materials, e.g., container inner liners or tank walls; or

(ii) Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(63) "Individual generation site" means the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(64) "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

(i) Cement kilns;

(ii) Lime kilns;

(iii) Aggregate kilns;

(iv) Phosphate kilns;

(v) Coke ovens;

(vi) Blast furnaces;

(vii) Smelting, melting and refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machine, roasters, and foundry furnaces;

(viii) Titanium dioxide chloride process oxidation reactors;

(ix) Methane reforming furnaces;

(x) Pulping liquor recovery furnaces;

(xi) Combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(xii) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as-generated.

(xiii) Such other devices as the Board may, after notice and comment, add to this list on the basis of one or more of the following factors:

(A) The design and use of the device primarily to accomplish recovery of material products;

(B) The use of the device to burn or reduce raw materials to make a material product;

(C) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;

(D) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;

(E) The use of the device in common industrial practice to produce a material product; and

(F) Other factors, as appropriate.

(65) "Infrared incinerator" means any enclosed device that

uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(66) "Inground tank" means a device meeting the definition of "tank" in Section R315-260-10 whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(67) "Injection well" means a well into which fluids are injected. See also "underground injection".

(68) "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

(69) "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

(70) "Intermediate facility" means any facility that stores hazardous secondary materials for more than 10 days, other than a hazardous secondary material generator or reclaimer of such material.

(71) "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(72) "Lamp," also referred to as "universal waste lamp", is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

(73) "Land-based unit" means an area where hazardous secondary materials are placed in or on the land before recycling. This definition does not include land-based production units.

(74) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(75) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(76) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

(77) "Large quantity generator" is a generator who generates any of the following amounts in a calendar month:

(i) Greater than or equal to 1,000 kilograms (2,200 lbs) of non-acute hazardous waste; or

(ii) Greater than 1 kilogram (2.2 lbs) of acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e); or

(iii) Greater than 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e).

(78) "Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

(79) "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of hazardous waste or accumulated liquid in the secondary containment structure. Such a system shall employ operational controls, e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks, or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of hazardous waste into the secondary containment structure.

(80) "Liner" means a continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents, or leachate.

(81) "Management" or "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(82) "Manifest" is defined in Subsection 19-6-102(14) and is further defined as: the shipping document EPA Form 8700-22, including, if necessary, EPA Form 8700-22A, or the electronic manifest, originated and signed in accordance with the applicable requirements of Rules R315-262 through 265.

(83) "Manifest tracking number" means: The alphanumeric identification number, i.e., a unique three letter suffix preceded by nine numerical digits, which is pre-printed in Item 4 of the Manifest by a registered source.

(84) "Mercury-containing equipment" means a device or part of a device, including thermostats, but excluding batteries and lamps, that contains elemental mercury integral to its function.

(85) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(86) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR 146, containment building, corrective action management unit, unit eligible for a research, development, and demonstration permit under Section R315-270-65, or staging pile.

(87) "Monitoring" means all procedures used to systematically inspect and collect data on operational parameters of the facility or on the quality of the air, ground water, surface water, or soils.

(88) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(89) "New hazardous waste management facility" or "new facility" means a facility which began operation, or for which construction commenced after November 19, 1980. See also "Existing hazardous waste management facility".

(90) "New tank system" or "new tank component" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of Subsections R315-264-193(g)(2) and 40 CFR 265.193(g)(2), which is adopted and incorporated by reference, a new tank system is one for which construction commences after July 14, 1986, or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of R315; except, however, for purposes of 40 CFR 265-193(g)(2), which is adopted and incorporated by reference, and Subsection R315-264-193(g)(2), a new tank system is one which construction commences after July 14, 1986. A non-HSWA new tank system

or non-HSWA new tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1. See also "existing tank system."

(91) "No free liquids, as used in Subsections R315-261-4(a)(26) and R315-261-4(b)(18)", means that solvent-contaminated wipes may not contain free liquids as determined by Method 9095B, Paint Filter Liquids Test, included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, and that there is no free liquid in the container holding the wipes. No free liquids may also be determined using another standard or test method as defined by the Director.

(92) "Non-acute hazardous waste" means all hazardous wastes that are not acute hazardous waste, as defined in Section R315-260-10.

(93) "On ground tank" means a device meeting the definition of "tank" in Section R315-260-10 and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(94) "On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

(95) "Open burning" means the combustion of any material without the following characteristics:

(i) Control of combustion air to maintain adequate temperature for efficient combustion,

(ii) Containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and

(iii) Control of emission of the gaseous combustion products. See also "incineration" and "thermal treatment".

(96) "Operator" means the person responsible for the overall operation of a facility.

(97) "Owner" means the person who owns a facility or part of a facility.

(98) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of Rules R315-264 and 265 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank, including its associated piping and underlying containment systems, landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(99) "Polychlorinated biphenyl, PCB" and "PCBs" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance. PCB and PCBs as contained in PCB items are defined in Section R315-260-10. For any purposes under Rules R315-260 through 266, 268, 270, 273, R315-15, and R315-5-101, inadvertently generated non-Aroclor PCBs are defined as the total PCBs calculated following division of the quantity of monochlorinated biphenyls by 50 and dichlorinated biphenyls by 5.

(100) "PCB Item" means any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.

(101) "Permit" means the plan approval as required by subsection 19-6-108(3)(a), or equivalent control document issued by the Director to implement the requirements of the Utah Solid and Hazardous Waste Act;

(102) "Permittee" is defined in Subsection 19-6-102(18) and includes any person who has received an approval of a hazardous waste operation plan under Section 19-6-108 and Rule R315-262 or a Federal RCRA permit for a treatment, storage, or disposal facility.

(103) "Person" means an individual, trust, firm, joint stock company, Federal Agency, corporation, including a government corporation, partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

(104) "Personnel" or "facility personnel" means all persons who work at, or oversee the operations of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of Rules R315-264 or 265.

(105) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(i) Is a new animal drug under FFDCA section 201(w), or

(ii) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(iii) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by Subsection R315-260-10(c)(105)(i) or (ii).

(106) "Pile" means any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

(107) "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(108) "POHC's" means principle organic hazardous constituents.

(109) "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(110) "Precipitation run-off" means water generated from naturally occurring storm events. If the precipitation run-off has been in contact with a waste defined in Sections R315-261-20 through 24, it qualifies as "precipitation run-off" if the water does not exhibit any of the characteristics identified in Section R315-261-20 through 24. If the precipitation run-off has been in contact with a waste listed in Sections R315-261-30 through 35, then it qualifies as "precipitation run-off" when the water has been excluded under Section R315-260-22. Water containing any leachate does not qualify as "precipitation run-off".

(111) "Publicly owned treatment works" or "POTW" means any device or system used in the treatment, including recycling and reclamation, of municipal sewage or industrial wastes of a liquid nature which is owned by the State or a political subdivision within the State. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(112) "Qualified Ground-Water Scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in ground-water hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgements regarding ground-water monitoring and contaminant fate and transport.

(113) "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. section 6901 et seq.

(114) "Remanufacturing" means processing a higher-value hazardous secondary material in order to manufacture a product that serves a similar functional purpose as the original commercial-grade material. For the purpose of this definition, a hazardous secondary material is considered higher-value if it was generated from the use of a commercial-grade material in a manufacturing process and can be remanufactured into a similar commercial-grade material.

(115) "Remediation waste" means all solid and hazardous wastes, and all media, including ground water, surface water, soils, and sediments, and debris, that are managed for implementing cleanup.

(116) "Remediation waste management site" means a facility where an owner or operator is or will be treating, storing or disposing of hazardous remediation wastes. A remediation waste management site is not a facility that is subject to corrective action under Section R315-264-101, but is subject to corrective action requirements if the site is located in such a facility.

(117)(i) "Replacement unit" means a landfill, surface impoundment, or waste pile unit:

(A) from which all or substantially all of the waste is removed; and

(B) that is subsequently reused to treat, store, or dispose of hazardous waste.

(ii) "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with a closure plan approved by the Director or a corrective action approved by the Director.

(118) "Representative sample" means a sample of a universe or whole, e.g., waste pile, lagoon, ground water, which can be expected to exhibit the average properties of the universe or whole.

(119) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(120) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(121) "Saturated zone" or "zone of saturation" means that part of the earth's crust in which all voids are filled with water.

(122) "Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

(123) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu/lb of sludge treated on a wet-weight basis.

(124) "Small Quantity Generator" is a generator who generates the following amounts in a calendar month:

(i) Greater than 100 kilograms (220 lbs) but less than 1,000 kilograms (2,200 lbs) of non-acute hazardous waste; and

(ii) Less than or equal to 1 kilogram (2.2 lbs) of acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e); and

(iii) Less than or equal to 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e).

(125) "Solid Waste Management Unit" means any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

(126) "Solvent-contaminated wipe" means:

(i) A wipe that, after use or after cleaning up a spill, either:

(A) Contains one or more of the F001 through F005 solvents listed in Section R315-261-31 or the corresponding P- or U- listed solvents found in Section R315-261-33;

(B) Exhibits a hazardous characteristic found in Sections R315-261-20 through 24 when that characteristic results from a solvent listed in Rule R315-261; and/or

(C) Exhibits only the hazardous waste characteristic of ignitability found in Section R315-261-21 due to the presence of one or more solvents that are not listed in Rule R315-261.

(ii) Solvent-contaminated wipes that contain listed hazardous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other than solvents, are not eligible for the exclusions at Subsections R315-261-4(a)(26) and R315-261-4(b)(18).

(127) "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

(128) "Sorb" means to either adsorb or absorb, or both.

(129) A "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(130) "Spill" means the accidental discharging, spilling, leaking, pumping, pouring, emitting, emptying, releasing, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes, into or on any land or water.

(131) "Staging pile" means an accumulation of solid, non-flowing remediation waste, as defined in Section R315-260-10, that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles shall be designated by the Director according to the requirements of Section R315-264-554.

(132) "State" means the state of Utah.

(133) "Storage" is defined in Subsection 19-6-102(20) and includes the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

(134) "Sump" means any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serve to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(135) "Surface impoundment" or "impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials, although it may be lined with man-made materials, which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(136) "Tank" means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials, e.g., wood, concrete, steel, plastic, which provide structural support.

(137) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(138) "TEQ" means toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

(139) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures

as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. See also "incinerator" and "open burning".

(140) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Subsections R315-273-13(c)(2) or R315-273-33(c)(2).

(141) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

(142) "Transfer facility" means any transportation-related facility, including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste or hazardous secondary materials are held during the normal course of transportation.

(143) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body; trailer, railroad freight car, etc.; is a separate transport vehicle.

(144) Transportation" is defined in Subsection 19-6-102(21) and includes the movement of hazardous waste by air, rail, highway, or water.

(145) "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

(146)(i) "Treatability study" means a study in which a hazardous waste is subjected to a treatment process to determine:

(A) Whether the waste is amenable to the treatment process,

(B) what pretreatment, if any, is required,

(C) the optimal process conditions needed to achieve the desired treatment,

(D) the efficiency of a treatment process for a specific waste or wastes, or

(E) the characteristics and volumes of residuals from a particular treatment process.

(ii) Also included in this definition for the purpose of the Subsection R315-261-4 (e) and (f) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

(iii) A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

(147) "Treatment" is defined in Subsection 19-6-102(22) and includes any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(148) "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

(149) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. See also "injection well".

(150) "Underground tank" means a device meeting the definition of "tank" in Section R315-260-10 whose entire surface area is totally below the surface of and covered by the ground.

(151) "Unfit-for use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(152) "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(153) "Universal waste" means any of the following hazardous wastes that are managed under the universal waste requirements of Rule R315-273:

(i) Batteries as described in Section R315-273-2;

(ii) Pesticides as described in Section R315-273-3;

(iii) Mercury-containing equipment as described in Section R315-273-4;

(iv) Lamps as described in Section R315-273-5;

(v) Antifreeze as described in Subsection R315-273-6(a); and

(vi) Aerosol cans as described in Subsection R315-273-6(b).

(154) Universal waste handler

(i) Means:

(A) A generator of universal waste; or

(B) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(ii) Does not mean:

(A) A person who treats, except under the provisions of Subsection R315-273-13(a) or (c), or R315-273-33(a) or (c), disposes of, or recycles universal waste; or

(B) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

(155) "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

(156) "Unsaturated zone" or "zone of aeration" means the zone between the land surface and the water table.

(157) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(158) Used oil is defined in Subsection 19-6-703(19).

(159) "User of the electronic manifest system" means a hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that:

(i) Is required to use a manifest to comply with:

(A) Any federal or state requirement to track the shipment, transportation, and receipt of hazardous waste or other waste material that is shipped from the site of generation to an off-site designated facility for treatment, storage, recycling, or disposal; or

(B) Any federal or state requirement to track the shipment, transportation, and receipt of rejected wastes or regulated container residues that are shipped from a designated facility to an alternative facility, or returned to the generator; and

(ii) Elects to use the system to obtain, complete and transmit an electronic manifest format supplied by the EPA electronic manifest system, or

(iii) Elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest, or data from such a paper copy, in accordance with

Subsections R315-264-71(a)(2)(v) or 40 CFR 265.71(a)(2)(v) which is adopted and incorporated by reference. These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

(160) "Very small quantity generator" is a generator who generates less than or equal to the following amounts in a calendar month:

(i) 100 kilograms (220 lbs) of non-acute hazardous waste; and

(ii) 1 kilogram (2.2 lbs) of acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e); and

(iii) 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e).

(161) "Vessel" includes every description of watercraft, used or capable of being used as a means of transportation on the water.

(162) "Waste management area" means the limit projected in the horizontal plane of the area on which waste will be placed during the active life of a regulated unit. The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit. If the facility contains more than one regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.

(163) "Wastewater treatment unit" means a device which:

(i) Is part of a wastewater treatment facility that is subject to regulation under either section 402 or 307(b) of the Clean Water Act; and

(ii) Receives and treats or stores an influent wastewater that is a hazardous waste as defined in Section R315-261-3, or that generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in Section R315-261-3, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section R315-261-3; and

(iii) Meets the definition of tank or tank system in Section R315-260-10.

(164) "Water, bulk shipment" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

(165) "Well" means any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(166) "Well injection": See "underground injection"

(167) "Wipe" means a woven or non-woven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

(168) "Zone of engineering control" means an area under the control of the owner/operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to ground water or surface water.

R315-260-11. References.

(a) For purposes of Rules R315-260 through 266, 268, 270, and 273, Rule R315-15 and Rule R315-101, the references of 40 CFR 260.11, 2015 ed, as amended by 81 FR 85806, November 28, 2016, are adopted and incorporated by reference.

R315-260-12. Definitions for Rule R315-101.

(a) For purposes of Rule R315-101 regarding cleanup action and Risk-Based Closure Standards, the following terms are defined:

(1) "The concentration term, C" is calculated as the 95% upper confidence limit, UCL, on the arithmetic average for normally distributed data, or as the 95% upper confidence limit on the arithmetic average for lognormally distributed data. For normally distributed data, C = Mean + t x Standard Deviation/$n^{1/2}$, where n is the number of observations, and t is Student's t distribution (at the 95% one-sided confidence level and n-1 degrees of freedom), tables of which are printed in most introductory statistics textbooks. For lognormally distributed data, C = exp (Mean of lognormal-transformed data + 0.5 x Variance of lognormal-transformed data + Standard Deviation of lognormal-transformed data x H/$(n - 1)^{1/2}$), where n is the number of observations, and H is Land's H statistic (at the 95% one-sided confidence level), tables of which are printed in advanced statistics books. For data which are not normally nor lognormally distributed, appropriate statistics, such as nonparametric confidence limits, shall be applied.

(2) "Area of contamination" means a hazardous waste management unit or an area where a release has occurred. The boundary is defined as the furthest extent where contamination from a defined source has migrated in any medium at the time the release is first identified.

(3) "Contaminate" means to render a medium polluted through the introduction of hazardous waste or hazardous constituents as identified in R315-261, Appendix VIII.

(4) "Hazard index" means the sum of more than one hazard quotient for multiple substances, multiple exposure pathways, or both. The Hazard Index is calculated separately for chronic, subchronic, and shorter duration exposures.

(5) "Hazard quotient" means the ratio of a single substance exposure level over a specified time period, e.g. subchronic, to a reference dose for that substance derived from a similar exposure period.

(6) "Risk-based closure" means closure of a site where hazardous waste was managed or any medium has been contaminated by a release of hazardous waste or hazardous constituents, and where hazardous waste or hazardous constituents remain at the site in any medium at concentrations determined, under Rule R315-101, to cause minimal levels of risk to human health and the environment so as to require no further action or monitoring on the part of the responsible party nor any notice of hazardous waste management on the deed to the property.

(7) "Reasonable maximum exposure (RME)" means the highest exposure that is reasonably expected to occur at a site. The goal of RME is to combine upper-bound and mid-range exposure factors so that the result represents an exposure scenario that is both protective and reasonable; not the worst possible case.

(8) "Release" means spill or discharge of hazardous waste, hazardous constituents, or material that becomes hazardous waste when released to the environment.

(9) "Responsible party" means the owner or operator of a facility, or any other person responsible for the release of hazardous waste or hazardous constituents.

(10) "Site" means the area of contamination and any other area that could be impacted by the released contaminants, or could influence the migration of those contaminants, regardless of whether the site is owned by the responsible party.

R315-260-19. Variances Authorized.

(a) Variances shall be granted by the Board only to the extent allowed under State and Federal law.

(b) The Board may consider a variance request in accordance with the standard established in section 19-6-111.

(c) The Board may, at its own instance, review any variance granted during the term for which a variance was granted.

(d) A person applying for a variance shall submit the application, in writing, to the Director. The application shall provide the following:

(1) Citation of the statutory, regulatory, or permit requirement from which the variance is sought;

(2) For variances for which the Board promulgates or has promulgated specific rules, information meeting the requirements of those rules;

(3) Information demonstrating that application of or compliance with the requirement would cause undue or unreasonable hardship on the person applying for the variance;

(4) Proposed alternative requirements, if any;

(5) Information demonstrating that the variance will achieve the purpose and intent of the statutory, regulatory, or permit provision from which the variance is sought;

(6) Information demonstrating that any alternative requirement or requirements will adequately protect human health and the environment; and

(7) If no alternative requirement is proposed, information demonstrating that if the variance is granted, human health and the environment will be adequately protected.

(e) A person applying for a variance shall provide such additional information as the Board or the Director requires.

(f) Nothing in Subsection R315-260-19(d) or (e) limits the authority of the Board to grant variances in accordance with the standard established in Section 19-6-111. A person applying for a variance under Section R315-263-32 shall provide such information described in Subsection R315-260-19(d) as the Director determines.

R315-260-20. Petition to Amend Rules.

(a) It is the intent of the Board to insure the compatibility and equivalency of Rules R315-260 through 266, 268, 270, 273 and 124 with the regulations promulgated by EPA under the Resource Conservation and Recovery Act of 1976.

(b) Any person may petition the Board to modify or revoke any provision in Rules R315-260 through 266, 268, 270, 273, Rule R315-15 Rule R315-101, R315-102, and R315-124. A petition shall be considered under the procedures outlined in Section 63G-3-601 and Rule R15-2.

R315-260-21. Petitions for Equivalent Testing or Analytical Methods.

(a) Any person seeking to add a testing or analytical method to Rules R315-261, R315-264, or R315-265 may petition for a regulatory amendment under Section R315-260-21 and Section R315-260-20. To be successful, the person shall demonstrate to the satisfaction of the Board that the proposed method is equal to or superior to the corresponding method prescribed in Rules R315-261, R315-264, or R315-265, in terms of its sensitivity, accuracy, and precision, i.e., reproducibility.

(b) Each petition shall include, in addition to the information required by Section R315-260-20:

(1) A full description of the proposed method, including all procedural steps and equipment used in the method;

(2) A description of the types of wastes or waste matrices for which the proposed method may be used;

(3) Comparative results obtained from using the proposed method with those obtained from using the relevant or corresponding methods prescribed in Rules R315-261, R315-264, or R315-265;

(4) An assessment of any factors which may interfere with, or limit the use of, the proposed method; and

(5) A description of the quality control procedures necessary to ensure the sensitivity, accuracy and precision of the proposed method.

(c) After receiving a petition for an equivalent method, the Board may request any additional information on the proposed method which the Board may reasonably require to evaluate the method.

(d) If the Board amends the rules to permit use of a new testing method, the method shall be incorporated by reference in Section R315-260-11.

(e) Petitioner may, alternatively, proceed under the provisions of 40 CFR 260.21 to have an alternative analytical method approved by EPA. In the event approval is granted, the petitioner shall so notify the Board and the Director and the decision of EPA shall be binding upon the Board and the Director.

R315-260-22. Petitions to Amend Rule to Exclude a Waste Produced at a Particular Facility.

(a) Any person seeking to exclude a waste at a particular generating facility from the lists in Sections R315-261-30 through 35 may petition for a regulatory amendment under Section R315-260-22 and Section R315-260-20. To be successful:

(1) The petitioner shall demonstrate to the satisfaction of the Board that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous or an acutely hazardous waste; and

(2) Based on a complete application, the Board shall determine, where it has a reasonable basis to believe that factors, including additional constituents, other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of Sections 261-20 through 24.

(b) The procedures in Sections R315-260-22 and R315-260-20 may also be used to petition the Board for a regulatory amendment to exclude from Subsections R315-261-3(a)(2)(ii) or (c), a waste which is described in Subsections R315-261-3(a)(2)(ii) or (c) and is either a waste listed Sections R315-261-30 through 35 or is derived from a waste listed in Sections R315-261-30 through 35. This exclusion may only be issued for a particular generating, storage, treatment, or disposal facility. The petitioner shall make the same demonstration as required by Subsection R315-260-22(a). Where the waste is a mixture of solid waste and one or more listed hazardous wastes or is derived from one or more hazardous wastes, his demonstration shall be made with respect to the waste mixture as a whole; analyses shall be conducted for not only those constituents for which the listed waste contained in the mixture was listed as hazardous, but also for factors, including additional constituents, that could cause the waste mixture to be a hazardous waste. A waste which is so excluded may still be a hazardous waste by operation of Sections R315-261-20 through 24.

(c) If the waste is listed with codes "I", "C", "R", or "E", in Sections R315-261-30 through 35,

(1) The petitioner shall show that the waste does not exhibit the relevant characteristic for which the waste was listed as defined in Sections R315-261-21 through 24 using any applicable methods prescribed therein. The petitioner also shall show that the waste does not exhibit any of the other characteristics defined in Sections R315-261-21 through 24 using any applicable methods prescribed therein;

(2) Based on a complete application, the Board shall determine, where it has a reasonable basis to believe that factors, including additional constituents, other than those for which the waste was listed could cause the waste to be hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of Sections R315-261-20 through 24.

(d) If the waste is listed with code "T" in Sections R315-2611-30 through 35,

(1) The petitioner shall demonstrate that the waste:

(i) Does not contain the constituent or constituents, as defined in appendix VII of Rule R315-261, that caused the waste to be listed; or

(ii) Although containing one or more of the hazardous

constituents, as defined in appendix VII of Rule R315-261, that caused the waste to be listed, does not meet the criterion of Subsection R315-261-11(a)(3) when considering the factors in Subsections R315-261-11(a)(3)(i) through (xi) under which the waste was listed as hazardous; and

(2) Based on a complete application, the Board shall determine, where it has a reasonable basis to believe that factors, including additional constituents, other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

(3) The petitioner shall demonstrate that the waste does not exhibit any of the characteristics defined in Sections R315-261.21 Through 24 using any applicable methods prescribed therein;

(4) A waste which is so excluded, however, still may be a hazardous waste by operation of Sections R315-261-20 through 24.

(e) If the waste is listed with the code "H" in Sections R315-261-30 through 35,

(1) The petitioner shall demonstrate that the waste does not meet the criterion of Subsection R315-261-11(a)(2); and

(2) Based on a complete application, the Board shall determine, where it has a reasonable basis to believe that additional factors, including additional constituents, other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

(3) The petitioner shall demonstrate that the waste does not exhibit any of the characteristics defined in Sections R315-261-21 through 24 using any applicable methods prescribed therein;

(4) A waste which is so excluded, however, still may be a hazardous waste by operation of Sections R315-261-20 through 24.

(f) Reserved.

(g) Reserved.

(h) Demonstration samples shall consist of enough representative samples, but in no case less than four samples, taken over a period of time sufficient to represent the variability or the uniformity of the waste.

(i) Each petition shall include, in addition to the information required by subsection R315-260-20(b):

(1) The name and address of the laboratory facility performing the sampling or tests of the waste;

(2) The names and qualifications of the persons sampling and testing the waste;

(3) The dates of sampling and testing;

(4) The location of the generating facility;

(5) A description of the manufacturing processes or other operations and feed materials producing the waste and an assessment of whether such processes, operations, or feed materials can or might produce a waste that is not covered by the demonstration;

(6) A description of the waste and an estimate of the average and maximum monthly and annual quantities of waste covered by the demonstration;

(7) Pertinent data on and discussion of the factors delineated in the respective criterion for listing a hazardous waste, where the demonstration is based on the factors in Subsection R315-261-11(a)(3);

(8) A description of the methodologies and equipment used to obtain the representative samples;

(9) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization and preservation of the samples;

(10) A description of the tests performed, including results;

(11) The names and model numbers of the instruments used in performing the tests; and

(12) The following statement signed by the generator of the waste or his authorized representative:

(i) I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration 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.

(j) After receiving a petition for an exclusion, the Board may request any additional information which the Board may reasonably require to evaluate the petition.

(k) An exclusion will only apply to the waste generated at the individual facility covered by the demonstration and will not apply to waste from any other facility.

(l) The Board may exclude only part of the waste for which the demonstration is submitted where it has reason to believe that variability of the waste justifies a partial exclusion.

(m) Petitioner may, alternatively, proceed under the provisions of 40 CFR 260.22 to have a particular waste delisted by EPA. In the event delisting is granted, the petitioner shall so notify the Board and the Director and the decision of EPA will be binding upon the Board and the Director unless, within 30 days after such notification, the Board specifically overrules the decision of EPA. In such event, the petitioner may petition the Board directly under Section R315-260-22 for the relief sought.

R315-260-23. Petitions to Amend Rule R315-273 to Include Additional Hazardous Wastes.

(a) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of Rule R315-273 may petition for a regulatory amendment under Section R315-260-23 Section R315-260-20, and Sections R315-273-80 and 81.

(b) To be successful, the petitioner shall demonstrate to the satisfaction of the Board that regulation under the universal waste regulations of Rule R315-273: Is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition shall include the information required by Subsection R315-260-20(b). The petition should also address as many of the factors listed in Section R315-273-81 as are appropriate for the waste or category of waste addressed in the petition.

(c) The Board shall grant or deny a petition using the factors listed in Section R315-273-81. The decision shall be based on the weight of evidence showing that regulation under Rule R315-273 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

(d) The Board may request additional information needed to evaluate the merits of the petition.

R315-260-30. Non-Waste Determinations and Exclusion from Classification as a Solid Waste.

In accordance with the standards and criteria in Sections R315-260-31 and 34 and the procedures in Section R315-260-33, the Director may determine on a case-by-case basis that the following recycled materials are not solid wastes:

(a) Materials that are accumulated speculatively without sufficient amounts being recycled, as defined in Subsection R315-261-1(c)(8);

(b) Materials that are reclaimed and then reused within the original production process in which they were generated;

(c) Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered;

(d) Hazardous secondary materials that are reclaimed in a

continuous industrial process; and

(e) Hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate.

R315-260-31. Standards and Criteria for Exclusion from Classification as a Solid Waste.

(a) The Director may grant requests for exclusion from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If exclusion is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The Director's decision will be based on the following criteria:

(1) The manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur, for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling;

(2) The reason that the applicant has accumulated the material for one or more years without recycling 75 percent of the volume accumulated at the beginning of the year;

(3) The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

(4) The extent to which the material is handled to minimize loss; and

(5) Other relevant factors.

(b) The Director may grant requests for exclusion from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

(1) How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

(2) The extent to which the material is handled before reclamation to minimize loss;

(3) The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

(4) The location of the reclamation operation in relation to the production process;

(5) Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

(6) Whether the person who generates the material also reclaims it; and

(7) Other relevant factors.

(c) The Director may grant requests for exclusion from classifying as a solid waste those hazardous secondary materials that have been partially reclaimed, but must be reclaimed further before recovery is completed, if the partial reclamation has produced a commodity-like material. A determination that a partially-reclaimed material for which the change in classification is sought is commodity-like will be based on whether the hazardous secondary material is legitimately recycled as specified in Section R315-260-43 and on whether all of the following decision criteria are satisfied:

(1) Whether the degree of partial reclamation the material has undergone is substantial as demonstrated by using a partial reclamation process other than the process that generated the hazardous waste;

(2) Whether the partially reclaimed material has sufficient economic value that it will be purchased for further reclamation;

(3) Whether the partially-reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials which is used in subsequent production steps;

(4) Whether there is a market for the partially-reclaimed material as demonstrated by known customer(s) who are further reclaiming the material, e.g., records of sales and/or contracts and evidence of subsequent use, such as bills of lading; and

(5) Whether the partially-reclaimed material is handled to minimize loss.

R315-260-32. Reclassification as a Boiler.

In accordance with the standards and criteria in the definition of a boiler found in Section R315-260-10, and the procedures in Section R315-260-33, the Board may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in Subsection R315-260-10, after considering the following criteria:

(a) The extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(b) The extent to which the combustion chamber and energy recovery equipment are of integral design; and

(c) The efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(d) The extent to which exported energy is utilized; and

(e) The extent to which the device is in common and customary use as a "boiler" functioning primarily to produce steam, heated fluids, or heated gases; and

(f) Other factors, as appropriate.

R315-260-33. Procedures for Exclusion from Classification as a Solid Waste, for Reclassification as a Boiler, or for Non-waste Determinations.

The Director shall use the following procedures in evaluating applications for exclusion from classification as a solid waste, applications to classify particular enclosed controlled flame combustion devices as boilers, or applications for non-waste determinations.

(a) The applicant shall apply to the Director for the exclusion, reclassification, or non-waste determination. The application shall address the relevant criteria contained in Sections R315-260-31, 32, or 34, as applicable.

(b) The Director shall evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision shall be provided by newspaper advertisement or radio broadcast in the locality where the facility requesting the exclusion, reclassification, or non-waste determination is located. The Director shall accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at the Director's discretion. The Director shall issue a final decision after receipt of comments and after the hearing, if any.

(c) In the event of a change in circumstances that affect how a hazardous secondary material meets the relevant criteria contained in Sections R315-260-31 or 34 upon which a exclusion determination or non-waste determination has been based, the applicant shall send a description of the change in circumstances to the Director. The Director may issue a determination that the hazardous secondary material continues to meet the relevant criteria of the exclusion determination or non-waste determination or may require the facility to re-apply for the exclusion determination or non-waste determination.

(d) Exclusion determinations and non-waste determinations shall be effective for a fixed term not to exceed ten years. No later than six months prior to the end of this term, facilities shall re-apply for a exclusion determination or non-

waste determination. If a facility re-applies for a exclusion determination or non-waste determination within six months, the facility may continue to operate under an expired exclusion determination or non-waste determination until receiving a decision on their re-application from the Director.

(e) Facilities receiving a exclusion determination or non-waste determination shall provide notification as required by Section R315-260-42.

R315-260-34. Standards and Criteria for Non-Waste Determinations.

(a) An applicant may apply to the Director for a formal determination that a hazardous secondary material is not discarded and therefore not a solid waste. The determinations will be based on the criteria contained in Subsections R315-260-34(b) or (c), as applicable. If an application is denied, the hazardous secondary material might still be eligible for a solid waste variance or exclusion.

(b) The Director may grant a non-waste determination for hazardous secondary material which is reclaimed in a continuous industrial process if the applicant demonstrates that the hazardous secondary material is a part of the production process and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in Section R315-260-43 and on the following criteria:

(1) The extent that the management of the hazardous secondary material is part of the continuous primary production process and is not waste treatment;

(2) Whether the capacity of the production process would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned, for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements;

(3) Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and

(4) Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under Sections R315-261-2 or 4.

(c) The Director may grant a non-waste determination for hazardous secondary material which is indistinguishable in all relevant aspects from a product or intermediate if the applicant demonstrates that the hazardous secondary material is comparable to a product or intermediate and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in Section R315-260-43 and on the following criteria:

(1) Whether market participants treat the hazardous secondary material as a product or intermediate rather than a waste, for example, based on the current positive value of the hazardous secondary material, stability of demand, or any contractual arrangements;

(2) Whether the chemical and physical identity of the hazardous secondary material is comparable to commercial products or intermediates;

(3) Whether the capacity of the market would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned, for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements;

(4) Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and

(5) Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under Sections R315-261-2 or 4.

R315-260-40. Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis.

(a) The Director may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in Subsection R315-261-6(a)(2)(iii) should be regulated under Subsection R315-261-6(b) and (c). The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision, the Director shall consider the following factors:

(1) The types of materials accumulated or stored and the amounts accumulated or stored;

(2) The method of accumulation or storage;

(3) The length of time the materials have been accumulated or stored before being reclaimed;

(4) Whether any contaminants are being released into the environment, or are likely to be so released; and

(5) Other relevant factors.

(2) The procedures for this decision are set forth in R315-260-41.

R315-260-41. Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities.

The Director shall use the following procedures when determining whether to regulate hazardous waste recycling activities described in Subsection R315-261-6(a)(2)(iii) under the provisions of Subsection R315-261-6(b) and (c), rather than under the provisions of Section R315-266-70.

(a) If a generator is accumulating the waste, the Director shall issue a notice setting forth the factual basis for the decision and stating that the person shall comply with the applicable requirements of Sections R315-262-10 through 12, R315-262-30 through 34, R315-262-40 through 44, and R315-262-50 through 58. The notice shall become final within 30 days, unless a request for agency action is made under the requirements of the Administrative Procedures Act.

(b) If the person is accumulating the recyclable material as a storage facility, the notice will state that the person shall obtain a permit in accordance with all applicable provisions of Rule R315-270 and 124. The owner or operator of the facility shall apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the Director's decision, he may do so in in accordance with the Administrative Procedures Act.

R315-260-42. Notification Requirement for Hazardous Secondary Materials.

(a) Facilities managing hazardous secondary materials under Section R315-260-30, or Subsections R315-261-4(a)(23), (24), (25), or (27) shall send a notification prior to operating under the regulatory provision and by March 1 of each even numbered year thereafter to the Director using EPA Form 8700-12 that includes the following information:

(1) The name, address, and EPA ID number, if applicable, of the facility;

(2) The name and telephone number of a contact person;

(3) The NAICS code of the facility;

(4) The regulation under which the hazardous secondary materials shall be managed;

(5) For reclaimers and intermediate facilities managing hazardous secondary materials in accordance with Subsections R315-261-4(a)(24) or (25), whether the reclaimer or intermediate facility has financial assurance (not applicable for persons managing hazardous secondary materials generated and reclaimed under the control of the generator);

(6) When the facility began or expects to begin managing the hazardous secondary materials in accordance with the regulation;

(7) A list of hazardous secondary materials that shall be managed according to the regulation, reported as the EPA hazardous waste numbers that would apply if the hazardous secondary materials were managed as hazardous wastes;

(8) For each hazardous secondary material, whether the hazardous secondary material, or any portion thereof, will be managed in a land-based unit;

(9) The quantity of each hazardous secondary material to be managed annually; and

(10) The certification, included in EPA Form 8700-12, signed and dated by an authorized representative of the facility.

(b) If a facility managing hazardous secondary materials has submitted a notification, but then subsequently stops managing hazardous secondary materials in accordance with the regulation(s) listed above, the facility shall notify the Director within thirty days using EPA Form 8700-12. For purposes of Section R315-260-42, a facility has stopped managing hazardous secondary materials if the facility no longer generates, manages and/or reclaims hazardous secondary materials under the regulation(s) above and does not expect to manage any amount of hazardous secondary materials for at least 1 year.

R315-260-43. Legitimate Recycling of Hazardous Secondary Materials.

(a) Recycling of hazardous secondary materials for the purpose of the exclusions or exemptions from the hazardous waste regulations shall be legitimate. Hazardous secondary material that is not legitimately recycled is discarded material and is a solid waste. In determining if their recycling is legitimate, persons shall address all the requirements of Subsections R315-260-43(a)(1) through (3) and shall consider the requirements of Subsection R315-260-43(b).

(1) Legitimate recycling shall involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process. The hazardous secondary material provides a useful contribution if it:

(i) Contributes valuable ingredients to a product or intermediate; or

(ii) Replaces a catalyst or carrier in the recycling process; or

(iii) Is the source of a valuable constituent recovered in the recycling process; or

(iv) Is recovered or regenerated by the recycling process; or

(v) Is used as an effective substitute for a commercial product.

(2) The recycling process shall produce a valuable product or intermediate. The product or intermediate is valuable if it is:

(i) Sold to a third party; or

(ii) Used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.

(3) The generator and the recycler shall manage the hazardous secondary material as a valuable commodity when it is under their control. Where there is an analogous raw material, the hazardous secondary material shall be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material, the hazardous secondary material shall be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.

(b) The following factor shall be considered in making a determination as to the overall legitimacy of a specific recycling activity.

(1) The product of the recycling process does not:

(i) Contain significant concentrations of any hazardous constituents found in Section R315-261-1092 that are not found in analogous products; or

(ii) Contain concentrations of hazardous constituents found in Section R315-261-1092 at levels that are significantly elevated from those found in analogous products, or

(iii) Exhibit a hazardous characteristic, as defined in Subsections R315-261-20 through 24, that analogous products do not exhibit.

(2) In making a determination that a hazardous secondary material is legitimately recycled, persons shall evaluate all factors and consider legitimacy as a whole. If, after careful evaluation of these considerations, the factor in this paragraph is not met, then this fact may be an indication that the material is not legitimately recycled. However, the factor in this paragraph does not have to be met for the recycling to be considered legitimate. In evaluating the extent to which this factor is met and in determining whether a process that does not meet this factor is still legitimate, persons can consider exposure from toxics in the product, the bioavailability of the toxics in the product and other relevant considerations.

KEY: hazardous waste
September 14, 2018 **19-1-301**
19-6-105
19-6-106

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 establish special management requirements for hazardous waste produced by very small quantity generators and hazardous waste which is recycled.

(2) Sections R315-261-10 and 11 set forth the criteria used to identify characteristics of hazardous waste and to list particular hazardous wastes.

(3) Sections R315-261-20 through 24 identify characteristics of hazardous waste.

(4) Sections R315-261-30 through 35 list particular hazardous wastes.

(b)(1) The definition of solid waste contained in this rule applies only to wastes that also are hazardous for purposes of the rules implementing Title 19 Chapter 6. For example, it does not apply to materials such as non-hazardous scrap, paper, textiles, or rubber that are not otherwise hazardous wastes and that are recycled.

(2) Rule R315-261 identifies only some of the materials which are solid wastes and hazardous wastes under the Utah Solid and Hazardous Waste Act. A material which is not defined as a solid waste in Rule R315-261, or is not a hazardous waste identified or listed in Rule R315-261, is still a solid waste and a hazardous waste for purposes of these sections if:

(i) In the case of section 19-6-109, the Director has reason to believe that the material may be a solid waste within the meaning of Subsection 19-6-102(13) and a hazardous waste within the meaning of Subsection 19-6-102(7) or

(ii) In the case of section 19-6-115, the material is presenting an imminent and substantial danger to human health or the environment.

(c) For the purposes of Sections R315-261-2 and 261-6:

(1) A "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing;

(2) "Sludge" has the same meaning used in Section R315-260-10;

(3) A "by-product" is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a co-product that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(4) A material is "reclaimed" if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents. In addition, for purposes of Subsections R315-261-4(a)(23), and (24) smelting, melting and refining furnaces are considered to be solely engaged in metals reclamation if the metal recovery from the hazardous secondary materials meets the same requirements as those specified for metals recovery from hazardous waste found in Subsection R315-266-100(d)(1) through (3), and if the residuals meet the requirements specified in Section R315-266-112.

(5) A material is "used or reused" if it is either:

(i) Employed as an ingredient, including use as an intermediate, in an industrial process to make a product, for example, distillation bottoms from one process used as feedstock in another process. However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products, as when metals are recovered from metal-containing secondary materials; or

(ii) Employed in a particular function or application as an effective substitute for a commercial product, for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment.

(6) "Scrap metal" is bits and pieces of metal parts; for example bars, turnings, rods, sheets, or wire; or metal pieces that may be combined together with bolts or soldering; for example radiators, scrap automobiles, or railroad box cars; which when worn or superfluous can be recycled.

(7) A material is "recycled" if it is used, reused, or reclaimed.

(8) A material is "accumulated speculatively" if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that during the calendar year, commencing on January 1, the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. Materials shall be placed in a storage unit with a label indicating the first date that the material began to be accumulated. If placing a label on the storage unit is not practicable, the accumulation period shall be documented through an inventory log or other appropriate method. In calculating the percentage of turnover, the 75 percent requirement is to be applied to each material of the same type, e.g., slags from a single smelting process, that is recycled in the same way, i.e., from which the same material is recovered or that is used in the same way. Materials accumulating in units that would be exempt from regulation under Subsection R315-261-4(c) are not to be included in making the calculation. Materials that are already defined as solid wastes also are not to be included in making the calculation. Materials are no longer in this category once they are removed from accumulation for recycling, however.

(9) "Excluded scrap metal" is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.

(10) "Processed scrap metal" is scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type, i.e., sorted, and, fines, drosses and related materials which have been agglomerated. Note: shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled Subsection R315-261-4(a)(14).

(11) "Home scrap metal" is scrap metal as generated by steel mills, foundries, and refineries such as turnings, cuttings, punchings, and borings.

(12) "Prompt scrap metal" is scrap metal as generated by the metal working/fabrication industries and includes such scrap metal as turnings, cuttings, punchings, and borings. Prompt scrap is also known as industrial or new scrap metal.

R315-261-2. 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 except as provided in 261-4-(a)(17) 261-4(a)(23) 261-4(a)(24) or 261-4(a)(27)	Speculative 261-2(c)(3) 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 provided it is not accumulated speculatively as defined in Subsection R315-261-1(c).

(8) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion, such as occurs in boilers, industrial furnaces, or incinerators;

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(9)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in Subsections R315-261-4(a)(9)(i) and (ii), so long as they meet all of the following conditions:

(A) The wood preserving wastewaters and spent wood preserving solutions are reused on-site at water borne plants in the production process for their original intended purpose;

(B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both;

(C) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in 40 CFR 265.440 through 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 three factors in Subsection R315-260-43(a) and how the factor in Subsection R315-260-43(b) was considered. 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 another person 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) Prior to arranging for transport of hazardous secondary materials to a reclamation facility (or facilities) where the management of the hazardous secondary materials is not addressed under a hazardous waste part B permit or interim status standards, the hazardous secondary material generator shall make reasonable efforts to ensure that each reclaimer intends to properly and legitimately reclaim the hazardous secondary material and not discard it, and that each reclaimer will manage the hazardous secondary material in a manner that is protective of human health and the environment. If the hazardous secondary material will be passing through an intermediate facility where the management of the hazardous secondary materials is not addressed under a hazardous waste part B permit or interim status standards, 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, and the hazardous secondary material generator shall perform reasonable efforts to ensure that the intermediate facility will manage the hazardous secondary material in a manner that is protective of human health and the environment. Reasonable efforts shall be repeated at a minimum of every three years for the hazardous secondary material generator to claim the exclusion and to send the hazardous secondary materials to each reclaimer and any intermediate facility. In making these reasonable efforts, the generator may use any credible evidence available, including information gathered by the hazardous secondary material generator, provided by the reclaimer or intermediate facility, and/or provided by a third party. The hazardous secondary material generator shall affirmatively answer all of the following questions for each reclamation facility and any intermediate facility:

(I) Does the available information indicate that the reclamation process is legitimate pursuant to Section R315-260-43? In answering this question, the hazardous secondary material generator can rely on their existing knowledge of the physical and chemical properties of the hazardous secondary material, as well as information from other sources including the reclamation facility and audit reports about the reclamation process.

(II) Does the publicly available information indicate that the reclamation facility and any intermediate facility that is used by the hazardous secondary material generator notified the appropriate authorities of hazardous secondary materials reclamation activities pursuant to Section R315-260-42 and have they notified the appropriate authorities that the financial assurance condition is satisfied per Subsection R315-261-4(a)(24)(vi)(F)? In answering these questions, the hazardous secondary material generator can rely on the available information documenting the reclamation facility's and any intermediate facility's compliance with the notification requirements per Section R315-260-42, including the requirement in Subsection R315-260-42(a)(5) to notify the Director whether the reclaimer or intermediate facility has financial assurance.

(III) Does publicly available information indicate that the reclamation facility or any intermediate facility that is used by the hazardous secondary material generator has not had any formal enforcement actions taken against the facility in the previous three years for violations of Sections R315-260 through 268, 270, and 273 and has not been classified as a significant non-complier with Sections R315-260 through 268, 270, and 273? In answering this question, the hazardous secondary material generator can rely on the publicly available information from EPA or the state. If the reclamation facility or any intermediate facility that is used by the hazardous secondary material generator has had a formal enforcement action taken against the facility in the previous three years for violations of Sections R315-260 through 268, 270, and 273 and has been classified as a significant non-complier with Sections R315-260 through 268, 270, and 273, does the hazardous secondary material generator have credible evidence that the facilities will manage the hazardous secondary materials properly? In answering this question, the hazardous secondary material generator can obtain additional information from EPA, the state, or the facility itself that the facility has addressed the violations, taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to the proper management of the hazardous secondary materials.

(IV) Does the available information indicate that the reclamation facility and any intermediate facility that is used by the hazardous secondary material generator have the equipment and trained personnel to safely recycle the hazardous secondary material? In answering this question, the generator may rely on a description by the reclamation facility or by an independent third party of the equipment and trained personnel to be used to recycle the generator's hazardous secondary material.

(V) If residuals are generated from the reclamation of the excluded hazardous secondary materials, does the reclamation facility have the permits required (if any) to manage the residuals? If not, does the reclamation facility have a contract with an appropriately permitted facility to dispose of the residuals? If not, does the hazardous secondary material generator have credible evidence that the residuals will be managed in a manner that is protective of human health and the environment? In answering these questions, the hazardous secondary material generator can rely on publicly available

information from EPA or the state, or information provided by the facility itself.

(C) The hazardous secondary material generator shall maintain for a minimum of three years documentation and certification that reasonable efforts were made for each reclamation facility and, if applicable, intermediate facility where the management of the hazardous secondary materials is not addressed under a hazardous waste part B permit or interim status standards prior to transferring hazardous secondary material. Documentation and certification shall be made available upon request by the Director within 72 hours, or within a longer period of time as specified by the Director. The certification statement shall:

(I) Include the printed name and official title of an authorized representative of the hazardous secondary material generator company, the authorized representative's signature, and the date signed;

(II) Incorporate the following language: "I hereby certify in good faith and to the best of my knowledge that, prior to arranging for transport of excluded hazardous secondary materials to (insert name(s) of reclamation facility and any intermediate facility), reasonable efforts were made in accordance with Subsection R315-261-4(a)(24)(v)(B) to ensure that the hazardous secondary materials would be recycled legitimately, and otherwise managed in a manner that is protective of human health and the environment, and that such efforts were based on current and accurate information."

(D) 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.

(E) 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;

(F) 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,

(vii) In addition, all persons claiming the exclusion under Subsection R315-261-4(a)(24) provide notification as required under Section R315-260-42.

(25) Hazardous secondary material that is exported from the United States and reclaimed at a reclamation facility located in a foreign country is not a solid waste, provided that the hazardous secondary material generator complies with the applicable requirements of Subsection R315-261-4(a)(24)(i)-(v), excepting Subsection R315-261-4(a)(24)(v)(B)(2) for foreign reclaimers and foreign intermediate facilities, and that the hazardous secondary material generator also complies with the following requirements:

(i) Notify EPA of an intended export before the hazardous secondary material is scheduled to leave the United States. A complete notification shall be submitted at least 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 hazardous secondary material generator, and include the following information:

(A) Name, mailing address, telephone number and EPA ID number, if applicable, of the hazardous secondary material generator;

(B) A description of the hazardous secondary material and the EPA hazardous waste number that would apply if the hazardous secondary material was managed as hazardous waste and the U.S. DOT proper shipping name, hazard class and ID number, UN/NA, for each hazardous secondary material as identified in 49 CFR parts 171 through 177;

(C) The estimated frequency or rate at which the

hazardous secondary material is to be exported and the period of time over which the hazardous secondary material is to be exported;

(D) The estimated total quantity of hazardous secondary material;

(E) All points of entry to and departure from each foreign country through which the hazardous secondary material will pass;

(F) A description of the means by which each shipment of the hazardous secondary material will be transported, for example mode of transportation vehicle including air, highway, rail and water, and types of containers including drums, boxes and tanks;

(G) A description of the manner in which the hazardous secondary material will be reclaimed in the country of import;

(H) The name and address of the reclaimer, any intermediate facility and any alternate reclaimer and intermediate facilities; and

(I) The name of any countries of transit through which the hazardous secondary material will be sent and a description of the approximate length of time it will remain in such countries and the nature of its handling while there, for purposes of this section, the terms "EPA Acknowledgement of Consent", "country of import" and "country of transit" are used as defined in 40 CFR 262.81 with the exception that the terms in Section R315-261-4 refer to hazardous secondary materials, rather than hazardous waste:

(ii) Notifications shall be submitted electronically using EPA's Waste Import Export Tracking System, WIETS, or its successor system.

(iii) Except for changes to the telephone number in Subsection R315-261-4(a)(25)(i)(A) and decreases in the quantity of hazardous secondary material indicated pursuant to Subsection R315-261-4(a)(25)(i)(D), when the conditions specified on the original notification change, including any exceedance of the estimate of the quantity of hazardous secondary material specified in the original notification, the hazardous secondary material generator shall provide EPA with a written renotification of the change. The shipment cannot take place until consent of the country of import to the changes, except for changes to Subsection R315-261-4(a)(25)(i)(I) and in the ports of entry to and departure from countries of transit pursuant to Subsection R315-261-4(a)(25)(i)(E), has been obtained and the hazardous secondary material generator receives from EPA an EPA Acknowledgment of Consent reflecting the country of import's consent to the changes.

(iv) Upon request by EPA, the hazardous secondary material generator shall furnish to EPA any additional information which a country of import requests in order to respond to a notification.

(v) EPA will provide a complete notification to the country of import and any countries of transit. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of Subsection R315-261-4(a)(25)(i). Where a claim of confidentiality is asserted with respect to any notification information required by Subsection R315-261-4(a)(25)(i), EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(vi) The export of hazardous secondary material under Subsection R315-261-4(a)(25) is prohibited unless the country of import consents to the intended export. When the country of import consents in writing to the receipt of the hazardous secondary material, EPA will send an EPA Acknowledgment of Consent to the hazardous secondary material generator. Where the country of import objects to receipt of the hazardous secondary material or withdraws a prior consent, EPA will notify the hazardous secondary material generator in writing. EPA will also notify the hazardous secondary material generator of any responses from countries of transit.

(vii) For exports to OECD Member countries, the receiving country may respond to the notification using tacit consent. If no objection has been lodged by any country of import or countries of transit to a notification provided pursuant to Subsection R315-261-4(a)(25)(i) within thirty days after the date of issuance of the acknowledgement of receipt of notification by the competent authority of the country of import, the transboundary movement may commence. In such cases, EPA will send an EPA Acknowledgment of Consent to inform the hazardous secondary material generator that the country of import and any relevant countries of transit have not objected to the shipment, and are thus presumed to have consented tacitly. Tacit consent expires one calendar year after the close of the thirty day period; renotification and renewal of all consents is required for exports after that date.

(viii) A copy of the EPA Acknowledgment of Consent shall accompany the shipment. The shipment shall conform to the terms of the EPA Acknowledgment of Consent.

(ix) If a shipment cannot be delivered for any reason to the reclaimer, intermediate facility or the alternate reclaimer or alternate intermediate facility, the hazardous secondary material generator shall re-notify EPA of a change in the conditions of the original notification to allow shipment to a new reclaimer in accordance with Subsection R315-261-4(a)(25)(iii) and obtain another EPA Acknowledgment of Consent.

(x) Hazardous secondary material generators shall keep a copy of each notification of intent to export and each EPA Acknowledgment of Consent for a period of three years following receipt of the EPA Acknowledgment of Consent. They may satisfy this recordkeeping requirement by retaining electronically submitted notifications or electronically generated Acknowledgements in their account on EPA's Waste Import Export Tracking System, WIETS, or its successor system, provided that such copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No hazardous secondary material generator may be held liable for the inability to produce a notification or Acknowledgement for inspection under Subsection R315-261-4(a)(25) if they can demonstrate that the inability to produce such copies are due exclusively to technical difficulty with EPA's Waste Import Export Tracking System, WIETS, or its successor system for which the hazardous secondary material generator bears no responsibility.

(xi) Hazardous secondary material generators shall file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency and ultimate destination of all hazardous secondary materials exported during the previous calendar year. Annual reports shall be submitted electronically using EPA's Waste Import Export Tracking System, WIETS, or its successor system. Such reports shall include the following information:

(A) Name, mailing and site address, and EPA ID number, if applicable, of the hazardous secondary material generator;

(B) The calendar year covered by the report;

(C) The name and site address of each reclaimer and intermediate facility;

(D) By reclaimer and intermediate facility, for each hazardous secondary material exported, a description of the hazardous secondary material and the EPA hazardous waste number that would apply if the hazardous secondary material was managed as hazardous waste, the DOT hazard class, the name and U.S. EPA ID number, where applicable, for each transporter used, the total amount of hazardous secondary material shipped and the number of shipments pursuant to each notification;

(E) A certification signed by the hazardous secondary material generator which states: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and

that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."

(xii) All persons claiming an exclusion under Subsection R315-261-4(a)(25) shall provide notification as required by Section R315-260-42.

(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.

R315-261-6. Requirements for Recyclable Materials.

(a)(1) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of Subsections R315-261-6(b) and (c), except for the materials listed in Subsections R315-261-6(a)(2) and (a)(3). Hazardous wastes that are recycled shall be known as "recyclable materials."

(2) The following recyclable materials are not subject to the requirements of Section R315-261-6 but are regulated under Sections R315-266-20 through 23, Section R315-266-70, Section R315-266-80, Sections R315-266-100 through 112, Sections R315-266-200 through 206, and Sections R315-266-210, 220, 225, 230,235, 240, 245, 250, 255, 260, 310, 315, 320, 325, 330, 335, 340, 345,350, 355, and 360 and all applicable provisions in Rules R315-268, 270 and 124.

(i) Recyclable materials used in a manner constituting disposal, Sections R315-266-20 through 23;

(ii) Hazardous wastes burned, as defined in Subsection R315-266-100(a), in boilers and industrial furnaces that are not regulated under Sections R315-264-340 through 345, 347 and 351; Sections R315-370, 373, 375, 377, and 381 through 383; and Section R315-266-100 through 112;

(iii) Recyclable materials from which precious metals are reclaimed, Section R315-266-70;

(iv) Spent lead-acid batteries that are being reclaimed, Section R315-266-80.

(3) The following recyclable materials are not subject to regulation under Rules R315-262 through 268, 270 and 124, and are not subject to the notification requirements of section 3010 of RCRA:

(i) Industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in Section R315-262-58:

(A) A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, shall comply with the requirements applicable to a primary exporter in Section R315-262-53, Subsections R315-262-56(a)(1) through (4), (6), and (b), and Section R315-262-57, export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in Sections R315-262-50 through 58, and provide a copy of the EPA Acknowledgment of Consent to the shipment to the transporter transporting the shipment for export;

(B) Transporters transporting a shipment for export may not accept a shipment if he knows the shipment does not conform to the EPA Acknowledgment of Consent, shall ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment and shall ensure that it is delivered to the facility designated by the person initiating the shipment.

(ii) Scrap metal that is not excluded under Subsection R315-261-4(a)(13);

(iii) Fuels produced from the refining of oil-bearing hazardous waste along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices, this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under Subsection R315-261-4(a)(12);

(iv)(A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under Subsection R315-15-1.2(c) and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under Subsection R315-15-1.2(c); and

(C) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under Subsection R315-15-1.2(c).

(4) Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of Rules R315-260 through 268, but is regulated under Rule R315-15. Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose, including the purpose for which the oil was originally used. Such term includes, but is not limited to, oil which is re-refined, reclaimed, burned for energy recovery, or reprocessed.

(5) Hazardous waste that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD), as defined in Subsection R315-262-58(a)(1), for purpose of recovery is subject to the requirements of Sections R315-262-80 through 87 and 89, if it is subject to either the manifesting requirements of Rule R315-262, to the universal waste management standards of Rule R315-273.

(b) Generators and transporters of recyclable materials are subject to the applicable requirements of Rules R315-262 and 263 and the notification requirements under section 3010 of RCRA, except as provided in Subsection R315-261-6(a).

(c)(1) Owners and operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of Rules R315-264 and 265, and under Rules R315-266, 268, 270 and 124 and the notification requirements under section 3010 of RCRA, except as provided in Subsection R315-261-6(a). The recycling process itself is exempt from regulation except as provided in Subsection R315-261-6(d).

(2) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in R315-261-6(a):

(i) Notification requirements under section 3010 of RCRA;

(ii) 40 CFR 265.71 and 72, which are adopted by reference; dealing with the use of the manifest and manifest discrepancies;

(iii) Subsection R315-261-6(d); and

(iv) Section R315-265-75, addressing biennial reporting requirements.

(d) Owners or operators of facilities subject to permitting requirements under Section 19-6-108 with hazardous waste management units that recycle hazardous wastes are subject to the requirements of Sections R315-264-1030 through 1036; and Sections R315-264-1050 through 1065; 40 CFR 265.1030 through 1035, which are adopted and incorporated by reference; or 40 CFR 265.1050 through 1064.

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 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	(T)
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	(H)

	reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol, or of intermediates used to produce its derivatives	
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 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	(T)
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 from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides (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 apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate. (T)

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 (T)

	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	
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 refining	(T)
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). 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. 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(d), 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, 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 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 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 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 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 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 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 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 has knowledge that a spill has reached surface water, the generator or an intermediate or reclamation facility shall immediately notify the National Response Center, using their 24-hour toll free number 800/424-8802 and follow the requirements Section R315-263-33. 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 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 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 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 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 R315-261-410(f).

(4) The plan shall list names, addresses, and phone numbers, office and home, of all persons qualified to act as emergency coordinator, see Subsection R315-261-420(e), and this list shall be kept up-to-date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they shall assume responsibility as alternates.

(5) The plan shall include a list of all emergency equipment at the facility, such as fire extinguishing systems, spill control equipment, communications and alarm systems, internal and external, and decontamination equipment, where this equipment is required. This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(6) The plan shall include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes, in cases where the primary routes could be blocked by releases of hazardous waste or fires.

(c) Copies of contingency plan. A copy of the contingency plan and all revisions to the plan shall be:

(1) Maintained at the facility; and

(2) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

(d) Amendment of contingency plan. The contingency plan shall be reviewed, and immediately amended, if necessary, whenever:

(1) Applicable regulations are revised;

(2) The plan fails in an emergency;

(3) The facility changes-in its design, construction, operation, maintenance, or other circumstances-in a way that materially increases the potential for fires, explosions, or releases of hazardous secondary material or hazardous secondary material constituents, or changes the response necessary in an emergency;

(4) The list of emergency coordinators changes; or

(5) The list of emergency equipment changes.

(e) Emergency coordinator. At all times, there shall be at least one employee either on the facility premises or on call, i.e., available to respond to an emergency by reaching the facility within a short period of time, with the responsibility for coordinating all emergency response measures. This emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of hazardous secondary material handled, the location of all records within the facility, and the facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan. The emergency coordinator's responsibilities are more fully spelled out in Subsection R315-261-420(f). Applicable responsibilities for the emergency coordinator vary,

depending on factors such as type and variety of hazardous secondary material(s) handled by the facility, and type and complexity of the facility.

(f) Emergency procedures.

(1) Whenever there is an imminent or actual emergency situation, the emergency coordinator, or his designee when the emergency coordinator is on call, shall immediately:

(i) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(ii) Notify appropriate State or local agencies with designated response roles if their help is needed.

(2) Whenever there is a release, fire, or explosion, the emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any released materials. The emergency coordinator may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.

(3) Concurrently, the emergency coordinator shall assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment shall consider both direct and indirect effects of the release, fire, or explosion, e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions.

(4) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he shall report his findings as follows:

(i) If his assessment indicates that evacuation of local areas may be advisable, the emergency coordinator shall immediately notify appropriate local authorities. The emergency coordinator shall be available to help appropriate officials decide whether local areas should be evacuated; and

(ii) The emergency coordinator shall immediately notify the Utah Department of Environmental Quality 24 hour answering service at 801/536-4123, and the National Response Center, using their 24-hour toll free number 800/424-8802. The report shall include:

(A) Name and telephone number of reporter;

(B) Name and address of facility;

(C) Time and type of incident, e.g., release, fire;

(D) Name and quantity of material(s) involved, to the extent known;

(E) The extent of injuries, if any; and

(F) The possible hazards to human health, or the environment, outside the facility.

(5) During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous secondary material at the facility. These measures shall include, where applicable, stopping processes and operations, collecting and containing released material, and removing or isolating containers.

(6) If the facility stops operations in response to a fire, explosion or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(7) Immediately after an emergency, the emergency coordinator shall provide for treating, storing, or disposing of recovered secondary material, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility. Unless the hazardous secondary material generator can demonstrate, in accordance with Subsections R315-261-3(c) or (d), that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of Rules R315-262, 263, and 265.

(8) The emergency coordinator shall ensure that, in the affected area(s) of the facility:

(i) No secondary material that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

(ii) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(9) The hazardous secondary material generator shall note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he shall submit a written report on the incident to the Director. The report shall include:

(i) Name, address, and telephone number of the hazardous secondary material generator;

(ii) Name, address, and telephone number of the facility;

(iii) Date, time, and type of incident, e.g., fire, explosion;

(iv) Name and quantity of material(s) involved;

(v) The extent of injuries, if any;

(vi) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(vii) Estimated quantity and disposition of recovered material that resulted from the incident.

(g) Personnel training. All employees must be thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies.

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
September 14, 2018 **19-6-105**
19-6-106

R392. Health, Disease Control and Prevention, Environmental Services.
R392-301. Recreational Vehicle Park Sanitation.
R392-301-1. Authority and Purpose.

(1) This rule is authorized under Sections 26-1-5, 26-1-30(9), 26-1-30(23), 26-7-1, and 26-15-2.

(2) This rule establishes minimum standards for the sanitation, operation, and maintenance of a recreational vehicle park, as defined by this rule, and provides for the prevention and control of health hazards associated with a recreational vehicle park that are likely to affect individuals dwelling temporarily therein including risk factors contributing to injury, sickness, death, and disability.

R392-301-2. Applicability.

This rule applies to any person who owns or operates a recreational vehicle park, unless specifically exempted by this rule. This rule applies to the repair, maintenance, use, operation, and occupancy of recreational vehicle parks designed, intended for use, or otherwise used for temporary human habitation.

R392-301-3. Definitions.

For the purposes of this rule, the following terms, phrases, and words shall have the meanings herein expressed:

(1) "Building Code" means International Building Code as incorporated and amended in Title 15A, State Construction and Fire Codes Act.

(2) "Dependent recreational vehicle" means a recreational vehicle that is dependent upon a service building for toilet facilities, hand washing facilities, or shower or bathing facilities, and is not designed for connection to water, sewer, or electrical utilities.

(3) "Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that can cause infection, disease transmission, vermin infestation, or hazardous condition that requires immediate correction or cessation of operation to prevent injury, illness, or death.

(4) "Independent recreational vehicle" means a recreational vehicle equipped with electrical appliances, a water-flush toilet, and a sink and bath or shower which, to be functional, may require connection to outside electrical, water, and sewer utilities.

(5) "Local health officer" means the health officer of the local health department having jurisdiction, or a designated representative.

(6) "Operator" means a person responsible for managing or operating a recreational vehicle park.

(7) "Plumbing Code" means International Plumbing Code as incorporated and amended in Title 15A, State Construction and Fire Codes Act.

(8) "Recreational vehicle" means a vehicular unit, other than a mobile home or tiny house, designed as a temporary dwelling for travel, recreational and vacation use, which is either driven or is mounted on or pulled by another vehicle, including: travel trailer, camp trailer, fifth-wheel trailer, folding tent trailer, truck camper, or motorhome.

(9) "Recreational vehicle park" or "RV park" means any site, tract or parcel of land on which facilities have been developed to provide temporary living quarters for two or more recreational vehicles. Such a park may be developed or owned by a private, public or non-profit organization catering to the public or restricted to the organizational or institutional members and their guests only.

(10) "Sanitary dump station" means a facility designed:

(a) in accordance with requirements set by Plumbing Code and the Utah Department of Environmental Quality, Division of Water Quality;

(b) to receive the discharge of wastewater from any holding tank or similar device installed in any recreational vehicle; and

(c) to discharge the contents, in an acceptable manner, to an approved wastewater disposal or treatment system.

(11) "Service building" means a structure within a recreational vehicle park that contains toilet, hand sink, and bathing facilities. It may also include laundry facilities, a vending area, or other service type facilities for RV park occupant use.

(12) "Tiny house", for the purposes of this rule, means a dwelling that is 400 square feet or less in floor area, constructed on a chassis with wheels. A tiny house is not a park model recreational vehicle as defined in 41-1a-101 or any other recreational vehicle type as defined in this rule.

(13) "Wastewater" means discharges from all plumbing facilities including rest rooms, kitchen, and laundry fixtures either separately or in combination.

R392-301-4. General.

(1)(a) This rule does not require a construction change in any portion of a RV park if the park was in compliance with the law in effect at the time the park was constructed, except as in Subsection R392-301-4(1)(b).

(b) The local health officer may require construction changes if it is determined the RV park or portion thereof contains an imminent health hazard.

(2) The operator shall carry out the provisions of this rule.

(3) Severability - If any provision of this rule or its application to any person or circumstance is declared invalid, the application of such provision to other persons or circumstances, and the remainder of this rule, shall not be affected thereby.

(4) The operator shall comply with all applicable building, zoning, electrical, health, fire codes and all local ordinances.

(5) The operator shall provide the local health officer with contact information for a park representative who can be available to communicate with the local health officer during all days and times that the RV park is occupied in the event of an imminent health hazard or emergency.

(6) A recreational vehicle park operator or agent shall select or construct a location for the facility that will provide adequate surface drainage. The operator shall make a reasonable effort to locate the facility away from any known existing public health nuisance.

(7) When an operator accommodates dependent recreational vehicles or tents, the operator shall construct and maintain a service building according to the requirements of Section R392-301-7.

(8) A recreational vehicle or a tiny house may be allowed in a RV Park only when:

(a) a data plate or permanent label is attached to the structure that includes:

(i) name of the manufacturer;

(ii) serial number or vehicle identification number (VIN) of the unit;

(iii) date of manufacture; and

(iv) a statement that the unit is designed and manufactured to NFPA 1192 or ANSI A119.5 standards; and when

(b) it has been certified by the Recreational Vehicle Industry Association; or

(c) it has been inspected by a qualified third-party inspection company and certified to be in compliance with the standards in NFPA 1192 or ANSI A119.5.

(9) An electrical installation in a RV park shall comply with Utah Code Title 15A.

R392-301-5. Water Supply.

(1) Potable water supply systems for use by recreational vehicle park occupants shall be designed, installed, and operated according to the requirements set forth by:

(a) Plumbing Code;

(b) The Utah Department of Environmental Quality, Division of Drinking Water under Title R309; and

(c) Local health department regulations.

(2) The operator shall provide potable water to each site designed and intended for recreational vehicle use.

(a) This provision may be modified with approval by the local health officer if a service building is provided as in Subsection R392-301-4(7).

(b) Where individual water connections are not provided to sites, common-use water faucets shall be accessible to RV park occupants, and located not more than 300 feet from any site. A threaded spigot is prohibited on any such common-use water faucet providing potable water to a site.

(c) The operator shall design and construct the area immediately around a common-use water faucet (i.e. spigot) to promote surface drainage by using a constructed drain system such as a gravel pit, subsurface drywell, French drain, or seepage trench. The operator shall prevent water in this area from flowing into traffic areas and surface waters, or from pooling, standing, or becoming stagnant. This requirement does not apply to water connections in individual sites.

(d) The operator shall protect water systems against the hazards of cross-connection, backflow, and interior surface contamination of attached hoses.

(3) In any recreational vehicle park or portion thereof where it is not feasible to pipe potable water into the area, an alternate supply of potable water may be permitted upon approval of the local health officer.

R392-301-6. Wastewater.

(1) All wastewater shall be discharged to a public sanitary sewer system whenever practicable.

(a) Sewer systems for use by recreational vehicle park occupants shall be designed, installed, and operated according to the requirements set forth by:

(i) Plumbing Code;

(ii) The Utah Department of Environmental Quality, Division of Water Quality under Title R317;

(iii) local health department regulations; and

(iv) the local sewer district having jurisdiction.

(b) Where connection to a public sewer is not available, wastewater shall be discharged into an approved wastewater disposal system meeting the requirements of Title R317, Environmental Quality, Water Quality, and local health department regulations.

(c) The operator shall submit all required plans for the construction or alteration of a wastewater disposal system in accordance with Title R317 prior to commencing construction or alteration.

(2) The operator shall provide a sanitary dump station unless all sites are connected to an approved sewer system. Unless a local health officer approves other means, the operator shall design and construct the sanitary dump station to include the following:

(a) Easy ingress and egress from a service road for recreational vehicles and located not less than 50 feet from any site;

(b) The sewage inlet surrounded by a curbed concrete apron or trough of at least three feet by three feet, sloped to the inlet, and provided with a suitable hinged cover milled to fit tight;

(c) A means for flushing with pressurized water the immediate area and the recreational vehicle wastewater holding tank(s).

(3) If the operator makes sewer service available to each designated site designed and intended to accommodate independent recreational vehicles, the operator shall design, install, operate, and maintain individual connections to the sewer system according to the requirements set by:

(a) Plumbing Code;

(b) the Utah Department of Environmental Quality, Division of Water Quality;

(c) local health department regulations; and

(d) local sewer district having jurisdiction.

(4) When the operator makes sewer service available to an individual site, that sewer connection is not subject to the requirements of Subsection R392-301-6(2).

(5) The operator shall provide tight-fitting covers for all sewer risers.

(6) A trap is prohibited between the sewer riser and sewer lateral.

(7) The connection and connecting line between the recreational vehicle drain outlet and the sewer riser shall be watertight and self-draining.

(8) The rim of the sewer riser shall extend not more than 4 inches above adjacent ground surface elevations. Surface drainage shall be directed away from the sewer riser.

(9) The operator shall prohibit dependent recreational vehicles and tents in a recreational vehicle park unless effective means are provided to collect and contain dishwashing, bathing or other liquid waste material and to properly dispose of these wastes by means approved by the local health officer.

(10) If the operator provides laundering facilities, the equipment shall discharge wastewater as required in Subsection R392-301-6(1).

R392-301-7. Service Building.

(1) All structures used in a recreational vehicle park shall be of permanent construction, meeting the requirements of Building Code.

(2) Each recreational vehicle park in which sites are set aside for dependent recreational vehicles or tents, as in R392-301-4(7), shall be provided with a service building or buildings for the use of park occupants.

(3) Service buildings shall meet the following requirements:

(a) Except as provided in Subsection R392-301-7(3)(b)(i), separate toilet rooms within the service building shall be provided for each sex. These rooms shall be distinctly marked "for men" and "for women" by signs printed in English, or marked with easily understood pictures or symbols.

(b) Each service building shall have one toilet, one hand sink, and one bath fixture for each sex for each 15 sites set aside in Subsection R392-301-4(7), or fraction thereof.

(i) Where a toilet room will be occupied by no more than one person at a time, can be locked from the inside, and contains at least one toilet, separate toilet rooms for each sex need not be provided.

(c) A service building shall be located not less than 15 feet and not more than 500 feet from any site designated for dependent recreational vehicles.

(d) A service building shall be provided with adequate light, heat and ventilation.

(e) A service building shall be properly maintained clean and shall be constructed of smooth, moisture resistant finish materials to withstand frequent washing and cleaning.

(4) The operator shall maintain each service building in a clean and sanitary condition.

(5) Clean individual disposable towels shall be provided near handwashing sinks. Alternate hand drying methods approved by the local health officer may be substituted for individual disposable towels.

(6) The operator shall provide soap and waste receptacles with lids in each service building.

(7) For each toilet room within a service building, the operator shall provide:

(a) toilet tissue in suitable dispensers; and

(b) at least one solid, easily cleanable, covered waste receptacle for the collection of solid waste; or

(c) at least one solid, easily cleanable, uncovered waste receptacle and a sanitary napkin receptacle.

R392-301-8. Operation and Maintenance.

(1) The operator shall maintain all buildings, rooms, and equipment, including furnishings and equipment in RV park areas, and the grounds surrounding them in a clean and operable condition, free of litter and debris.

(2) Where electric power is available, service buildings shall be equipped with outside lighting to indicate the location and entrance doorways of each.

(3) Where necessary, all reasonable means shall be employed to eliminate or control infestations of vermin, vectors, or pests within all parts of a RV park. This shall include approved screening or other approved control of outside openings in structures intended for occupancy.

(4) The operator shall maintain interior roads and parking areas in a manner that prevents harborage for vermin.

R392-301-9. Food Service.

When food service is provided for RV park occupants, food service, storage, and preparation shall comply with the FDA Model Food Code as incorporated and amended in Rule R392-100 and local health department regulations.

R392-301-10. Solid Wastes.

(1) The operator shall provide adequate containers to prevent the accumulation of solid waste in the RV park.

(2) Solid waste generated at a RV park or picnic area shall be stored in a leak-proof, non-absorbent container, which shall be kept covered with a tight-fitting lid.

(3) All solid wastes shall be disposed with sufficient frequency and in such a manner as to prevent insect breeding, rodent harborage, or a public health nuisance.

R392-301-11. Swimming Pools.

The operator shall comply with Rule R392-302, Design, Construction, and Operation of Public Pools as well as other local health department regulations for all pools or spas made available to RV park occupants or staff.

R392-301-12. Inspections and Investigations.

(1)(a) Upon presenting proper identification, the operator shall permit the local health officer to enter upon the premises of a recreational vehicle park to perform inspections, investigations, reviews, and other actions as necessary to ensure compliance with Rule R392-301.

(b) The local health officer may not enter an occupied recreational vehicle without the express permission of the occupant except when a warrant is issued to a duly authorized public safety officer which authorizes the local health officer to enter, or when the operator and the local health officer determine that there exists an imminent risk to the life, health, or safety of the occupant.

R392-301-13. Closing or Restricting Use of Recreational Vehicle Parks or Sites.

(1) If a local health officer deems a recreational vehicle park, site, space, or portion thereof to be an imminent health hazard, the park, site, or space may be closed or its use may be restricted, as determined by the local health officer.

(2) The operator shall restrict public access to the impacted area of any recreational vehicle park, site, or space closed or restricted to use by a local health officer within a reasonable time as ordered by the local health officer.

(3) It shall be unlawful for an operator to allow the public to utilize any recreational vehicle park, unit, space, or portion thereof that has been deemed unfit for use until written approval of the local health officer is given.

KEY: public health, recreation areas, RV parks, recreational vehicles

September 10, 2018	**26-1-5**
Notice of Continuation November 8, 2016	**26-1-30(9)**
	26-1-30(23)
	26-7-1
	26-15-2

R392. Health, Disease Control and Prevention, Environmental Services.
R392-501. Temporary Labor Community Sanitation.
R392-501-1. Authority and Purpose.

(1) This rule is authorized under Sections 26-1-5, 26-1-30(9), 26-1-30(23), 26-7-1, and 26-15-2.

(2) This rule establishes minimum standards for the sanitation, operation, and maintenance of a temporary labor community, as defined by this rule, and provides for the prevention and control of health hazards associated with a temporary labor community that are likely to affect individuals dwelling temporarily therein including risk factors contributing to injury, sickness, death, and disability.

R392-501-2. Applicability.

This rule applies to any person who owns or operates a temporary labor community in Utah, unless specifically exempted. This rule applies to the repair, maintenance, use, operation, and occupancy of temporary labor communities designed, intended for use, or otherwise used for temporary human habitation in Utah. This rule does not apply to recreational camping, recreational vehicle parks, or manufactured home communities.

R392-501-3. Definitions.

For the purposes of this rule, the following terms, phrases, and words shall have the meanings herein expressed:

(1) "Building Code" means International Building Code as incorporated and amended in Title 15A, State Construction and Fire Codes Act.

(2) "Housing unit" means living quarters, including housing accommodations, rooming houses, dormitories and manufactured homes, maintained directly or indirectly in connection with any work of or place where work is being performed by seasonal or temporary workers whether or not rent is paid or reserved for use or occupancy. The term includes the facilities necessary to or associated with the buildings; and any area or site set aside and provided for camping of seasonal or temporary workers. The term does not include buildings reserved exclusively for the personal use of the landowner or employer, including the primary residence, which may also serve as housing for family members and friends of the family.

(3) "Local health department" has the same meaning as provided in Section 26A-1-102(5).

(4) "Local health officer" means the health officer of the local health department having jurisdiction, or designated representative.

(5) "Manufactured home" means a factory assembled structure or structures equipped with the necessary service connections and made so as to be readily movable as a unit or units on its own running gear and designed to be used as a dwelling unit without a permanent foundation. A modular home transported on wheels to its foundation is not a manufactured home.

(6) "Nuisance" means a condition or hazard, or the source thereof, which may be deleterious or detrimental to the health, safety, or welfare of the public.

(7) "Operator" means a person with ownership or overall responsibility for managing or operating a labor community.

(8) "Pest" means a noxious, destructive, or troublesome organism whether plant or animal, when found in and around places of human occupancy, habitation, or use that threatens the health or well-being of the public.

(9) "Plumbing Code" means International Plumbing Code as incorporated and amended in Title 15A, State Construction and Fire Codes Act.

(10) "Plumbing fixture" means a receptacle or device that is connected to the water supply system of the premises; or discharges wastewater, liquid-borne waste materials, or sewage to the drainage system of the premises.

(11) "Premises" means any lot, parcel, or plot of land, including any buildings or structure.

(12) "Sanitary" means the condition of being free from infective, physically hurtful, diseased, poisonous, unwholesome, or otherwise unhealthful substances and being completely free from vermin, vectors, and pests and from the traces of either, and free of harborage for vermin, vectors, or pests.

(13) "Service building" means a structure located within a labor community that contains toilet, hand sink, bathing, laundry, or recreational facilities.

(14) "Temporary labor community" or "Labor community" means one or more buildings, structures, tents or related facilities together with surrounding grounds designed, constructed, or used or intended for use as living quarters or housing facilities to temporarily accommodate groups such as seasonal migrant laborers or construction, exploration, mining, or demolition workers, etc.

(15) "Toilet fixture", as defined in this rule, means:

(a) a water flush toilet that discharges to a public sanitary sewer system or an approved onsite wastewater disposal system;

(b) a privy seat in a vault privy; or

(c) a chemical toilet in a portable restroom.

(16) "Vault privy" - means a toilet facility wherein the waste is deposited without flushing into a permanently-installed, watertight vault or receptacle. Vault wastes is periodically removed and disposed of in accordance with Rule R317-560.

(17) "Vector" means any organism such as an insect or rodent that transmits a pathogen that can adversely affect public health.

(18) "Vermin" means rats, mice, cockroaches, bedbugs, flies, or any other pest or vector as determined by the local health officer to be harmful to the life, health, or welfare of the public.

(19) "Wastewater" means discharges from all plumbing facilities including, rest rooms, kitchen, and laundry fixtures either separately or in combination.

R392-501-4. General.

(1) This rule does not require a construction change in any portion of a labor community if the community was in compliance with the law in effect at the time the community was constructed, except as in R392-501-4(1)(a).

(a) The local health officer may require construction changes if it is determined the labor community or portion thereof is dangerous, unsafe, unsanitary, a nuisance or menace to life, health, or property.

(2) Severability - If any provision of this code, or its application to any person or circumstance is declared invalid, the application of such provision to other person or circumstances, and the remainder of this code, shall not be affected thereby.

(3) The operator shall carry out the provisions of this rule.

(4) The operator shall comply with all applicable building, zoning, electrical, health, fire codes and all local ordinances.

(5)(a) An operator shall select or construct a location for the labor community that will provide adequate surface drainage.

(b) All sites used for labor communities shall be adequately drained. They shall not be subject to areas of periodic flooding, nor located within 200 feet of swamps, pools, sink holes, or other surface collections of water unless such stagnant water surfaces are subjected to continued mosquito control measures.

(c) The labor community shall be located so the drainage from and through the community will not endanger any domestic or public water supply.

(d) All sites shall be graded, ditched, and rendered free from depressions in which water may become a nuisance.

(e) The operator shall make a reasonable effort to locate the labor community away from any known existing public health nuisance.

(6) For a labor community employing and housing ten or more individuals, the operator shall be on duty within the community premises or on call at all times that the labor community is occupied or shall designate a manager or attendant to do so.

(7) No labor community shall be operated for longer than one year without approval of the local health officer.

(8) In labor communities where dormitory type housing facilities are provided or where any occupied housing unit is not equipped with operable plumbing fixtures, the operator shall construct and maintain a service building according to the requirements of Section R392-501-11.

R392-501-5. Housing Requirements.

(1) Housing for workers and their families shall be limited to one of the following:

(a) a building used exclusively for the purpose of human habitation;

(b) a fully-partitioned room in a building used for purposes other than human habitation, provided that persons may not be housed in buildings used for the shelter of livestock;

(c) a manufactured home approved by the local health officer; or

(d) a dormitory or sleeping room shared by workers, which shall be separate for each sex.

(2) Every housing foundation, exterior and interior wall, floor, ceiling, roof, gutter, leader and downspout, stairway, door and appurtenances thereto shall be

(a) constructed in accordance with Building Code; and

(b) maintained in sound condition and in good repair.

(3) The floors of habitable rooms, hallways, corridors, toilet rooms, laundries, pantries and storage areas shall meet the following requirements:

(a) Wooden floors shall be elevated a minimum of 12 inches above ground level at all points;

(b) Every toilet room, shower room, laundry room, and kitchen wall and ceiling surface shall be constructed and maintained reasonably impervious to water;

(c) Floor to wall junctures shall be coved and sealed in toilet rooms, shower rooms, laundry rooms, and kitchens;

(d) Floor surfaces within two feet of the toilet or urinal shall be smooth, non-absorbent, and easily cleanable;

(e) Floor drains shall be provided in all showers, baths, shower rooms, and laundry rooms; and

(f) Minimum ceiling height, usable space, and habitable room size shall be constructed in compliance with Building Code.

(4)(a) Every habitable room shall be provided with windows that are weathertight, operable and in good repair and shall be openable except where the operator has supplied an operable mechanical ventilation device.

(b) Properly fitted screens of at least 16 mesh shall be provided for every openable window.

(5)(a) Exterior doors shall be weathertight and in sound operating condition.

(b) If the doorway is used for ventilation, a tight fitting screen door with a self-closing device shall be provided.

(6) Interior spaces intended for human occupancy shall be provided with active or passive space heating systems capable of maintaining an indoor temperature of not less than 68 degrees F at a point three feet above the floor.

(a) Space heating systems are not required for interior spaces that are only inhabited during the summer months.

(7)(a) The operator shall provide water heating equipment capable of heating water to a minimum temperature of 110 degrees F, and shall maintain such in proper operating condition.

(b) The operator shall supply hot water to kitchens, hand sinks, showers, tubs and laundry fixtures.

(8) Unvented or unventable heaters employing a flame are prohibited.

R392-501-6. Sleeping Room Contents.

(1) The operator shall provide each occupant of the labor community with:

(a) a bed and mattress with an impermeable mattress cover; or

(b) a cot.

(2) Each provided bed or cot shall be maintained in a sanitary condition and in good repair.

(3) The operator shall ensure that mattresses, mattress covers, quilts, blankets, pillows, pillowcases, sheets, bedcovers, and other bedding are kept clean and in good repair.

(4) Beds or cots shall be elevated at least 12 inches from the floor.

(5) In open bay type sleeping areas containing four or more beds, the operator shall separate beds by a horizontal distance of at least five feet, reducible to three feet if beds are alternated head to foot, except in the case of double stacked bunks, which shall have a minimum horizontal separation of six feet under all circumstances. If partitions are utilized to preclude face-to-face exposure between beds, spacing requirements may be modified to a minimum separation distance of three feet between adjacent beds upon approval of the local health officer.

(6) Triple deck bunks are prohibited.

(7) The operator shall provide each labor community occupant with suitable storage facilities in the sleeping room area. The following are acceptable:

(a) lockers or closets;

(b) three feet of rod and shelving; or

(c) a dresser or equivalent storage space.

R392-501-7. Water Supply.

(1)(a) The operator shall ensure that the labor community and each service building provided with plumbing fixtures is supplied with adequate and convenient potable water for drinking, cooking, washing of foods, washing of cooking or eating utensils, washing of food preparation or processing areas, hand washing, and bathing.

(b) A water supply shall be capable of delivering a minimum of 35 gallons per person per day.

(c) Water outlets shall be distributed throughout the community in such a manner that no housing unit is more than 100 feet from a water faucet (i.e. spigot) if water is not piped directly to the housing unit.

(2) Potable water supply systems for use by labor community occupants shall be designed, installed, and operated according to the requirements set forth by:

(a) Plumbing Code;

(b) The Utah Department of Environmental Quality, Division of Drinking Water under Title R309; and

(c) local health department regulations.

(3) If a labor community experiences or will experience a disruption of potable water or sewer service for more than four hours, for any reason:

(a) The operator shall notify the local health officer within one hour of becoming aware of the service disruption, and;

(b) The operator shall have a backup water supply plan, which shall:

(i) provide for two liters of water per day per person for drinking, and;

(ii) include a strategy for either relocating laborers or providing the following services, as approved by the local health officer:

(A) an alternative source of potable water; and
(B) an alternative process for the disposal of human waste.
(4) Outlets for non-potable water, such as water for industrial or firefighting purposes, shall be posted or otherwise marked in a manner that will indicate clearly that the water is unsafe and is not to be used for any purpose detailed in Subsection R392-501-5(1)(a)
(5) In labor communities as described in Subsection R392-501-4(8), one drinking fountain shall be provided for each 100 occupants or fraction thereof, except as in R392-501-7(6).
(a) Drinking fountains shall be equipped with a pressure regulating valve and shall be maintained in a sanitary manner.
(6) If the provision of a drinking fountain is impractical as determined by a local health officer, the operator shall provide:
(a) commercially bottled water; or
(b) an adequate supply of single service drinking cups to be used in conjunction with a drinking water dispenser as follows:
(i) Common drinking cups are prohibited.
(ii) Suitable waste containers shall be provided for discarded single service drinking cups.
(iii) Drinking water dispensers shall be:
(A) filled only with potable drinking water;
(B) designed, constructed, and serviced so that sanitary conditions are maintained;
(C) capable of being closed;
(D) equipped with a tap; and
(E) clearly marked as to the nature of its contents and not used for any other purpose.
(iv) Open containers such as barrels, pails, or tanks for drinking water from which the water must be dipped or poured, are prohibited, whether or not they are fitted with a removable cover.
(7) The operator may be required to sample water systems operated on a seasonal basis for bacteriologic analysis, as determined by the local health officer.

R392-501-8. Wastewater Disposal Requirements.
(1) The operator shall make sewer service available to a labor community.
(2) Sewer systems for use by community occupants shall be designed, installed, and operated according to the requirements set forth by:
(a) Plumbing Code;
(b) The Utah Department of Environmental Quality, Division of Water Quality under Title R317;
(c) local health department regulations; and
(d) the local sewer district having jurisdiction.
(3) All wastewater shall be discharged to a public sanitary sewer system whenever practicable.
(4) Where connection to a public sanitary sewer is not practicable, wastewater shall be discharged to:
(a) an approved onsite wastewater disposal system;
(b) a permitted holding tank; or
(c) a vault privy which shall be located, constructed, and maintained according to the requirements of Rule R317-560 and local health department regulation in such a manner that:
(i) users do not contact waste matter deposited;
(ii) access to the privy interior or vault is minimized for flies, insects, rats, and other animals;
(iii) surface or ground water cannot enter the vault, either as runoff or as flood water;
(iv) the waste material in the vault privy cannot contaminate a water supply, stream, or body of water; and
(v) odors are minimized both inside and outside the privy structure.
(5) The operator shall submit all required plans for the construction or alteration of a wastewater disposal system in accordance with Title R317 prior to commencing construction or alteration.

R392-501-9. Laundry Facility Requirements.
(1) The operator shall provide:
(a) one mechanical washing machine or one double laundry tray or two tubs for each 30 workers, or fraction thereof; or
(b) transportation at least weekly to nearby laundromat; or
(c) a contract with a commercial linen service.
(2) The operator shall provide one service sink in the same area as laundry facilities.
(3) The operator shall provide facilities for drying clothes.
(4) The operator shall ensure that buildings containing laundry facilities are maintained in a clean and sanitary condition.

R392-501-10. Toilet and Bath Requirements.
(1) The operator shall make the following operable plumbing fixtures available to each labor community occupant:
(a) a toilet fixture;
(b) a shower or bath fixture; and
(c) a hand sink installed at a ratio of one per six workers in a convenient location, as approved by the local health officer.
(2) The number of toilet fixtures or privy seats provided for each sex shall be based on the maximum number of workers of that sex which the labor community is designed to house at any one time, and shall be calculated from Section R392-501-11 Table I.
(3) The number of shower or bathing facilities provided for each sex shall be based on the maximum number of workers of that sex which the labor community is designed to house at any one time, and shall be calculated from Section R392-501-11 Table II.
(4) When the plumbing fixtures listed in Subsection R392-501-10(1) are located within a housing unit:
(a) a toilet and bathing room shall have:
(i) a window not less than six square feet in area opening directly to the outside area; or
(ii) operable mechanical ventilation.
(5) Toilet facilities and toilet rooms shall be easily cleanable.
(6) The operator shall ensure that toilet rooms and bathrooms are maintained in a clean and sanitary condition.

R392-501-11. Service Building Requirements.
(1) Each labor community having housing units as described in R392-501-4(8) shall be provided with a service building or buildings for the use of labor community occupants.
(2) A service building shall meet the following requirements:
(a) It shall have interior walls constructed of smooth, moisture-resistant material to facilitate frequent washing and cleaning.
(b) All outer openings shall be effectively screened.
(c) It shall be provided with a minimum of 10 foot candles of exterior lighting to indicate the location of the building and entrance doorways.
(d) Toilet or privy rooms and laundry facilities shall be provided with a minimum of 10 foot candles of interior lighting.
(e) Approaches to any service building shall be free from obstruction.
(f) Any common-use potable water faucet inside or connected to a service building shall not have a threaded spigot.
(3) The number of toilets or privy seats provided in a service building for each sex shall be based on the maximum number of workers of that sex which the labor community is designed to house at any one time, and shall be calculated from Table I.

TABLE I
Required Minimum Toilet Fixtures in a Labor Community

Number of Workers of Same Sex	Required Toilet Fixture(s)
1 -- 5	1 toilet or privy seat
6 - 30	2 toilets or privy seats
31 - 45	3 toilets or privy seats
46 -- 60	4 toilets or privy seats

(4) Labor communities employing fewer than six workers, irrespective of sex, only require one toilet or privy if located in a single occupancy toilet room that can be locked from the inside.

(5)(a) Urinals may be provided on the basis of one unit for each 18 men or fraction thereof, provided the urinal is installed in addition to a toilet at the same location.

(b) The required number of toilet fixtures for men may be reduced by up to 1/3 by installing urinals in this ratio.

(c) The floor from the wall and for a distance not less than 15 inches measured from the outward edge of the urinals shall be constructed of materials impervious to moisture.

(6) Toilet facilities and toilet rooms shall be easily cleanable.

(7) Except as provided in Subsection R392-501-11(7)(a), separate toilet rooms within the service building shall be provided for each sex. These rooms shall be distinctly marked "for men" and "for women" by signs printed in English and in the native languages of the persons occupying the temporary labor community, or marked with easily understood pictures or symbols.

(a) Where a toilet room will be occupied by no more than one person at a time, can be locked from the inside, and contains at least one toilet, separate toilet rooms for each sex need not be provided.

(8)(a) A service building toilet room shall have a window not less than 6 square feet in area opening directly to the outside area or shall be otherwise satisfactorily ventilated in a manner approved by the local health officer.

(b) Outside openings shall be screened with 16 mesh material.

(c) Each vault privy room shall be ventilated with a properly screened opening or openings of at least two square feet.

(9) A toilet fixture or urinal may not be located in a room used for other than toilet purposes.

(10)(a) A service building as required in R392-501-4(8) shall be located within 200 feet of the door of any housing unit.

(b) A vault privy may not be located closer than 100 feet to a sleeping room, dining room, designated lunch area, or kitchen.

(11) Sinks shall be located either in the same room as toilet fixtures or immediately adjacent to the toilet room or service building.

(12) The operator shall provide soap and toilet tissue in suitable dispensers in each service building.

(13) The operator shall provide at least one solid, easily cleanable, covered waste receptacle for the collection of solid waste for each toilet room within a service building.

(14) The operator shall provide clean individual disposable towels at each sink. Alternate hand drying methods approved by the local health officer may be substituted for individual disposable towels.

(15) The number of shower or bathing facilities provided in a service building for each sex shall be based on the maximum number of workers of that sex which the labor community is designed to house at any one time, and shall be calculated from Table II.

TABLE II
Required Minimum Shower or Bathing Facilities in a Labor Community

Number of Workers of Same Sex	Required Shower or Bathing Facility
1 -- 15	1 shower or bath
16 - 30	2 showers or baths
31 - 45	3 showers or baths
46 -- 60	4 showers or baths

(16) Labor communities employing fewer than six workers, irrespective of sex, only require one shower or bath if located in a single occupancy room that can be locked from the inside.

(17) Except as provided in Subsection R392-501-11(15)(a), where shower or bathing facilities are communal, separate bathing or shower areas shall be provided for each sex. These areas shall be distinctly marked "MEN" or "WOMEN" by signs printed in English and in the native languages of the persons occupying the temporary labor community, or marked with easily understood pictures or symbols.

(a) Separate shower or bathing areas for each sex need not be provided if:

(i) shower or bathing rooms are designed to be occupied by no more than one person at a time; and

(ii) shower or bathing rooms can be locked from the inside.

R392-501-12. Toilet and Handwashing Accessibility Requirements for Offsite Labor Locations.

(1) On any offsite premises where workers are employed or permitted to work for a period of three hours or more, the operator shall provide within a convenient distance of the working area sufficient, suitable and separate toilet and handwashing facilities. The operator shall use the following standards to determine the number of toilet and handwashing facilities needed, and the distance to each:

(a) For one to 20 workers, male or female, one toilet facility and one handwashing facility within a one-quarter-mile walk of the work area;

(b) For work crews of 21 or more, one toilet facility per every 20 males or fraction thereof and one toilet facility for every 20 females or fraction thereof. These toilet facilities shall be within a one-quarter-mile walk of the work area; or

(c) As approved by the local health officer, the operator may develop a written agreement in the native language of the workers that shall state that the operator will furnish readily available transportation that provides prompt access, within 10 minutes, to a toilet facility once during any continuous four hours of work.

(2) Toilet and handwashing facilities shall be accessibly located in close proximity to each other.

(3) The operator shall notify each employee of the location of the toilet and handwashing facilities and drinking water, and shall allow each employee reasonable opportunities during the workday to use them.

(4) Portable toilet facilities shall be operational and maintained in clean and sanitary condition.

(5) Portable handwashing facilities shall be refilled with potable water as necessary to ensure an adequate supply and shall be maintained in a clean and sanitary condition.

(6) Disposal of wastes from toilet and handwashing facilities shall not cause unsanitary conditions.

(7) The operator shall provide an adequate supply of disposable toilet tissue and single use towels for worker use.

R392-501-13. Operation and Maintenance.

(1) All buildings, grounds, rooms, equipment, and

furnishings shall be maintained in a clean and operable condition.

(2) All reasonable means shall be employed to eliminate or control infestations of vermin within all parts of any community. This shall include approved screening or other approved control of outside openings in structures intended for occupancy or food service facilities.

(3) Each labor community shall be equipped with at least a 24-unit ANSI compliant first aid kit. The operator shall ensure that each first aid kit is:

(a) properly stocked;

(b) readily accessible; and

(c) conveniently located.

(4) The operator of a community with onsite staff shall employ at least one individual who is adequately trained to render first aid. This individual should possess at least a certificate of completion of the Basic First Aid Course as presented by the American National Red Cross or its equivalent.

R392-501-14. Food Service.

When food service is provided for labor community members, food service, storage, and preparation shall comply with the FDA Model Food Code as incorporated and amended in R392-100 and local health department regulations.

R392-501-15. Solid Wastes.

(1) The operator shall provide adequate containers to prevent the accumulation of solid waste in the labor community.

(2) Solid waste generated at a labor community shall be stored in a leak-proof, non-absorbent container, which shall be kept covered with a tight-fitting lid.

(3) All solid wastes shall be disposed with sufficient frequency and in such a manner as to prevent insect breeding, rodent harborage, or a public health nuisance.

R392-501-16. Swimming Pool.

The operator shall comply with Rule R392-302, Design, Construction, and Operation of Public Pools as well as other local health department regulations for all pools or spas made available to labor community members or staff.

R392-501-17. Inspections and Investigations.

(1)(a) Upon presenting proper identification, the operator shall permit the local health officer to enter upon the premises of a labor community to perform inspections, investigations, reviews, and other actions as necessary to ensure compliance with Rule R392-501.

(b) The local health officer may not enter an occupied tent or other structure designed or intended for temporary human habitation without the express permission of the occupant except when a warrant is issued to a duly authorized public safety officer which authorizes the local health officer to enter, or when the operator and the local health officer determine that there exists an imminent risk to the life, health, or safety of the occupant.

R392-501-18. Closing or Restricting of Temporary Labor Communities or Housing Units.

(1) If a local health officer deems a temporary labor community, housing unit, or portion thereof to be an imminent risk to the life, health, or safety of the public, the community or unit area may be closed or its use may be restricted, as determined by the local health officer.

(2) The operator shall restrict public access to the impacted area of any temporary labor community or housing unit closed or restricted to use by a local health officer within a reasonable time as ordered by the local health officer.

(3) It shall be unlawful for an operator to allow the public to utilize any temporary labor community, housing unit, or portion thereof that has been deemed unfit for use until written approval of the local health officer is given.

KEY: public health, oil-gas-and mining camp, labor camp, migrant camp

September 10, 2018	**26-15-2**
Notice of Continuation November 8, 2016	**26-1-5**
	26-1-30(9)
	26-1-30(23)
	26-7-1

R398. Health, Family Health and Preparedness, Children with Special Health Care Needs.
R398-3. Children's Hearing Aid Program.
R398-3-1. Definitions.

a. "Hearing aid" is any traditional non-surgical device providing acoustic amplification.

b. "CHAP" is Children's Hearing Aid Program.

c. "CSHCN" is the Department's Bureau of Children with Special Health Care Needs.

d. "L and D" is loss and damage, referring to warranty or insurance coverage for hearing aids.

e. "Managing audiologist" is a non-Department licensed audiologist with expertise in pediatric audiology who is responsible for the provision of hearing aids and follow-up care to eligible children.

R398-3-2. Purpose and Authority.

The purpose of this rule is to set forth the process to identify children who are financially eligible to receive services under the program and describe how the department will review and pay for services provided to a child under the program.

This rule is authorized by Section 26-10-11(5) which provides that the department shall make rules regarding implementation of the hearing aid program.

R398-3-3. Process to Identify Children Who Are Financially Eligible for Services.

(1) Participant financial eligibility

a. Children younger than six years old, with hearing loss who do not yet own a hearing aid or for whom current amplification is no longer appropriate may be eligible for hearing aids under this program.

b. Participant must complete and submit CSHCN Financial Form (PFR) with application to the managing audiologist.

c. Upon request, the family must provide a copy of the most recent federal income tax filing to CHAP to verify family income as reported by the child's parents. If the federal income tax filing is unavailable, the parents may submit the prior three months' check stubs to extrapolate annual income.

d. Family must be at or below 300% of Federal Poverty Level.

e. This is a one-time per ear benefit per child.

R398-3-4. Process to Review and Pay for Services Provided to a Child.

(1) Applications

a. Participant application

i. Must be completed by parent or guardian.

ii. If a child is under three years of age, the child shall participate in a Part C Early Intervention program.

iii. Application must be submitted to managing audiologist with:

1. Proof of denial for Medicaid or evidence that family is ineligible for Medicaid.

2. Evidence of non-coverage by current insurance provider.

i. Family/guardian shall provide coverage for all out-of-warranty repairs.

ii. If L and D is claimed during the warranty period, the family shall provide supplemental hearing aid insurance including L and D.

iii. Child will receive hearing aids directly from managing audiologist.

a. Audiologist qualifications and application

i. Hearing aid must be fit by a licensed audiologist.

ii. A separate application must be submitted for each child.

(2) Review of applications

a. All applications will be reviewed for completeness and eligibility by the Advisory Committee chair or UDOH designee.

b. Eligibility shall be communicated to the managing audiologist.

(3) Payment process

a. Within 30 days of hearing aid fitting, the managing audiologist will submit the Payment Request Cover Sheet with all supporting documentation.

b. UDOH will review documentation to assure that managing audiologist has submitted all items listed in payment request.

c. Payments will go directly to the managing audiologist or their designee.

KEY: hearing aids
August 21, 2015 26-10-11
Notice of Continuation September 14, 2018

R398. Health, Family Health and Preparedness, Children with Special Health Care Needs.
R398-10. Autism Spectrum Disorders and Intellectual Disability Reporting.
R398-10-1. Authority and Purpose.

(1) This rule is authorized by Subsections 26-1-30(5), (6), (7), (8), (9), 53E-9-308(6)(b), 26-5-3, 26-5-4, and 26-7-4.

(2) This rule establishes reporting requirements for autism spectrum disorder (ASD) and intellectual disability and related screening and test results in individuals.

R398-10-2. Definitions.

As used in this rule:

(1) "Autism Spectrum Disorder" or "ASD" means a pervasive developmental disorder described by the American Psychiatric Association or the World Health Organization diagnostic manuals as: Autistic disorder, Atypical autism, Asperger Syndrome, Rett Syndrome, Childhood Disintegrative Disorder, or Pervasive Developmental Disorder-Not Otherwise Specified; or a special education classification for autism or other disabilities related to autism.

(2) "Intellectual Disability" means a condition marked by an intelligence quotient of less than or equal to 70 on the most recently administered psychometric test (or for infants, a clinical judgment of significantly subaverage intellectual functioning) and concurrent deficits or impairments in adaptive functioning in at least two of the following areas: communication, self-care, home living, social and interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety. This condition must have its onset before age 18 years.

(3) "Qualified professional" means a medical, clinical or educational professional in a position to observe children with developmental disabilities, including, psychologists, physicians, teachers, speech/language pathologists, occupational therapists, physical therapists, nurses, and social workers.

R398-10-3. Reporting by Diagnostic, Treatment or Educational Facilities.

Diagnostic, treatment or educational facilities which provide specialized care or individualized education programs for ASD and related disorders shall report or cause to report the following to the Department within thirty days of making an ASD diagnosis or special education classification for autism or other disabilities related to autism:

(1) patient's name;
(2) patient's date of birth;
(3) patient's address;
(4) home phone;
(5) patient's sex;
(6) mother's name;
(7) mother's date of birth;
(8) provider name;
(9) provider degree;
(10) provider specialty;
(11) provider address;
(12) provider phone number;
(13) diagnosis of autistic disorder, atypical autism, pervasive developmental disorder-not otherwise specified, Asperger's syndrome, or special education classification which makes the individual eligible to receive special education services; and
(14) date of diagnosis.

R398-10-4. ASD and Intellectual Disability Records Review.

Upon Department request, qualified professionals and diagnostic, treatment or educational facilities which provide specialized care or individualized education programs for ASD and related disorders shall allow the Department or its agents to review medical and educational records of individuals with ASD, intellectual disability, and related disorders to clarify duplicate names and to collect demographic characteristics, medical and educational histories, and assessments.

R398-10-5. Confidentiality of Reports.

All reports herein required are confidential and are not open to public inspection. The confidentiality of personal information obtained under this rule shall be maintained according to the provisions of Utah Code, Title 26, Chapter 3.

R398-10-6. Liability.

As provided in Title 26, Chapter 25, persons who report information covered by this rule may not be held liable for reporting the information to the Department of Health.

KEY: autism spectrum, intellectual disability, reporting

September 24, 2018	**26-1-30(5)**
Notice of Continuation March 12, 2014	**26-1-30(6)**
	26-1-30(7)
	26-1-30(8)
	26-1-30(9)
	53E-9-308(6)(b)
	26-5-3
	26-5-4
	26-7-4

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-511. Medicaid Accountable Care Organization Incentives to Appropriately Use Emergency Room Services.
R414-511-1. Introduction and Authority.

(1) This rule is established under the authority of Section 26-18-408.

(2) The purpose of this rule is to establish provisions governing Accountable Care Organization (ACO) accountable performance measures for the reduction of non-emergent use of emergency departments by Medicaid beneficiaries.

R414-511-2. Definitions.

(1) "Non-emergent medical condition" means a medical condition that does not meet the criteria of an emergency medical condition under 42 U.S.C. 1395dd (e) of the Emergency Medical Treatment and Active Labor Act.

(2) "Non-emergent medical care" means:

(a) Medical care provided in an emergency room for the treatment of a non-emergent medical condition.

(3) "Non-emergent medical care" does not mean:

(a) Medical services necessary to conduct a medical screening examination to determine if the Medicaid beneficiary has an emergent or non-emergent medical condition; and

(b) Medical care provided to a Medicaid beneficiary who, using a prudent layperson standard, reasonably believes he is experiencing an "emergency medical condition" as defined by 42 U.S.C. 1395dd(e) of the Emergency Medical Treatment and Active Labor Act.

(4) "Medicaid Beneficiary" means a person who enrolls in an ACO in accordance with the Department's "Choice of Health Care Delivery Program" (CHCDP) freedom-of-choice waiver under Section 1915(b) of the Social Security Act.

R414-511-3. Performance Measures.

(1) An ACO that contracts with the Department to provide services to Medicaid beneficiaries shall report the following information to the Department in accordance with the terms of its contract:

(a) Emergency room visits with low acuity CPT codes 99281or 99282;

(b) Actions the ACO takes to expand primary care and urgent care for Medicaid beneficiaries who are enrolled in the Accountable Care Plan;

(c) Actions the ACO takes to implement emergency room diversion plans that include:

(i) Weekday, evening and weekend access to primary care providers and community health centers for Medicaid beneficiaries and

(ii) Other innovations for expanding access to primary care.

(d) Other quality of care for Medicaid beneficiaries who are enrolled in an ACO as required by the Department.

KEY: Medicaid
January 13, 2014 **26-1-5**
Notice of Continuation September 14, 2018 **26-18-3**
26-18-408

R432. Health, Family Health and Preparedness, Licensing.
R432-35. Background Screening -- Health Facilities.
R432-35-1. Authority.

This rule is adopted pursuant to Title 26 Chapter 21 Part 2.

R432-35-2. Purpose.

To outline the process required for individuals to be cleared to have direct patient access while employed by a covered provider, covered contractor or covered employer.

R432-35-3. Definitions.

Terms used in this rule are defined in Title 26, Chapter 21 Part 2.

In addition:

(1) "Aged" means an individual who is 60 years of age or older.

(2) "Clearance" means approval by the department under Section 26-21-203 for an individual to have direct patient access.

(3) "Covered body" means a covered provider, covered contractor, or covered employer.

(4) "Corporation" means a corporation that has business interest/connection to covered providers that employ individuals who provide consultative services which may result in direct patient access.

(5) "Covered contractor" means a person or corporation that supplies covered individuals, by contract, to:

(a) a covered employer, or

(b) a covered provider for services within the scope of the health facility license.

(6) "Covered employer" means an individual who:

(a) engages a covered individual to provide services in a private residence to:

(i) an aged individual, as defined by department rule; or

(ii) a disabled individual, as defined by department rule;

(b) is not a covered provider; and

(c) is not a licensed health care facility within the state.

(7) "Covered individual":

(a) means an individual:

(i) whom a covered body engages; and

(ii) who may have direct patient access;

(b) which may include:

(i) a nursing assistant;

(ii) a personal care aide;

(iii) an individual licensed to engage in the practice of nursing under Title 58, Chapter 31b, Nurse Practice Act;

(iv) a provider of medical, therapeutic, or social services, including a provider of laboratory and radiology services;

(v) an executive;

(vi) administrative staff, including a manager or other administrator;

(vii) dietary and food service staff;

(viii) housekeeping;

(ix) transportation staff;

(x) maintenance staff; and

(xi) volunteer as defined by department rule.

(c) does not include a student directly supervised by a member of the staff of the covered body or the student's instructor.

(8) "Covered provider" means:

(a) an end stage renal disease facility;

(b) a long-term care hospital;

(c) a nursing care facility;

(d) a small health care facility;

(e) an assisted living facility;

(f) a hospice;

(g) a home health agency; or

(h) a personal care agency.

(9) "Direct patient access" means for an individual to be in a position where the individual could, in relation to a patient or resident of the covered body who engages the individual:

(a) cause physical or mental harm;

(b) commit theft; or

(c) view medical or financial records.

(10) "Disabled individual" means an individual who has limitations with two or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and employment.

(11) "Engage" means to obtain one's services:

(a) by employment;

(b) by contract;

(c) as a volunteer; or

(d) by other arrangement.

(12) "Long-term care hospital":

(a) means a hospital that is certified to provide long-term care services under the provisions of 42 U.S.C. Sec. 1395tt; and

(b) does not include a critical access hospital, designated under 42 U.S.C. Sec. 1395i-4(c)(2).

(13) "Nursing Assistant" means an individual who performs duties under the supervision of a nurse, which may include a nurse aide, personal care aide or certified nurse aide.

(14) "Patient" means an individual who receives health care services from one of the following covered providers:

(a) an end stage renal disease facility;

(b) a long-term care hospital;

(c) a hospice;

(d) a home health agency; or

(e) a personal care agency.

(15) "Resident" means an individual who receives health care services from one of the following covered providers:

(a) a nursing care facility;

(b) a small health care facility;

(c) an assisted living facility; or

(d) a hospice that provides living quarters as part of its services.

(16) "Residential setting" means a place provided by a covered provider:

(a) for residents to live as part of the services provided by the covered provider; and

(b) where an individual who is not a resident also lives.

(17) "Volunteer" means an individual who may have unsupervised direct patient access who is not directly compensated for providing services.

The following groups or individuals are excluded as volunteers and are not required to complete the background clearance process as defined in R432-35:

(a) Clergy;

(b) Religious groups;

(c) Entertainment groups;

(d) Resident family members;

(e) Patient family members; and

(f) Individuals volunteering services for 20 hours per month or less.

R432-35-4. Covered Provider - Direct Access Clearance System Process.

(1) Utah Code, Title 26, Chapter 21, Part 2 requires that a covered provider enter required information into the Direct Access Clearance System to initiate a clearance for each covered individual prior to issuance of a provisional license, license renewal or engagement as a covered individual.

(2) The covered provider must ensure that the engaged covered individual:

(a) Signs a criminal background screening authorization form which must be available for review by the department; and

(b) Submits fingerprints within 15 working days of engagement.

(3) The covered provider must ensure the Direct Access

Clearance System reflects the current status of the covered individual within 5 working days of the engagement or termination.

(4) A covered provider may provisionally engage a covered individual while direct patient access clearance is pending.

(5) If the Department determines an individual is not eligible for direct patient access, based on information obtained through the Direct Access Clearance System, the Department shall send a Notice of Agency Action to the covered provider and the individual explaining the action and the individual's right of appeal as defined in R432-30.

(6) A covered provider may not allow a covered individual who has been determined to be not eligible for direct patient access to be engaged in a position with direct patient access.

(7) The Department may allow a covered individual direct patient access with conditions, during an appeal process, if the covered individual can demonstrate the work arrangement does not pose a threat to the safety and health of patients or residents.

(8) A covered provider that provides services in a residential setting must enter required information into the Direct Access Clearance System to initiate and obtain a clearance for all individuals 12 years of age and older, who are not residents, and reside in the residential setting. If the individual is not eligible for clearance as defined in R432-35-8, the Department may revoke an existing license or deny licensure for healthcare services in the residential setting.

(9) Covered providers requesting to renew a license as a health care facility must utilize the Direct Access Clearance System to run a verification report and verify that each covered individual's information is correct, including:

(a) employment status;

(b) address; and

(c) name.

(10) Individuals or covered individuals requesting to be licensed as a covered provider must submit required information to the Department to initiate and obtain a clearance prior to the issuance of the provisional license. If the individuals are not eligible for clearance as defined in R432-35-8, the Department may revoke an existing license or deny licensure as a health care facility.

R432-35-5. Covered Contractor - Direct Access Clearance System Process.

(1) Utah Code, Title 26, Chapter 21, Part 2 requires that a covered contractor enter required information into the Direct Access Clearance System to initiate a clearance for each covered individual prior to being supplied by contract to a covered provider.

(2) A covered contractor must ensure that the covered individual, being supplied by contract to a covered provider:

(a) Signs a criminal background screening authorization form which must be available for review by the department; and

(b) Submits fingerprints within 15 working days of placement with a covered provider.

(3) The covered contractor must ensure the Direct Access Clearance System reflects the current status of the covered individual within 5 working days of placement or termination.

(4) A covered contractor may provisionally supply a covered individual to a covered provider while clearance is pending.

(5) If the Department determines an individual is not eligible for direct patient access, based on information obtained through the Direct Access Clearance System, the Department shall send a Notice of Agency Action to the covered contractor and the individual explaining the action and the individual's right of appeal as defined in R432-30.

(6) A covered contractor may not supply to a covered provider a covered individual who has been determined to be not eligible to have direct patient access.

(7) The Department may allow a covered individual direct patient access with conditions, during an appeal process, if the covered individual can demonstrate the work arrangement does not pose a threat to the safety and health of patients or residents.

R432-35-6. Covered Employer - Direct Access Clearance System Process.

(1) Utah Code, Title 26, Chapter 21, Part 2 requires that a covered employer be allowed to enter required information into the Direct Access Clearance System to initiate and obtain a clearance for a covered individual.

(2) If the Department determines an individual is not eligible for direct patient access, based on information obtained through the Direct Access Clearance System, the Department shall send a Notice of Agency Action to the covered employer and the individual explaining the action and the individual's right of appeal as defined in R432-30.

R432-35-7. Sources for Background Review.

(1) As required in Utah Code 26-21-204 the department may review relevant information obtained from the following sources:

(a) Department of Public Safety arrest, conviction, and disposition records described in Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including information in state, regional, and national records files;

(b) juvenile court arrest, adjudication, and disposition records, as allowed under Section 78A-6-209;

(c) federal criminal background databases available to the state;

(d) the Department of Human Services' Division of Child and Family Services Licensing Information System described in Section 62A-4a-1006;

(e) child abuse or neglect findings described in Section 78A-6-323;

(f) the Department of Human Services' Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

(g) registries of nurse aids described in Title 42 Code of Federal Regulations Section 483.156;

(h) licensing and certification records of individuals licensed or certified by the Division of Occupational and Professional Licensing under Title 58, Occupations and Professions; and

(i) the List of Excluded Individuals and Entities database maintained by the United States Department of Health and Human Services' Office of Inspector General.

(2) If the Department determines an individual is not eligible for direct patient access based upon the criminal background screening and the individual disagrees with the information provided by the Criminal Investigations and Technical Services Division or court record, the individual may challenge the information as provided in Utah Code Annotated Sections 77-18a.

(3) If the Department determines an individual is not eligible for direct patient access based upon the non-criminal background screening and the individual disagrees with the information provided, the individual may challenge the information through the appropriate agency.

R432-35-8. Exclusion from Direct Patient Access.

(1) Convictions or Pending Charges

(a) As required by Utah Code Subsection 26-21-204, if an individual or covered individual has been convicted, has pleaded no contest, or is subject to a plea in abeyance or diversion agreement, for the following offenses, they may not have direct patient access:

(i) any felony or class A conviction under Utah Code.

(ii) any felony, class A or B conviction under Utah Criminal Code 76-6-106(2)(b)(i)(A) Criminal Mischief - Human Life;

(iii) any felony or class A, B or C conviction under the following Utah Codes:

(A) 76-4 Enticement of a Minor;

(B) 76-5 Offenses Against the Person;

(C) 76-9-301.8, Bestiality;

(D) 76-9-702 to 702.5 Lewdness - Sexual Battery - Public urination - Lewdness Involving Child - Voyeurism offenses;

(E) 76-10-1201 to 1229.5, Pornographic and Harmful Materials and Performances;

(F) 76-10-1301 to 1314, Prostitution; and

(G) 62A-3-305 failure to report suspected abuse, neglect, or exploitation of a vulnerable adult.

(b) As required by Utah Code Subsection 26-21-204, if an individual or covered individual has a warrant for arrest or an arrest for any of the identified offenses in R432-35-8(1)(a), the department may deny clearance based on:

(i) the type of offense;

(ii) the severity of offense; and

(iii) potential risk to patients or residents.

(2) Juvenile Records

(a) As required by Utah Code Subsection 26-21-204(4)(a)(ii)(E), juvenile court records shall be reviewed if an individual or covered individual is:

(i) under the age of 28; or

(ii) over the age of 28 and has convictions or pending charges identified in R432-35-8(1)(a).

(b) Adjudications by a juvenile court may exclude the individual from direct patient access if the adjudications refer to an act that, if committed by an adult, would be a felony or a misdemeanor.

(3) Non-Criminal Records

(a) As required by Utah Code Subsection 26-21-204(3), the Department may review findings from the following sources to determine whether an individual or covered individual should be granted or retain direct patient access:

(i) the Department of Human Services' Division of Child and Family Services Licensing Information System described in Section 62A-4a-1006;

(ii) child abuse or neglect findings described in Section 78A-6-323;

(iii) the Department of Human Services' Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

(iv) registries of nurse aids described in Title 42 Code of Federal Regulations Section 483.156;

(v) licensing and certification records of individuals licensed or certified by the Division of Occupational and Professional Licensing under Title 58, Occupations and Professions; and

(vi) the List of Excluded Individuals and Entities database maintained by the United States Department of Health and Human Services' Office of Inspector General.

(4) Review of Relevant Information

(a) Results of background screening review, as listed above in R432-35-8(1), (2), and (3), may be reviewed to determine under what circumstance, if any, the covered individual may be granted or retain direct patient access. The following factors may be considered:

(i) types and number;

(ii) passage of time;

(iii) surrounding circumstances;

(vi) intervening circumstances; and

(v) steps taken to correct or improve.

(b) The department shall rely on relevant information identified in R432-35-8(1), (2), and (3) as conclusive evidence and may deny clearance based on that information.

R432-35-9. Covered Individuals with Arrests or Pending Criminal Charges.

(1) If the Department determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would be excluded under R432-35-8(1), the Department may act to protect the health and safety of patients or residents in covered providers.

(2) The Department may allow a covered individual direct patient access with conditions, until the arrest or criminal charges are resolved, if the covered individual can demonstrate the work arrangement does not pose a threat to the safety and health of patients or residents.

(3) If the Department denies or revokes a license, or denies direct patient access based upon arrest or criminal charges, the Department shall send a Notice of Agency Action to the covered provider and the covered individual notifying them of the right to appeal in accordance with R432-30.

R432-35-10. Penalties.

The department may impose civil monetary penalties in accordance with Title 26, Chapter 23, Utah Health Code Enforcement Provisions and Penalties, if there has been a failure to comply with the provisions of this chapter, or rules promulgated pursuant to this chapter, as follows:

(1) if significant problems exist that are likely to lead to the harm of an individual resident, the department may impose a civil penalty of $50 to $1,000 per day; and

(2) if significant problems exist that result in actual harm to a resident, the department may impose a civil penalty of $1,050 to $10,000 per day.

KEY: health care facilities, background screening
October 1, 2018 26-21-9.5
Notice of Continuation January 29, 2018

R527. Human Services, Recovery Services.
R527-201. Medical Support Services.
R527-201-1. Authority and Purpose.

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111 and 62A-11-107.

2. The purpose of this rule is to specify the responsibilities and procedures for the Office of Recovery Services/Child Support Services for providing medical support services.

R527-201-2. Federal Requirements.

The Office of Recovery Services/Child Support Services, (ORS/CSS), adopts the federal regulations as published in 45 CFR 303.30, 303.31, and 303.32 (2008) which are incorporated by reference in this rule.

R527-201-3. Definitions.

1. Accessibility: Insurance is considered accessible to the child if non-emergency services covered by the health plan are available to the child within 90 minutes or 90 miles of the child's primary residence.

2. National Medical Support Notice (NMSN) is the federally approved form that ORS/CSS shall use, when appropriate, to notify an employer to enroll dependent children in an employment-related group health insurance plan in accordance with a child support order.

3. Cash Medical Support: An obligation to equally share all reasonable and necessary medical and dental expenses of children.

R527-201-4. Limitation of Services.

ORS/CSS shall not:

1. pursue establishment of specific amounts for ongoing medical support,

2. initiate an action to obtain a judgment for uninsured medical expenses, or

3. collect and disburse premium payments to insurance companies.

R527-201-5. Conditions Under Which Non-IV-A Medicaid Recipients May Decline Support Services.

ORS/CSS shall provide child and spousal support services; however, a Non-IV-A Medicaid recipient may decline child and spousal support services if paternity is not an issue and there is an order for the non-custodial parent to provide medical support.

R527-201-6. Securing a Medical Support Provision in the Support Order.

1. Notice to potentially obligated parents: The notice to potentially obligated parents shall include a provision that an administrative or judicial proceeding will occur to:

a. order either parent to purchase and maintain appropriate medical insurance for the children, and

b. order both parents to pay cash medical support. This notification shall be provided when either of the following conditions is met:

a. the state initiates an action to establish a final support order or to adjust an existing child support order; or

b. the state joins a divorce or modification action initiated by either the custodial or the non-custodial parent.

2. If a judicial support order does not include a medical support provision, ORS/CSS shall commence judicial action to include a medical support provision.

R527-201-7. Reasonable Cost of Insurance Premiums.

Employment-related or other group coverage that does not exceed 5% of the obligated parent's monthly gross income is generally considered reasonable in cost. However, an employer may not withhold more than the lesser of the amount allowed under the Consumer Credit Protection Act, the amount allowed by the state of the employee's principal place of employment, or the amount allowed for health insurance premiums by the child support order. If the combined child support and medical support obligations exceed the allowable deduction amount, the employer shall withhold according to the law, if any, of the state of the employee's principal place of employment requiring prioritization between child support and medical support. If the employee's principal place of employment is in Utah, the employer shall deduct current child support before deducting amounts for health insurance coverage. If the amount necessary to cover the health insurance premiums cannot be deducted due to prioritization or limitations on withholding, the employer shall notify ORS/CSS.

R527-201-8. Insurance Credit.

1. If an obligated parent is required to provide health insurance for his or her minor child(ren) and the order was issued by a Utah tribunal, in accordance with U.C.A. 78B-12-212, the parent may receive an insurance credit. ORS/CSS will calculate and apply the insurance credit if the office receives a completed Insurance Premium Credit Request letter. The Insurance Premium Credit Request must include the following information:

a. availability of insurance;
b. policy number;
c. names of all individuals covered by the policy;
d. the out-of-pocket cost for the insurance;
e. proof of the monthly insurance premium paid;
f. the obligated parent's signature; and,
g. the date the letter was completed.

2. Credit will be given to the obligated parent beginning the first day of the month following the date ORS/CSS receives the completed Insurance Premium Credit Request letter.

3. The insurance credit will be ended each calendar year, January 2, in accordance with U.C.A. 78B-12-212(8), unless the obligated parent provides verification of coverage and costs to ORS/CSS on an updated Insurance Premium Credit Request. To allow sufficient time for ORS to process the annual insurance verification, the obligated parent may provide verification of the coverage as early as November 1 of the previous year.

R527-201-9. Credit for Premium Payments and Effect of Changes to the Premium Amount Subsequent to the Order.

1. If the order or underlying worksheet does not mention a specific credit for insurance premiums, ORS/CSS shall give credit for the child(ren)'s portion of the insurance premium when the obligated parent provides the necessary verification coverage.

2. ORS/CSS shall notify both parents in writing whenever the credit is changed.

R527-201-10. Enforcement of Obligation to Maintain Medical and Dental Insurance.

1. In Non-IV-A cases and in IV-A Medicaid cases, appropriate steps shall be taken to ensure compliance with orders which require the obligated parent to maintain insurance. Obligated parents shall demonstrate compliance by providing ORS/CSS with policy numbers and the insurance provider name for the dependent children for whom the medical support is ordered.

2. In Non-IV-A cases and in IV-A Medicaid cases, if an obligated parent has been ordered to maintain insurance and insurance is accessible and available at a reasonable cost, ORS/CSS shall use the NMSN to transfer notice of the insurance provision to the obligated parent's employer unless ORS/CSS is notified pursuant to Section 62A-11-326.1 that the children are already enrolled in an insurance plan in accordance

with the order.

3. When appropriate, ORS/CSS shall send the NMSN to the obligated parent's employer within two business days after the name of the obligated parent has been entered into the registry of the State Directory of New Hires, matched with ORS/CSS records, and reported to ORS/CSS in accordance with Subsection 35A-7-105(2).

4. The employer shall transfer the NMSN to the appropriate group health plan for which the children are eligible within twenty business days of the date of the NMSN if all of the following criteria are met:

a. the obligated parent is still employed by the employer;

b. the employer maintains or contributes to plans providing dependent or family health coverage;

c. the obligated parent is eligible for the coverage available through the employer; and

d. state or federal withholding limitations, prioritization, or both, do not prevent withholding the amount required to obtain coverage.

5. If more than one coverage option is available under a group insurance plan and the obligated parent is not already enrolled, ORS/CSS in consultation with the custodial parent may select the least expensive option if the option complies with the child support order and benefits the children. The insurer shall enroll the children in the plan's default option or least expensive option in accordance with Subsection 62A-11-326.2(1)(b) unless another option is specified by ORS/CSS.

6. The employer shall determine if the necessary employee contributions for the insurance coverage are available. If the amounts necessary are available, the employer shall begin withholding when appropriate and remit directly to the plan.

7. In accordance with Subsections 62A-11-326.1(2) and (3), the obligated parent may contest withholding insurance premiums based on a mistake of fact. The employer shall continue withholding under the NMSN until notified by ORS/CSS to terminate withholding insurance premiums.

8. If a parent successfully contests the action to enroll the children in a group health plan based on a mistake of fact, ORS/CSS shall notify the employer to discontinue enrollment and withholding insurance premiums for the children.

9. In accordance with Subsection 62A-11-406(9), the employer shall:

a. notify ORS/CSS within five days after the obligated parent terminates employment;

b. provide the office with the obligated parent's last-known address; and

c. the name and address of any new employer, if known.

10. ORS/CSS shall promptly notify the employer when a current order for medical support is no longer in effect for which ORS/CSS is responsible.

R527-201-11. Coordination of Health Insurance Benefits.

If, at any point in time, a dependent child is covered by the health, hospital, or dental insurance plans of both parents, the health, hospital, or dental insurance plan of the parent whose birthday occurs first in the calendar year, shall be designated as primary coverage for the dependent child. The health, hospital, or dental insurance plan of the other parent shall be designated as secondary coverage for the dependent child.

R527-201-12. Obligated Parent Receiving Medicaid.

In an unestablished paternity case, if the alleged father's income was taken into consideration when determining the household's eligibility for Medicaid, ORS/CSS shall not enforce payment of medical expenses regardless of the medical support provisions in the order, but shall enforce the health insurance provision.

KEY: child support, health insurance, Medicaid

March 27, 2012
Notice of Continuation August 8, 2016

30-3-5
30-3-5.4
62A-1-111
62A-11-103(2)
62A-11-107
62A-11-326
62A-11-326.1
62A-11-326.2
62A-11-326.3
62A-11-406(9)
63G-4-102 et seq.
78B-12-102(6)
78B-12-212
35A-7-105(2)
45 CFR 303.30
45 CFR 303.31
45 CFR 303.32

R590. Insurance, Administration.
R590-160. Adjudicative Proceedings.
R590-160-1. Authority.

This rule is promulgated by the commissioner pursuant to Subsections 31A-2-201(3)(a), 63G-4-102(6), 63G-4-203(1), and applicable provisions of Title 63G, Chapter 4, Administrative Procedures Act.

R590-160-2. Purpose.

(1) This rule establishes procedures governing the designation and conduct of adjudicative proceedings before the presiding officer.

(2) Public hearings pursuant to Section 63G-3-302 are not governed by this rule.

R590-160-3. Definitions.

In addition to the definitions in Sections 31A-1-301 and 63G-4-103, the following definitions shall apply for the purpose of this rule:

(1) "Complainant" means the Department in any action against a licensee or other person alleged to have committed a violation of statute, rule, or order of the commissioner.

(2) "Department" means the Utah Insurance Department.

(3) "Existing Disability" means:

(a) any suspension, revocation or limitation of a license or certificate of authority; or

(b) any limitation on a right to apply to the commissioner for a license or certificate of authority.

(4) "Intervenor" means any person, not a party, permitted to intervene in a proceeding pursuant to Section 63G-4-207.

(5) "Licensee" means any person who has been issued a license or certificate under Title 31A, Insurance Code.

(6) "Petitioner" means any person, other than the Department, who commences an adjudicative proceeding and seeks agency action.

(7) "Pleading" means any paper or document filed, in written or electronic form, in an adjudicative proceeding.

(8) "Presiding officer" means the commissioner or a presiding officer appointed by the commissioner

(9) "Respondent" means any person against whom an adjudicative proceeding is initiated.

R590-160-4. Designations of Proceedings.

(1) Any of the following proceedings may be commenced as an informal adjudicative proceeding:

(a) the Department's initial decision on an application for a license or a certificate of authority;

(b) the Department's decision on a petition to remove an existing disability;

(c) the Department's decision to disapprove a rate;

(d) the Department's decision to disapprove a form;

(e) when it appears to the Department that the matter may have no issues;

(f) when it appears to the Department that the matter involves technical or minor violations of law; or

(g) proceedings for the purpose of entering stipulated findings of fact, conclusions of law and orders.

(2) A complainant may commence an informal or formal adjudicative proceeding pursuant to this rule.

(3) Any petitioner may commence a formal adjudicative proceeding pursuant to this rule.

(4) The presiding officer shall conduct any informal or formal adjudicative proceeding.

(5) Any time before a final order is issued, the presiding officer may, sua sponte or upon motion of any party, convert any adjudicative proceeding from a formal to an informal adjudicative proceeding or from an informal to a formal adjudicative proceeding, provided the conversion is in the public interest and does not unfairly prejudice the rights of any party.

R590-160-5. Rules Applicable to All Proceedings.

(1) Liberal Construction. These rules shall be liberally construed to secure just, speedy and economical determination of all issues.

(2) Deviation from Rules. The presiding officer may permit a deviation from these rules if strict compliance is found to be impracticable or unnecessary or for other good cause.

(3) Computation of Time. The time within which any act shall be completed shall be computed by excluding the first day and including the last day unless the last day is a Saturday, Sunday or a legal holiday, and then the last day is excluded and the period runs until the end of the next day that is not a Saturday, Sunday, or a legal holiday.

(4) Parties.

(a) A party to a proceeding is:

(i) any person authorized by statute or agency rule to participate in the adjudicative proceeding pursuant to Subsections 63G-4-201(1)(a) or (b);

(ii) a complainant;

(iii) a petitioner;

(iv) a respondent; or

(v) an intervenor.

(b) Any participant in a proceeding shall be named in the caption as Petitioner, Complainant, Respondent or Intervenor.

(5) Appearances, Representation, and Pro Hac Vice.

(a) Making an Appearance. Any party enters an appearance by filing an initial written response to a notice of agency action at the beginning of the adjudicative proceeding, providing the party's name, address, email, telephone number, and the party's position or interest in the proceeding.

(b) Representation of Parties.

(i) An attorney who is an active member of the Utah State Bar may represent any party.

(ii) An individual who is a party to an adjudicative proceeding may represent himself or herself.

(iii) An officer duly authorized by corporate resolution may represent a corporation that is duly registered with the Department of Commerce, Division of Corporations and Commercial Code, as required by law.

(iv) A general partner may represent a partnership.

(v) An authorized member or manager may represent a limited liability company that is duly registered with the Department of Commerce, Division of Corporations and Commercial Code, as required by law.

(vi) The legal, registered owner of a business conducted under an assumed name, dba, shall be considered the legal party in interest and that business may not be represented except through the legal party in interest.

(c) Pro Hac Vice.

(i) An attorney licensed to practice in a jurisdiction outside of Utah may represent any party in a particular matter before the presiding officer without being admitted pro hac vice in Utah.

(ii) An attorney, pro hac vice attorney, or other authorized representative pursuant to R590-160-5(5)(b), if previous appearance has not been entered, shall file a Notice of Appearance with the presiding officer no later than five days before any hearing at which the attorney or other authorized representative shall appear. The Notice of Appearance shall contain:

(A) the name, address, telephone number, fax number, email address, bar identification number(s), and state(s) of admission of the pro hac vice attorney, if applicable;

(B) the name and docket number of the case in which the applicant is appearing as the attorney of record;

(C) a statement whether, in any state, the applicant is currently suspended or disbarred from the practice of law, or has been disciplined within the prior five years, or is the subject of

any pending disciplinary proceeding; and

(D) the name, address, Bar identification number, telephone number, fax number and email of a member of the Utah State Bar to serve as associate counsel.

(iii) The presiding officer may require Utah counsel to appear at any hearing.

(6) Pleadings.

(a) Pleadings Allowed. Pleadings shall consist of petitions, complaints, requests for hearing, responsive pleadings, motions, stipulations, affidavits, memoranda, orders, or documents in a proceeding.

(b) Docket Number. Upon the commencement of an adjudicative proceeding, the commissioner shall assign a docket number to the proceeding.

(c) Title. Pleadings shall be titled in substantially the following form:

(i) Centered heading: BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF UTAH;

(ii) Left side, identification of parties;

(iii) Right side, identification of type of pleading;

(iv) Right side, docket number.

(d) Content of Pleadings. Any pleading shall identify the proceedings by title and docket number, if known, and shall contain a clear and concise statement of the matter relied upon as a basis for the pleading, together with an appropriate request for relief when relief is sought.

(e) Amendment to Pleading. The presiding officer may allow any pleading to be amended or corrected. Any amendment to any pleading shall be consistent with the Utah Rules of Civil Procedure.

(f) Signing of Pleading. Any pleading shall be signed and dated by the party or by the party's attorney or other authorized representative and shall show the signer's address, telephone number, and email. The signature is a certification by the signer that the signer has read the pleading and that, to the best of the signer's knowledge and belief, there are good grounds to support it.

(g) Motions.

(i) A proceeding seeking an order to secure compliance may not be initiated by motion except for a Motion for Order to Show Cause.

(ii) Any motion, other than one made orally at a hearing, shall be in writing and shall be filed and served on all parties as provided in this rule. The presiding officer may use discretion to decide any motion with or without a hearing. If either party desires a hearing on its motion, the pleadings in support or in opposition shall state that a hearing is requested and shall provide the reasons therefor. The filing of affidavits or declarations in support of the motions or in opposition thereto may be permitted or required by the presiding officer. Oral motions may be allowed at a hearing at the discretion of the presiding officer.

(iii) Any motion shall be filed and served at least ten days prior to the date set for the hearing.

(7) Filing and Service.

(a) Any pleading shall be considered filed on the date it is received by the Department.

(b) Unless filed and served electronically pursuant to R590-160-5.5, the pleading shall be filed with the Department and a copy served upon all other parties to the proceeding. The presiding officer may direct that a copy of any pleading be made available by the filer to any person requesting copies thereof who the presiding officer determines may be affected by the proceedings.

(c) Service may be made upon any party or other person by ordinary mail, by certified mail with return receipt requested, in accordance with the Utah Rules of Civil Procedure, or by any person specifically designated by the commissioner. Service upon a licensee, if by mail, shall be to the mailing address or other address on file with the Department.

(d) Any pleading required to be served by these rules shall include a Certificate of Service in substantially the following form: The undersigned hereby certifies that on this date, a true and correct copy of the (Pleading title) was served, emailed, or mailed, postage prepaid, to the following: name, street, city, state, zip code, and email address. Dated this (blank) day of (month), (year). (signed).

(e) When any party is represented by an attorney or other authorized representative, service upon the attorney or representative constitutes service upon the party.

(8) Disqualification of Presiding Officer.

(a) Any party to an adjudicative proceeding may move for the disqualification of an assigned presiding officer by filing with the commissioner an affidavit alleging facts sufficient to support disqualification.

(b) The commissioner shall determine the issue of disqualification as a part of the record of the case and may request and receive any additional evidence or testimony as considered necessary to make this determination. The adjudicative proceeding may not proceed until the commissioner makes this determination. No appeal shall be taken from the commissioner's order on the determination of disqualification except as part of an appeal of a final agency action.

(i) If the commissioner finds that a motion for disqualification was filed without a reasonable basis or good faith belief in the facts asserted, the commissioner may order that the offending party be subject to the appropriate sanctions as are authorized by statute or this rule.

(ii) When a presiding officer is disqualified or it becomes impractical for the presiding officer to continue, the commissioner shall appoint another presiding officer.

(c) A presiding officer may at any time voluntarily disqualify himself or herself.

(9) Ex Parte Contact Prohibited. Except as to matters that by law are subject to disposition on an ex parte basis, the commissioner and the presiding officer shall not have ex parte contact with any party or its representative, directly or indirectly involved in any matter that is the subject of a pending adjudicative proceeding unless all parties are given notice and an opportunity to participate.

(10) Standard of Proof. Any issue of fact in an adjudicative proceeding before the presiding officer shall be decided upon the basis of a preponderance of the evidence standard.

(11) Burden of Proof.

(a) A party who commences an adjudicative proceeding has the burden to prove entitlement to the relief sought.

(b) A party who asserts an affirmative defense to a request for relief has the burden to prove entitlement to that defense.

R590-160-6. Electronic Filing and Service of Pleadings in Formal and Informal Proceedings.

(1) Filing with or service on the presiding officer may be accomplished by sending a copy of the pleading in PDF to uidadmincases@utah.gov.

(2) Filing with or service on the Department may be accomplished by sending a copy of the pleading in PDF to the Department's current email as provided in the subject proceeding.

(3) Filing with or service on:

(a) a licensee may be accomplished by sending a copy of the pleading in PDF to the current email provided by the licensee pursuant to Subsection 31A-23a-412(1); or

(b) a party's representative may be accomplished by sending a copy of the pleading in PDF to the representative's current email set forth in the representative's filed pleading.

(4)(a) Any pleading electronically filed or served shall be signed by a party or its representative and shall contain a signed

certificate stating the date of electronic filing or service.

(b) An electronically filed or served pleading may be signed using any lawfully recognized signature, including an electronic signature.

R590-160-7. Rules Applicable to Formal Adjudicative Proceedings.

(1) Conduct of Hearing. Any hearing in a formal adjudicative proceeding shall be conducted pursuant to the provisions of Section 63G-4-206.

(2) Continuance. If application is made within a reasonable time prior to the date of hearing, upon proper notice to the other parties, the presiding officer may grant a motion for continuance or other change in the time and place of hearing, upon good cause shown. The presiding officer may also, for good cause, continue a hearing in process if such continuance will not substantially prejudice the rights of any party.

(3) Public Hearings. Unless ordered by the presiding officer for good cause, any hearing shall be open to the public.

(4) Telephonic Testimony. The presiding officer may, when the identity of a witness can be established with reasonable assurance, take testimony telephonically. If telephonic testimony is taken, any party shall be permitted to hear the testimony and examine or cross-examine the witness. The presiding officer has discretion whether telephonic testimony may be allowed. Any telephonic testimony shall be given under oath.

(5) Record of Hearing.

(a) Recording. The record of the proceeding shall be made by an audio recording. A duplicate copy of the recording, or any portion thereof, shall be provided by the presiding officer at the request and expense of any party, and at no cost to the commissioner.

(b) Transcript of Hearing. Upon reasonable notice and at the party's own expense, any party may request that a certified shorthand reporter be present to record the proceeding. If a transcript is made, the original transcript of the proceeding shall be filed with the presiding officer at no cost to the commissioner. Any party who wants a copy of the transcript may purchase it from the reporter at the party's own expense

(6) Subpoenas, Witness Fees and Payment.

(a) Subpoenas.

(i) On the presiding officer's command, or at the request of any party the presiding officer may issue a subpoena to:

(A) obtain or inspect documents;

(B) inspect premises or tangible things; or

(C) secure the attendance of a witness at a hearing or deposition in a formal adjudicative proceeding.

(ii) Any subpoena shall be issued and served in accordance with the Utah Rules of Civil Procedure, Rule 45, Subpoena.

(b) Witness Fees. Each subpoenaed witness, other than Department staff, who appears before the presiding officer shall be entitled to receive the same fees and mileage allowed by law to witnesses in a district court, to be paid by the party who requests the subpoena.

(c) Payment.

(i) Any witness appearing at the request of the presiding officer shall be entitled to payment from the funds appropriated for the use of the Department.

(ii) Any witness subpoenaed at the request of a party other than the presiding officer may, at the time of service of the subpoena, demand one day's witness fee and mileage in advance and unless such fee is tendered, that witness shall not be required to appear.

(7) Discovery. Discovery may be conducted by the parties' agreement or pursuant to an order of the presiding officer.

(8) Order. The presiding officer shall issue a written, signed order based upon evidence presented in the hearing.

R590-160-8. Rules Applicable to Informal Adjudicative Proceedings.

(1) An informal adjudicative proceeding may be commenced by the Department by issuing a Notice of Informal Adjudicative Proceeding and Order as provided in R590-160-4(1). The Order shall be based upon the information contained in the files of the Department, any declarant's testimony, and information known to the presiding officer. The Order shall constitute a proposed order that shall become final 15 days after service or mailing to the party unless a written request for a hearing is received by the Department prior to the expiration of 15 days.

(2) A respondent's failure to timely request a hearing in an informal adjudicative proceeding will be considered a failure to exhaust administrative remedies.

(3) When a hearing is requested in an informal adjudicative proceeding, a Notice of Prehearing Conference shall be issued stating the matters to be decided and giving notice of the date, time and place of the prehearing scheduling conference to be held.

(4) A hearing in an informal adjudicative proceeding may be of record.

(5) At a hearing in an informal adjudicative proceeding, the presiding officer may receive testimony, proffers of evidence, affidavits, declarations, and arguments relating to the issues to be decided and may issue subpoenas requiring the attendance of witnesses or the production of necessary evidence.

(6) At the close of the informal adjudicative proceeding, the presiding officer shall issue a written, signed order based upon evidence in the Department's files and the evidence or proffers of evidence received at the proceeding. The order shall be final on the date of the order.

R590-160-9. Agency Review.

(1) Agency review of an adjudicative proceeding, except an informal proceeding that becomes final without a request for a hearing pursuant to R590-160-7(1), shall be available to any party to the proceeding by filing a petition for review with the commissioner within 30 days of the date of the order. Failure to seek agency review shall be considered a failure to exhaust administrative remedies.

(2) A request for agency review shall be filed in accordance with Section 63G-4-301.

(3) The review shall be conducted by the commissioner or the commissioner's designee. The designee shall not be the presiding officer who issued the decision under review. If the review is conducted by a designee, the designee shall recommend a disposition to the commissioner who shall make the final decision and shall sign the order.

(4) Content of a Request for Agency Review.

(a) The content of a request for agency review shall be in accordance with Subsection 63G-4-301(1)(b) and include a copy of the order, which is the subject of the request.

(b) A party requesting agency review shall set forth any factual or legal basis in support of that request.

(c) The request for agency review may include:

(i) supporting argument;

(ii) citation to appropriate legal authority

(iii) any reference to the relevant portion of the record developed during the formal adjudicative proceeding under review; or

(iv) reference to the relevant portion of the Department's files, and other evidence or proffers of evidence received during the informal adjudicative proceeding under review.

(d) If a party challenges a finding of fact in the order subject to review, the party shall demonstrate:

(i) based on the entire record, that the finding is not supported by substantial evidence in the formal adjudicative proceeding under review; or

(ii) based on the Department's files and declarant's testimony, that the finding is not supported by substantial evidence in the informal adjudicative proceeding under review.

(e) If a party challenges a legal conclusion in the order subject to review, the party shall support its argument with citation to any relevant authority and also:

(i) cite the portion of the record which is relevant to that issue in the formal adjudicative proceeding under review; or

(ii) cite the portion of the record which is relevant to that issue based upon the evidence in the Department's files, facts appearing in the Department's files and verified by a declarant testimony, and facts presented in evidence or proffers of evidence received in the informal adjudicative proceeding under review.

(f)(i) If the grounds for agency review include any challenge to a determination of fact or conclusion of law as unsupported by or contrary to the evidence, the party seeking agency review shall:

(A) order and cause a transcript of the recording relevant to such finding or conclusion to be prepared in the formal adjudicative proceeding under review, in accordance with R590-160-6(5)(a) and (b); or

(B) provide a statement in its request for agency review that no transcript or recording is available in the informal adjudicative proceeding under review.

(ii) In a request for agency review under R590-160-8(4)(e)(i)(A), the party seeking review shall certify that a transcript has been ordered and shall notify the presiding officer when the transcript is available for filing.

(iii) The party seeking agency review shall bear the cost of the transcript.

(iv) The presiding officer may waive the requirement of preparation of a written transcript and permit citation to the recording of such adjudicative proceeding upon motion and a reasonable showing that such citation would not be extensive and the costs and period of time in preparation of a written transcript would be unduly burdensome in relation thereto.

(5) Request for Stay.

(a) Upon the timely filing of a request for agency review, the party seeking review may request that the effective date of the order subject to review be stayed pending the completion of review.

(b) The Department may oppose the request for a stay in writing within 10 days from the date the stay is requested.

(c) In determining whether to grant a request for a stay, the presiding officer shall review the request, any opposing memorandum, the findings of fact, conclusions of law, and order and determine whether a stay is in the best interest of the public. If it is determined to be in the best interest of the public to issue a stay, the presiding officer may:

(i) issue a stay, staying all or any part of the order pending agency review, or

(ii) issue a conditional stay by imposing terms, conditions or restrictions on a party pending agency review.

(d) The presiding officer may also enter an interim order granting a stay pending a final decision on the request for a stay.

(6) Memoranda.

(a) The presiding officer may order or permit the parties to file memoranda to assist in conducting agency review. Any memoranda shall be filed consistent with these rules or as otherwise governed by any scheduling order.

(b)(i) If a transcript is necessary to conduct agency review, a supporting memorandum shall be filed no later than 15 days after the filing of the transcript with the Department.

(ii) If a transcript is unavailable or waived by the presiding officer pursuant to R590-160-8(4)(f)(iv), any supporting memoranda to the request for agency review shall be filed with the request.

(c) Any opposing memorandum shall be filed no later than 15 days after the filing of the supporting memorandum.

(d) After the filing of an opposing memorandum, a reply memorandum shall be filed no later than five days after the filing of the opposing memorandum.

(7) Oral Argument.

The request for agency review or the response thereto shall state whether oral argument is sought in conjunction with agency review. The presiding officer may order or permit oral argument if determined to be warranted to assist in conducting agency review.

(8) Standard of Review.

The standards for agency review correspond to the standards for judicial review of formal adjudicative proceedings, as set forth in Subsection 63G-4-403(4).

(9) Order on Review.

(a) The order on review shall comply with the requirements of Subsection 63G-4-301(6).

(b) An Order on Review may affirm, reverse, or amend, in whole or in part, the previous order, or remand for further adjudicative proceeding or hearing.

(10) Failure to comply with R590-160-8 may result in dismissal of the request for agency review.

R590-160-10. Sanctions.

(1) In any adjudicative proceeding the presiding officer may, by order, impose sanctions upon any party, a party's representative, any witness, or a witness's representative for contemptuous or disobedient conduct, or for failure to comply with this rule or any lawful order.

(2)(a) The presiding officer may take reasonable steps to control the conduct of an adjudicative proceeding. The presiding officer may impose a sanction against a party or a witness who fails to comply with an order or with a requirement of R590-160.

(b) A sanction may include:

(i) excluding evidence;

(ii) dismissing claims;

(iii) striking pleadings or portions of the pleadings;

(iv) entering default judgments; or

(v) ordering payment of costs, expenses and fees.

R590-160-11. Severability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, that invalidity shall not affect any other provision or application of this rule, which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance

August 14, 2018	**31A-2-201**
Notice of Continuation September 21, 2018	**63G-4-102**
	63G-4-203

R590. Insurance, Administration.
R590-161. Disability Income Policy Disclosure.
R590-161-1. Authority.

This rule is issued pursuant to the authority vested in the commissioner under Section 31A-2-201.

R590-161-2. Definition.

"Disability Income Policy" means a group or individual insurance policy that provides for payments to the insured to replace income lost from accident or sickness.

R590-161-3. Rule.

A. Unless the reduction is clearly explained in the outline of coverage, the group certificate, and the policy, the amount of benefit payable by an insurer under a disability income policy may not be reduced by:

(1) worker's compensation benefit paid to the insured; or

(2) social security benefit paid to the insured; or

(3) any other amount the insured has received, or is entitled to receive by law or contract, including any other disability contract.

B. Any insurer that has disability income policies in effect that have reduction of benefit provisions that were not clearly explained in the outline of coverage, the group certificate, and the policy, will, within 30 days after the effective date of this rule, send notices to these insureds that clearly explain these reductions.

R590-161-4. Severability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.

KEY: insurance
1994 31A-2-201
Notice of Continuation September 21, 2018

R590. Insurance, Administration.
R590-162. Actuarial Opinion and Memorandum Rule.
R590-162-1. Purpose.

The purpose of this rule is to prescribe:

A. Requirements for statements of actuarial opinion which are to be submitted in accordance with Section 31A-17-503, and for memoranda in support thereof;

B. Guidance as to the meaning of "adequacy of reserves;" and

C. Rules applicable to the appointment of an appointed actuary.

R590-162-2. Authority.

This rule is issued pursuant to the authority vested in the Commissioner of Insurance of the State of Utah under Title 31A, Chapter 17, Part 5.

R590-162-3. Scope.

This rule shall apply to all companies and fraternal benefit societies that file the life, accident and health annual statement and to all companies and fraternal benefit societies that are authorized to reinsure life insurance, annuities or accident and health insurance business in this State.

Companies that file the property and casualty annual statement or the health annual statement shall follow the actuarial opinion and supporting actuarial memoranda requirements pursuant to the instructions for these annual statements. Such companies are not subject to actuarial opinion and supporting actuarial memoranda requirements of this rule.

This rule shall be applied in a manner that allows the appointed actuary to utilize professional judgment in performing the asset adequacy analysis and developing the actuarial opinion and supporting memoranda, consistent with applicable actuarial standards of practice. However, the commissioner shall have the authority to specify the methods of actuarial analysis and actuarial assumptions when, in the commissioner's judgment, these specifications are necessary for an acceptable opinion to be rendered relative to the adequacy of reserves and related items.

This rule shall be applicable to all annual statements filed with the office of the commissioner after the effective date of this rule. A statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with Section 6 of this rule, and a memorandum in support thereof in accordance with Section 7 of this rule, shall be required each year.

R590-162-4. Definitions.

A. "Actuarial Opinion" means the opinion of an Appointed Actuary regarding the adequacy of the reserves and related actuarial items based on an asset adequacy test in accordance with Section 6 of this rule and with applicable Actuarial Standards of Practice.

B. "Actuarial Standards Board" is the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

C. "Annual Statement" means that statement required by Section 31A-4-113 to be filed by the company with the office of the commissioner annually.

D. "Appointed Actuary" means any individual who is appointed or retained in accordance with the requirements set forth in Subsection 5C of this rule to provide the actuarial opinion and supporting memorandum as required by 31A-17-503.

E. "Asset Adequacy Analysis" means an analysis that meets the standards and other requirements referred to in Subsection 5D of this rule. It may take many forms, including, but not limited to, cash flow testing, sensitivity testing or applications of risk theory.

F. "Commissioner" means the Insurance Commissioner of this State.

G. "Company" means a life insurance company, fraternal benefit society or reinsurer subject to the provisions of this rule.

H. "Qualified Actuary" means any individual who meets the requirements set forth in Subsection 5B of this rule.

R590-162-5. General Requirements.

A. Submission of Statement of Actuarial Opinion

(1) There is to be included on or attached to Page 1 of the annual statement for each year beginning with the year in which this rule becomes effective the statement of an appointed actuary, entitled "Statement of Actuarial Opinion," setting forth an opinion relating to reserves and related actuarial items held in support of policies and contracts, in accordance with Section 6 of this rule.

(2) In the case of a statement of actuarial opinion required to be submitted by a foreign or alien company, the commissioner may accept the statement of actuarial opinion filed by such company with the insurance supervisory regulator of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this State.

(3) Upon written request by the company, the commissioner may grant an extension of the date for submission of the statement of actuarial opinion.

B. Qualified Actuary

A "qualified actuary" is an individual who:

(1) Is a member in good standing of the American Academy of Actuaries;

(2) Is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements;

(3) Is familiar with the valuation requirements applicable to life and health insurance companies;

(4) Has not been found by the commissioner, or if so found has subsequently been reinstated as a qualified actuary, following appropriate notice and hearing to have:

(a) Violated any provision of, or any obligation imposed by, the Utah Code or other law in the course of his or her dealings as a qualified actuary;

(b) Been found guilty of fraudulent or dishonest practices;

(c) Demonstrated his or her incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary;

(d) Submitted to the commissioner during the past five years, pursuant to this rule, an actuarial opinion or memorandum that the commissioner rejected because it did not meet the provisions of this rule including standards set by the Actuarial Standards Board; or

(e) Resigned or been removed as an actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards; and

(5) Has not failed to notify the commissioner of any action taken by any commissioner of any other state similar to that under Subsection (4) above.

C. Appointed Actuary

An "appointed actuary" is a qualified actuary who is appointed or retained to prepare the statement of actuarial opinion required by this rule, either directly by or by the authority of the board of directors through an executive officer of the company other than the qualified actuary. The company shall give the commissioner timely written notice of the name, title, and, in the case of a consulting actuary, the name of the firm and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary and shall state in such notice that the person meets the requirements set forth in Subsection 5B of this rule. Once

notice is furnished, no further notice is required with respect to this person, provided that the company shall give the commissioner timely written notice in the event the actuary ceases to be appointed or retained as an appointed actuary or to meet the requirements set forth in Subsection 5B. If any person appointed or retained as an appointed actuary replaces a previously appointed actuary, the notice shall so state and give the reasons for replacement.

D. Standards for Asset Adequacy Analysis

The asset adequacy analysis required by this rule:

(1) shall conform to the Standards of Practice as promulgated from time to time by the Actuarial Standards Board and on any additional standards under this rule, which standards are to form the basis of the statement of actuarial opinion in accordance with this rule; and

(2) shall be based on methods of analysis as are deemed appropriate for such purposes by the Actuarial Standards Board.

E. Liabilities to be Covered

(1) Under authority of Section 31A-17-503, the statement of actuarial opinion shall apply to all in force business on the statement date, whether directly issued or assumed, regardless of when or where issued.

(2) If the appointed actuary determines as the result of asset adequacy analysis that a reserve should be held in addition to the aggregate reserve held by the company and calculated in accordance with methods set forth in Title 31A, Chapter 17, Part 5 the company shall establish such additional reserve.

(3) Additional reserves established under Subsection (2) above and deemed not necessary in subsequent years may be released. Any amounts released must be disclosed in the actuarial opinion for the applicable year. The release of such reserves would not be deemed an adoption of a lower standard of valuation.

R590-162-6. Statement of Actuarial Opinion Based On an Asset Adequacy Analysis.

A. General Description

(1) The statement of actuarial opinion submitted in accordance with this section shall consist of:

(a) a paragraph identifying the appointed actuary and his or her qualifications as specified in Subsection 6B(1) of this rule;

(b) a scope paragraph identifying the subjects on which an opinion is to be expressed and describing the scope of the appointed actuary's work, including a tabulation delineating the reserves and related actuarial items which have been analyzed for asset adequacy and the method of analysis, as specified in Subsection 6B(2) of this rule, and identifying the reserves and related actuarial items covered by the opinion which have not been so analyzed;

(c) a reliance paragraph describing those areas, if any, where the appointed actuary has deferred to other experts in developing data, procedures or assumptions, e.g., anticipated cash flows from currently owned assets, including variation in cash flows according to economic scenarios, as specified in Subsection 6B(3) of this rule, supported by a statement of each such expert in the form prescribed by Subsection 6E of this rule; and

(d) an opinion paragraph expressing the appointed actuary's opinion with respect to the adequacy of the supporting assets to mature the liabilities, as specified in Subsection 6B(6) of this rule.

(2) One or more additional paragraphs will be needed in individual company cases as follows:

(a) if the appointed actuary considers it necessary to state a qualification of the opinion;

(b) if the appointed actuary must disclose the method of aggregation for reserves of different products or lines of business for asset adequacy analysis;

(c) if the appointed actuary must disclose reliance upon any portion of the assets supporting the Asset Valuation Reserve (AVR), Interest Maintenance Reserve (IMR) or other mandatory or voluntary statement of reserves for asset adequacy analysis;

(d) if the appointed actuary must disclose an inconsistency in the method of analysis or basis of asset allocation used at the prior opinion date with that used for this opinion;

(e) if the appointed actuary must disclose whether additional reserves of the prior opinion date are released as of this opinion date, and the extent of the release; or

(f) if the appointed actuary chooses to add a paragraph briefly describing the assumptions which form the basis for the actuarial opinion.

B. Recommended Language

The following paragraphs are to be included in the statement of actuarial opinion in accordance with this section. Language is that which in typical circumstances should be included in a statement of actuarial opinion. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language which clearly expresses his or her professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in this section.

(1) The opening paragraph should generally indicate the appointed actuary's relationship to the company and his or her qualifications to sign the opinion. For a company actuary, the opening paragraph of the actuarial opinion should read as follows:

"I, (name), am (title) of (insurance company name) and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the commissioner dated (insert date). I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

For a consulting actuary, the opening paragraph should contain a sentence such as:

"I, (name), a member of the American Academy of Actuaries, am associated with the firm of (name of consulting firm). I have been appointed by, or by the authority of, the Board of Directors of (name of company) to render this opinion as stated in the letter to the commissioner dated (insert date). I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

(2) The scope paragraph should include a statement such as the following:

"I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, 20( ). Tabulated below are those reserves and related actuarial items which have been subjected to asset adequacy analysis."

(3) If the appointed actuary has relied on other experts to develop certain portions of the analysis, the reliance paragraph should include a statement such as the following:

"I have relied on (name), (title) for (e.g., anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios or certain critical aspects of the analysis performed in conjunction with forming my opinion), as certified in the attached statement I have reviewed the information relied upon for reasonableness."

Such a statement of reliance on other experts should be accompanied by a statement by each of such experts of the form prescribed by Subsection 6E of this rule.

(4) If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph should also

include the following:

"My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of the actuarial calculations as I considered necessary. I also reconciled the underlying basic asset and liability records to (exhibits and schedules listed as applicable) of the company's current annual statement."

(5) If the appointed actuary has not examined the underlying records, but has relied upon data (e.g., listings and summaries of policies in force or asset records) prepared by the company or a third party, the reliance paragraph should include a statement such as:

"In forming my opinion on (specify types of reserves) I have relied upon data prepared by (name and title of company officer certifying in-force records or other data) as certified in the attached statement. I evaluated that data for reasonableness and consistency. I also reconciled that data to (exhibits and schedules to be listed as applicable) of the company's current annual statement. In other respects my examination included such review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary."

Such a statement of reliance must be accompanied by a statement by each person relied upon of the form prescribed by Subsection 6E of this rule.

(6) The opinion paragraph should include the following:

TABLE

(a) "In my opinion the reserves and related actuarial values concerning the statement items identified above:

(i) are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;

(ii) are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

(iii) meet the requirements of the Insurance Law and rule of the state of (state of domicile) and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;

(iv) are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions noted below);

(v) include provision for all actuarial reserves and related statement items which ought to be established;"

(b) "The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company;"

(c) "The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion;" and

(d) "This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion;"

or

"The following material change(s) which occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion:" (Describe the change or changes.)

"The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis."

.....
"Signature of Appointed Actuary

.....
Address of Appointed Actuary

.....
Telephone Number of Appointed Actuary

.....
Date"

C. Assumptions for New Issues

The adoption for new issues or new claims or other new liabilities of an actuarial assumption which differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this Section 6.

D. Adverse Opinions

If the appointed actuary is unable to form an opinion, then the actuary shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, then the actuary shall issue an adverse or qualified actuarial opinion explicitly stating the reason(s) for such opinion. This statement should follow the scope paragraph and precede the opinion paragraph.

E. Reliance on Data Furnished by Other Persons

If the appointed actuary relies on the certification of others on matters concerning the accuracy or completeness of any data underlying the actuarial opinion, or the appropriateness of any other information used by the appointed actuary in forming the actuarial opinion, the actuarial opinion should so indicate the persons the actuary is relying upon and a precise identification of the items subject to the reliance.

In addition, the persons on whom the appointed actuary relies shall provide a certification that precisely identifies the items on which the person is providing information and a statement as to the accuracy, completeness or reasonableness, as applicable, of the items. This certification shall include the signature, title, company, address and telephone number of the person rendering the certification, as well as the date on which it is signed.

F. Alternate Option

(1) As an alternative to the requirements of Subsection B(6)(a)(iii) of this rule, the appointed actuary may state that the reserves and related actuarial values "meet the requirements of the Insurance Law and rule of the State of (state of domicile) and I have verified that the company's request to file an opinion based on the laws of the state of domicile has been approved by the commissioner and that any conditions required by the commissioner for approval of that request have been met."

(2) To use this alternative, the company shall file a request to do so, along with the justification for its use, no later than April 30 of the year of the opinion to be filed. The request shall be deemed approved on October 1 of that year if the commissioner has not denied the request by that date.

(3) Notwithstanding the above, the commissioner may reject an opinion based on the laws of the state of domicile and require an opinion based on the laws of this State. If a company is unable to provide the opinion within sixty days of the request or such other period of time determined by the commissioner after consultation with the company, the commissioner may contract an independent actuary at the company's expense to prepare and file the opinion.

R590-162-7. Description of Actuarial Memorandum Including an Asset Adequacy Analysis.

A. General

(1) In accordance with Section 31A-17-503, the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of the opinion regarding the reserves. The memorandum shall be made available for examination by the commissioner upon request but shall be

returned to the company after such examination and shall not be considered a record of the insurance department or subject to automatic filing with the commissioner.

(2) In preparing the memorandum, the appointed actuary may rely on, and include as a part of his or her own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of Subsection 5B of this rule, with respect to the areas covered in such memoranda, and so state in their memoranda.

(3) If the commissioner requests a memorandum and no such memorandum exists or if the commissioner finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of this rule, the commissioner may designate a qualified actuary to review the opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the commissioner.

(4) The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the commissioner; provided, however, that any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the commissioner and shall be kept confidential to the same extent as is prescribed by law with respect to other material provided by the company to the commissioner pursuant to the statute governing this rule. The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this rule for any one of the current year or the preceding three years.

(5)(a) In accordance with Section 31A-17-503, the appointed actuary shall prepare a regulatory asset adequacy issues summary, the content of which are specified in Subsection C.

(b) Every company domiciled in this state shall submit the regulatory asset adequacy issues summary no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required.

(c) Every foreign company is required to make the regulatory asset adequacy issues summary available to the commissioner upon request.

(d) The regulatory asset adequacy issues summary shall be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

B. Details of the Memorandum Section Documenting Asset Adequacy Analysis.

When an actuarial opinion is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in Subsection 5D of this rule and any additional standards under this rule. It shall specify:

(1) for reserves:

(a) product descriptions including market description, underwriting and other aspects of a risk profile and the specific risks the appointed actuary deems significant;

(b) source of liability in force;

(c) reserve method and basis;

(d) investment reserves;

(e) reinsurance arrangements;

(f) identification of any explicit or implied guarantees made the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis; and

(g) documentation of assumptions to test reserves for the following:

(i) lapse rates (both base and excess);

(ii) interest crediting strategy;

(iii) mortality;

(iv) policyholder dividend strategy;

(v) competitor or market interest rate;

(vi) annuitization rates;

(vii) commissions and expenses; and

(viii) morbidity;

(2) for assets:

(a) portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets;

(b) investment and disinvestment assumptions;

(c) source of asset data;

(d) asset valuation bases; and

(e) documentation of assumptions made for:

(i) default costs;

(ii) bond call function;

(iii) mortgage prepayment function;

(iv) determining market value for assets sold due to disinvestment strategy; and

(v) determining yield on assets acquired through the investment strategy;

(3) for the analysis basis:

(a) methodology;

(b) rationale for inclusion/exclusion of different blocks of business and how pertinent risks were analyzed;

(c) rationale for degree of rigor in analyzing different blocks of business (include in the rationale the level of "materiality" that was used in determining how rigorously to analyze different blocks of business);

(d) criteria for determining asset adequacy (include in the criteria the precise basis for determining if assets are adequate to cover reserves under "moderately adverse conditions" or other conditions as specified in relevant actuarial standards of practice); and

(e) effect of federal income taxes, reinsurance and other relevant factors;

(4) summary of material changes in methods, procedures, or assumptions from prior year's asset adequacy analysis;

(5) summary of Results; and

(6) conclusions.

C. Details of the Regulatory Asset Adequacy Summary

(1) The regulatory asset adequacy issues summary shall include:

(a) descriptions of the scenarios tested (including whether those scenarios are stochastic or deterministic) and the sensitivity testing done relative to those scenarios. If negative ending surplus results under certain tests in aggregate, the actuary should describe those tests and the amount of additional reserve as of the valuation date which, if held, would eliminate the negative aggregate surplus values. Ending surplus values shall be determined by either extending the projection period until the in force and associated assets and liabilities at the end of the projection period are immaterial or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force;

(b) the extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different than the assumptions used in the previous asset adequacy analysis;

(c) the amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion;

(d) comments on any interim results that may be of significant concern to the appointed actuary. For example, the impact of the insufficiency of assets to support the payment of

benefits and expenses and the establishment of statutory reserve during one or more interim periods;

(e) the methods used by the actuary to recognize the impact of reinsurance on the company's cash flows, including both assets and liabilities, under each scenario tested; and

(f) whether the actuary has been satisfied that all options, whether explicit or embedded, in any asset or liability (including but not limited to those affecting cash flows embedded in fixed income securities) and equity-like features in any investments have been appropriately considered in the asset adequacy analysis.

(2) The regulatory asset adequacy issues summary shall contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and shall be signed and dated by the appointed actuary rendering the actuarial opinion.

D. Documentation

The appointed actuary shall retain on file, for at least seven years, sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained. The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions.

R590-162-8. Exemptions.

A. Unless ordered by the commissioner, a company that is under supervision, rehabilitation, or liquidation is exempt from the requirements of this rule.

B.(1) At the discretion of the commissioner, a company domiciled in this State and doing business only in this State may submit an opinion without the statement required under R590-162-6(B)(6)(b).

(2) If the commissioner grants an exemption under Subsection B(1), the company shall be exempt from preparing and submitting the RAAIS document required under R590-162-7(A)(5).

C.(1) A company domiciled in this State, and otherwise subject to the requirements of this rule, may apply to the commissioner for an exemption from:

(a) the requirement to submit an actuarial opinion required under R590-162-5(A)(1);

(b) the requirement to include within its actuarial opinion the statement required under R590-162-6(B)(6)(b); or

(c) the requirement to prepare and submit the RAAIS document required under R590-162-7(A)(5).

(2) A company seeking an exemption under Subsection C(1) shall:

(a) submit a written request for an exemption no later than November 1 of the year for which the exemption is sought; and

(b) provide a written explanation and supporting documents, if any, explaining how complying with the requirement for which an exemption is sought would not enhance the department's understanding of the financial position of the company and, therefore, be an unnecessary burden on the company.

R590-162-9. Severability.

If any provision of this rule or its application to any person or circumstances is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.

KEY: insurance
August 26, 2015 31A-17-503
Notice of Continuation September 21, 2018

R590. Insurance, Administration.
R590-245. Self-Service Storage Insurance.
R590-245-1. Authority.

This rule is promulgated pursuant to Subsection 31A-2-201(3) in which the commissioner is empowered to adopt rules to implement the provisions of the Utah Insurance Code and specifically Subsections:

(1) 31A-23a-106(3)(a), that authorizes the Commissioner to recognize by rule other limited line producer lines of authority as to kinds of insurance not listed under Subsections 31A-23a-106(2)(a) through (f);

(2) 31A-23a-104(2), and 31A-23a-110(1), that authorizes the Commissioner to prescribe the form in which licenses covered under Chapter 23a are to be issued or renewed; and

(3) 31A-23a-111(10), that authorizes the Commissioner to prescribe by rule, license renewal and reinstatement procedures.

R590-245-2. Purpose and Scope.

(1) The purpose of this rule is to:

(a) recognize self-service storage as a limited line producer line of authority; and

(b) establish standards of licensing for those in the self-service storage related insurance business in Utah.

(2) This rule applies to all persons selling, soliciting, or negotiating self-service storage related insurance business in Utah.

R590-245-3. Definitions.

For the purposes of this rule, the commissioner adopts the definitions in Sections 31A-1-301 and 31A-23a-102, and the following:

(1) "Self-service storage insurance" means any contract of insurance issued to a renter as a part of an agreement of self-service storage with respect to:

(a) hazard insurance coverage provided to a renter for loss or damage to tangible personal property in storage or in transit during the rental period; or

(b) tenant liability insurance coverage.

(2) "Self-service storage facility" means a person or agency engaged in the business of providing leased or rented storage space to the public.

(3) "Storage space" means a room, unit, locker, or open space offered for rental to the public for temporary storage of personal belongings or light commercial goods.

(4) "Renter" means any person who obtains the use of storage space from a self-service storage facility under the terms of a rental agreement.

(5) "Rental agreement" means any written agreement setting forth the terms and conditions governing the use of storage space provided by a self-service storage facility.

(6) "Self-service storage insurance license" means a limited line producer license with a self-service storage insurance limited line producer line of authority that authorizes a person, licensed pursuant to this rule, to offer self-service storage insurance in connection with, and incidental to rental agreements on behalf of an insurer authorized to write the types of insurance specified in this state.

R590-245-4. Licensing and Renewal.

(1) All persons and entities involved in the sale, solicitation, or negotiation of self-service storage insurance must be licensed in accordance with Chapter 31A-23a, applicable department rules regarding individual and agency licensing, and this rule.

(2) A self-service storage insurance license is issued for a two-year license period and requires no examination or continuing education.

(3) A self-service storage insurance license must be renewed at the end of the two-year licensing period in accordance with Chapter 31A-23a and any applicable department rules regarding license renewal.

(4) A self-service storage insurance license may be held by an individual or by an agency, such as a self-service storage facility or franchisee of a self-service storage facility.

(5) An individual licensed under this rule must either be appointed by an insurance company underwriting the insurance policy the individual sells, or be designated to act by an agency licensed under this rule.

(6) An agency licensed under this rule must:

(a) be appointed by an insurance company underwriting the insurance policies the agency sells;

(b) designate a licensed individual to be responsible for the regulatory compliance of the agency in Utah.

(7) An agency licensed under this rule may employ non-licensed personnel employed as self-service storage counter sales representatives to sell, solicit, or negotiate self-service storage insurance. Such non-licensed employees must:

(a) be trained and supervised in the sale of self-service storage insurance products; and

(b) be responsible to a licensed individual designated by the agency.

(8) No self-service storage facility, or franchisee of a self-service storage facility, may offer or sell self-service storage insurance unless it has complied with the requirements of this rule and has been issued a license by the commissioner.

R590-245-5. Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-245-6. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R590-245-7. Severability.

If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remaining provisions to other persons or circumstances shall not be affected.

KEY: self-service storage, insurance

November 12, 2008	**31A-2-201**
Notice of Continuation September 21, 2018	**31A-23a-104**
	31A-23a-106
	31A-23a-110
	31A-23a-111
	31A-1-301
	31A-23a-102

R861. Tax Commission, Administration.
R861-1A. Administrative Procedures.
R861-1A-3. Division Conferences Pursuant to Utah Code Ann. Sections 59-1-210 and 63G-4-102.

Any party directly affected by a commission action or contemplated action may request a conference with the supervisor or designated officer of the division involved in that action.

(1) A request may be oral or written.

(2) A conference will be conducted in an informal manner in an effort to clarify and narrow the issues and problems involved.

(3) The party requesting a conference will be notified of the result:

(a) orally or in writing;

(b) in person or through counsel; and

(c) at the conclusion of the conference or within a reasonable time thereafter.

(4) A conference may be held at any time prior to a hearing, whether or not a petition for hearing, appeal, or other commencement of an adjudicative proceeding has been filed.

R861-1A-9. State Board of Equalization Procedures Pursuant to Utah Code Ann. Sections 59-2-212, 59-2-1004, and 59-2-1006.

(1) The commission sits as the state board of equalization in discharge of the equalization responsibilities given it by law. The commission may sit on its own initiative to correct the valuation of property that has been overassessed, underassessed, or nonassessed as described in Section 59-2-212, and as a board of appeal from the various county boards of equalization described in Section 59-2-1004.

(2) Appeals to the commission shall include:

(a) a copy of the recommendation of a hearing officer if a hearing officer heard the appeal;

(b) a copy of the notice required under Section 59-2-919.1;

(c) a copy of the minutes of the board of equalization;

(d) a copy of the property record maintained by the assessor;

(e) if the county board of equalization does not include the record in its minutes, a copy of the record of the appeal required under R884-24P-66;

(f) a copy of the evidence submitted by the parties to the board of equalization;

(g) a copy of the petition for redetermination; and

(h) a copy of the decision of the board of equalization.

(3) A notice of appeal filed by the taxpayer with the auditor pursuant to Section 59-2-1006 shall be presumed to have been timely filed unless the county provides convincing evidence to the contrary. In the absence of evidence of the date of mailing of the county board of equalization decision by the county auditor to the taxpayer, it shall be presumed that the decision was mailed three days after the meeting of the county board of equalization at which the decision was made.

(4) Appeals to the commission shall be scheduled for hearing pursuant to commission rules.

(5) Appeals to the commission shall be on the merits except for the following:

(a) dismissal for lack of jurisdiction;

(b) dismissal for lack of timeliness;

(c) dismissal for lack of evidence to support a claim for relief.

(6)(a) The commission shall consider, but is not limited to, the facts and evidence submitted to the county board.

(b) A party may raise a new issue before the commission.

(7) On an appeal from a dismissal by a county board for the exceptions under Subsection (5), the only matter that will be reviewed by the commission is the dismissal itself, not the merits of the appeal.

(8) An appeal filed with the commission may be remanded to the county board of equalization for further proceedings if the commission determines that:

(a) dismissal under Subsection (5)(a) or (c) was improper;

(b) the taxpayer failed to exhaust all administrative remedies at the county level;

(c) in the interest of administrative efficiency, the matter can best be resolved by the county board;

(d) the commission determines that dismissal under Subsection (5)(a)(c) is improper under R884-24P-66; or

(e) a new issue is raised before the commission by a party.

(9) The provisions of this rule apply only to appeals to the commission as the state board of equalization. For information regarding appeals to the county board of equalization, please see Section 59-2-1004 and R884-24P-66.

R861-1A-10. Miscellaneous Provisions Pursuant to Utah Code Ann. Section 59-1-210.

A. Rights of Parties. Nothing herein shall be construed to remove or diminish any right of any party under the Constitution of the United States, the Constitution of the state of Utah, or any existing law.

B. Effect of Partial Invalidation. If any part of these rules be declared unconstitutional or in conflict with existing statutory law by a court of competent jurisdiction, the remainder shall not be affected thereby and shall continue in full force and effect.

C. Enactment of Inconsistent Legislation. Any statute passed by the Utah Legislature inconsistent with these rules or any part thereof will effect a repeal of that part of these rules with which it is inconsistent, but of no other part.

D. Presumption of Familiarity. It will be presumed that parties dealing with the Commission are familiar with:

1. these rules and the provisions thereof,

2. the revenue laws of the state of Utah, and

3. all rules enacted by the Commission in its administration thereof.

R861-1A-11. Appeal of Corrective Action Order Pursuant to Utah Code Ann. Section 59-2-704.

A. Appeal of Corrective Action Order. Any county appealing a corrective action order issued pursuant to Section 59-2-704, shall, within 10 days of the mailing of the order, request in writing a hearing before the Commission. The Commission shall immediately set the time and place of the hearing, which shall be held no later than June 30 of the tax year to which the corrective action order applies.

B. Hearings. Hearings on corrective action order appeals shall be conducted as formal hearings and shall be governed by the procedures contained in these rules. If the parties are able to stipulate to a modification of the corrective action order, and it is evident that there is a reasonable basis for modifying the corrective action order, an amended corrective action order may be executed by the Commission. One or more commissioners may preside at a hearing under this rule with the same force and effect as if a quorum of the Commission were present. However, a decision must be made and an order signed by a quorum of the Commission.

C. Decisions and Orders. The Commission shall render its decision and order no later than July 10 of the tax year to which the corrective action order applies. Upon reaching a decision, the Commission shall immediately notify the clerk of the county board of equalization and the county assessor of that decision.

D. Sales Information. Access to Commission property sales information shall be available by written agreement with the Commission to any clerk of the county board of equalization and county assessor appealing under this rule. All other reasonable and necessary information shall be available upon request, according to Commission guidelines.

E. Conflict with Other Rules. This rule supersedes all other rules that may otherwise govern these proceedings before the Commission.

R861-1A-12. Policies and Procedures Regarding Public Disclosure Pursuant to Utah Code Ann. Sections 41-3-209, 59-1-210, 59-1-403, and 59-1-405.

(1) Hearings.

(a) Except as provided under Subsection (1)(b), and pursuant to Section 59-1-405, hearings related to appeals filed with the commission are confidential tax matters and not subject to Title 52, Chapter 4, Open and Public Meetings Act.

(b) Hearings related to the enforcement of Title 41, Chapter 3, Motor Vehicle Business Regulation, are open to the public.

(2) Orders.

(a) Except as provided in Subsections (2)(b) through (e), written orders signed by the commission will be mailed to the named parties in accordance with commission procedures. Copies of these orders or information about them will not be provided to any person other than the named parties except under the following circumstances:

(i) the parties have affirmatively waived any claims to confidentiality; or

(ii) the orders may be effectively sanitized through the deletion of references to the parties, specific tax amounts, witnesses, geographic information, or any other information that might identify a particular person.

(b) Property tax orders signed by the commission that do not contain commercial information will be mailed to the named parties in accordance with commission procedures. Copies of these orders or information about them will not be provided to any person other than the named parties except under the following circumstances:

(i) the parties have affirmatively waived any claims to confidentiality;

(ii) the orders may be effectively sanitized through the deletion of reference to the parties, specific tax amounts, witnesses, geographic information, or any other information that might identify any private party to the appeal; or

(iii) the disclosure is required or allowed under state law.

(c)(i) Property tax orders signed by the commission that contain commercial information will be mailed to the appropriate persons in accordance with Section 59-1-404 and rule R861-1A-37, Provisions Relating to Disclosure of Commercial Information.

(ii) Copies of property tax orders described in Subsection (2)(c)(i), or information about them, will be made available to persons other than the persons described in Section 59-1-404 and rule R861-1A-37 under the following circumstances:

(A) the parties have affirmatively waived any claims to confidentiality;

(B) the orders may be effectively sanitized through the deletion of reference to the parties, specific tax amounts, commercial information, witnesses, geographic information, or any other information that might identify any private party to the appeal; or

(C) the disclosure is required or allowed under state law.

(d) Orders resulting from a hearing related to the enforcement of Title 41, Chapter 1a, Motor Vehicle Act, will be mailed to the named parties in accordance with commission procedures. Copies of these orders or information about them will not be provided to any person other than the named parties except under the following circumstances:

(i) the parties have affirmatively waived any claims to confidentiality;

(ii) the orders may be effectively sanitized through the deletion of reference to the parties, specific tax amounts, witnesses, geographic information, or any other information that might identify any private party to the appeal; or

(iii) the disclosure is required under state law.

(e) Orders resulting from a hearing related to the enforcement of Title 41, Chapter 3, Motor Vehicle Business Regulation, are public information and may be publicized.

(3) Commission Notes and Workpapers.

(a) All workpapers, notes, and other material prepared by the commissioners, as well as staff and employees of the commission, are protected, and access to the specific material is restricted to employees of the commission and its legal counsel only.

(b) Examples of this restricted material include audit workpapers and notes, ad valorem appraisal worksheets, and notes taken during hearings and deliberations. In the case of information prepared as part of an audit, the auditing division will, upon request, provide summary information of the findings to the taxpayer. These items will not be available to any person or party by discovery carried out pursuant to these rules or the Utah Rules of Civil Procedure.

(4) Reciprocal Agreements.

(a) The commission may enter into individual reciprocal agreements to share specific tax information with authorized representatives of the United States Internal Revenue Service or the revenue service of any other state.

(b) For all taxes other than individual income tax and corporate franchise tax, the commission may share information gathered from returns and other written statements with the federal government, other states, and political subdivisions within and without the state if the political subdivision, state, or federal government grant substantially similar privileges to this state.

(5) Statistical Information. The commission authorizes the preparation and publication of statistical information regarding the payment and collection of state taxes. The information will be made available after review and approval of the commission.

(6) Publication of Delinquent Taxpayer Information.

(a) For purposes of this Subsection (6), "delinquent taxpayer" does not include a person subject to a tax under:

(i) Title 59, Chapter 7, Corporate Franchise and Income Taxes;

(ii) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information;

(iii) Title 59, Chapter 10, Part 2, Trusts and Estates; or

(iv) Title 59, Chapter 10, Part 14, Pass-Through Entities and Pass-Through Entity Taxpayers Act.

(b) The commission may publicize the following information relating to a delinquent taxpayer:

(i) name;

(ii) address;

(iii) the amount of money owed by tax type; and

(iv) any legal action taken by the commission, including charges filed and property seized.

R861-1A-13. Requests for Accommodation and Grievance Procedures Pursuant to Utah Code Ann. Section 63G-3-201, 28 CFR 35.107 1992 edition, and 42 USC 12201.

(1) Individuals with a disability may request reasonable accommodations to services, programs, or activities, or a job or work environment in the following manner.

(a) Requests shall be directed to:

Accommodations Coordinator
Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134

Telephone: 801-297-3811 TDD: 801-297-3819 or relay at 711

(b) Requests shall be made at least three working days prior to any deadline by which the accommodation is needed.

(c) Requests shall include the following information:

(i) the individual's name and address;
(ii) a notation that the request is made in accordance with the Americans with Disabilities Act;
(iii) a description of the nature and extent of the individual's disability;
(iv) a description of the service, program, activity, or job or work environment for which an accommodation is requested; and
(v) a description of the requested accommodation if an accommodation has been identified.
(2) The accommodations coordinator shall review all requests for accommodation with the applicable division director and shall issue a reply within two working days.
(a) The reply shall advise the individual that:
(i) the requested accommodation is being supplied; or
(ii) the requested accommodation is not being supplied because it would cause an undue hardship, and shall suggest alternative accommodations. Alternative accommodations must be described; or
(iii) the request for accommodation is denied. A reason for the denial must be included; or
(iv) additional time is necessary to review the request. A projected response date must be included.
(b) All denials of requests under Subsections (2)(a)(ii) and (2)(a)(iii) shall be approved by the executive director or designee.
(c) All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.
(3) Individuals with a disability who are dissatisfied with the reply to their request for accommodation may file a request for review with the executive director in the following manner.
(a) Requests for review shall be directed to:
Executive Director
Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134
Telephone: 801-297-3841 TDD: 801-297-3819 or relay at 711
(b) A request for review must be filed within 180 days of the accommodations coordinator's reply.
(c) The request for review shall include:
(i) the individual's name and address;
(ii) the nature and extent of the individual's disability;
(iii) a copy of the accommodation coordinator's reply;
(iv) a statement explaining why the reply to the individual's request for accommodation was unsatisfactory;
(v) a description of the accommodation desired; and
(vi) the signature of the individual or the individual's legal representative.
(4) The executive director shall review all requests for review and shall issue a reply within 15 working days after receipt of the request for review.
(a) If unable to reach a decision within the 15 working day period, the executive director shall notify the individual with a disability that the decision is being delayed and the amount of additional time necessary to reach a decision.
(b) All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.
(5) The record of each request for review, and all written records produced or received as part of each request for review, shall be classified as protected under Section 63G-2-305 until the executive director issues a decision.
(6) Once the executive director issues a decision, any portions of the record that pertain to the individual's medical condition shall remain classified as private under Section 63G-2-302 or controlled under Section 63G-2-304, whichever is appropriate. All other information gathered as part of the appeal shall be classified as private information. Only the written decision of the executive director shall be classified as public information.
(7) Individuals with a disability who are dissatisfied with the executive director's decision may appeal that decision to the commission in the manner provided in Sections 63G-4-102 through 63G-4-105.

R861-1A-15. Requirement of Social Security and Federal Identification Numbers Pursuant to Utah Code Ann. Section 59-1-210.

A. Taxpayers shall provide the Tax Commission with their social security number or federal identification number, as required by the Tax Commission.
B. Sole proprietor and partnership applicants shall provide the Tax Commission with the following information for every owner or partner of the applying entity:
1. name;
2. home address;
3. social security number and federal identification number, as required by the Tax Commission.
C. Corporation and limited liability applicants shall provide the Tax Commission with the following information for every officer or managing member of the applying entity:
1. name;
2. home address; and
3. social security number and federal identification number, as required by the Tax Commission.
D. Business trust applicants shall provide the Tax Commission with the following information for the responsible trustees:
1. name;
2. home address; and
3. social security number and federal identification number, as required by the Tax Commission.

R861-1A-16. Utah State Tax Commission Management Plan Pursuant to Utah Code Ann. Section 59-1-207.

(1) The executive director reports to the commission. The executive director shall meet with the commission periodically to report on the status and progress of this agreement, update the commission on the affairs of the agency and seek policy guidance. The chairman of the commission shall designate a liaison of the commission to coordinate with the executive director in the execution of this agreement.
(2) The structure of the agency is as follows:
(a) The Office of the Commission, including the commissioners and the following units that report to the commission:
(i) Internal Audit;
(ii) Appeals;
(iii) Economic and Statistical; and
(iv) Public Information.
(b) The Office of the Executive Director, including the executive director's staff and the following divisions that report to the executive director:
(i) Administration;
(ii) Taxpayer Services;
(iii) Motor Vehicle;
(iv) Auditing;
(v) Property Tax;
(vi) Processing; and
(vii) Motor Vehicle Enforcement.
(3) The Executive Director shall oversee service agreements from other departments, including the Department of Human Resources and the Department of Technology Services.
(4) The commission hereby delegates full authority for the following functions to the executive director:

(a) general supervision and management of the day to day management of the operations and business of the agency conducted through the Office of the Executive Director and through the divisions set out in Subsection (2)(b);

(b) management of the day to day relationships with the customers of the agency;

(c) all original assessments, including adjustments to audit, assessment, and collection actions, except as provided in Subsections (4)(d) and (5);

(d) in conformance with standards established by the commission, waivers of penalty and interest pursuant to Section 59-1-401 in amounts under $10,000, or offers in compromise agreements in amounts under $10,000;

(e) except as provided in Subsection (5)(g), voluntary disclosure agreements with companies, including multilevel marketers;

(f) determination of whether a county or taxing entity has satisfied its statutory obligations with respect to taxes and fees administered by the commission;

(g) human resource management functions, including employee relations, final agency action on employee grievances, and development of internal policies and procedures; and

(h) administration of Title 63G, Chapter 2, Government Records Access and Management Act.

(5) The executive director shall prepare and, upon approval by the commission, implement the following actions, agreements, and documents:

(a) the agency budget;

(b) the strategic plan of the agency;

(c) administrative rules and bulletins;

(d) waivers of penalty and interest in amounts of $10,000 or more pursuant to Section 59-1-401 as per the waiver of penalty and interest policy;

(e) offer in compromise agreements that abate tax, penalty and interest over $10,000 as per the offer in compromise policy;

(f) stipulated or negotiated agreements that dispose of matters on appeal; and

(g) voluntary disclosure agreements that meet the following criteria:

(i) the company participating in the agreement is not licensed in Utah and does not collect or remit Utah sales or corporate income tax; and

(ii) the agreement forgives a known past tax liability of $10,000 or more.

(6) The commission shall retain authority for the following functions:

(a) rulemaking;

(b) adjudicative proceedings;

(c) private letter rulings issued in response to requests from individual taxpayers for guidance on specific facts and circumstances;

(d) internal audit processes;

(e) liaison with the governor's office:

(i) Correspondence received from the governor's office relating to tax policy will be directed to the Office of the Commission for response. Correspondence received from the governor's office that relates to operating issues of the agency will be directed to the Office of the Executive Director for research and appropriate action. The executive director shall prepare a timely response for the governor with notice to the commission as appropriate.

(ii) The executive director and staff may have other contact with the governor's office upon appropriate notice to the commission;

(f) liaison with the Legislature:

(i) The commission will set legislative priorities and communicate those priorities to the executive director.

(ii) Under the direction of the executive director, staff may be assigned to assist the commission and the executive director in monitoring legislative meetings and assisting legislators with policy issues relating to the agency; and

(g) litigation:

(i) The executive director shall advise the commission on matters under litigation.

(ii) If a settlement offer is received, the executive director shall inform the commission of the:

(A) terms of the offer; and

(B) the division's recommendations with regards to that offer.

(7) Correspondence that has been directed to the commission or individual commissioners that relates to matters delegated to the executive director shall be forwarded to a staff member of the Office of the Executive Director for research and appropriate action. A log shall be maintained of all correspondence and periodically the executive director will review with the commission the volume, nature, and resolution of all correspondence from all sources.

(8) The executive director's staff may occasionally act as support staff to the commission for purposes of conducting research or making recommendations on tax issues.

(a) Official communications or assignments from the commission or individual commissioners to the staff reporting to the executive director shall be made through the executive director.

(b) The commissioners and the Office of the Commission staff reserve the right to contact agency staff directly to facilitate a collegial working environment and maintain communications within the agency. These contacts will exclude direct commands, specific policy implementation guidance, or human resource administration.

(9) The commission shall meet with the executive director periodically for the purpose of exchanging information and coordinating operations.

(a) The commission shall discuss with the executive director all policy decisions, appeal decisions or other commission actions that affect the day to day operations of the agency.

(b) The executive director shall keep the commission apprised of significant actions or issues arising in the course of the daily operation of the agency.

(c) When confronted with circumstances that are not covered by established policy or by instances of real or potential conflicts of interest, the executive director shall refer the matter to the commission.

R861-1A-18. Allocations of Remittances Pursuant to Utah Code Ann. Sections 59-1-210 and 59-1-705.

A. Remittances received by the commission shall be applied first to penalty, then interest, and then to tax for the filing period and account designated by the taxpayer.

B. If no designation for period is made, the commission shall allocate the remittance so as to satisfy all penalty, interest, and tax for the oldest period before applying any excess to other periods.

C. Fees associated with Tax Commission collection activities shall be allocated from remittances in the manner designated by statute. If a statute does not provide for the manner of allocating those fees from remittances, the commission shall apply the remittance first to the collection activity fees, then to penalty, then interest, and then to tax for the filing period.

R861-1A-20. Time of Appeal Pursuant to Utah Code Ann. Sections 63G-4-201 and 68-3-8.5.

(1) Except as provided in Subsection (2), a petition for adjudicative action must be received in the commission offices no later than 30 days from the date of the action that creates the right to appeal. The petition is deemed to be timely if:

(a) in the case of mailed or hand-delivered documents:

(i) the petition is received in the commission offices on or before the close of business of the last day of the 30-day period; or

(ii) the date of the postmark on the envelope or cover indicates that the petition was mailed on or before the last day of the 30-day period; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the 30-day period.

(c) A petition for adjudicative action that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsections 68-3-8.5(2)(b) and (c).

(2) If a statute provides the period within which an appeal may be filed, a petition for adjudicative action is deemed to be timely if:

(a) in the case of mailed or hand-delivered documents:

(i) the petition is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(ii) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the time frame provided by statute; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the time frame provided by statute.

(c) A petition for adjudicative action that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsections 68-3-8.5(2)(b) and (c).

(3) Any party adversely affected by an order of the commission may seek judicial review within the time frame provided by statute. Copies of the appeal shall be served upon the commission and upon the Office of the Attorney General.

R861-1A-22. Petitions for Commencement of Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501, and 63G-4-201.

(1) Time for Petition. Unless otherwise provided by Utah statute, petitions for adjudicative actions shall be filed within the time frames specified in R861-1A-20. If the last day of the 30-day period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next Tax Commission business day.

(2) Contents. A petition for adjudicative action need not be in any particular form, but shall be in writing and, in addition to the requirements of 63G-4-201, shall contain the following:

(a) name and street address and, if available, a fax number or e-mail address of petitioner or the petitioner's representative;

(b) a telephone number where the petitioning party or that party's representative can be reached during regular business hours;

(c) petitioner's tax identification, social security number or other relevant identification number, such as real property parcel number or vehicle identification number;

(d) particular tax or issue involved, period of alleged liability, amount of tax in dispute, and, in the case of a property tax issue, the lien date;

(e) if the petition results from a letter or notice, the petition will include the date of the letter or notice and the originating division or officer; and

(f) in the case of property tax cases, the assessed value sought.

(3) Effect of Nonconformance. The commission will not reject a petition because of nonconformance in form or content, but may require an amended or substitute petition meeting the requirements of this section when such defects are present. An amended or substitute petition must be filed within 15 days after notice of the defect from the commission.

R861-1A-23. Designation of Adjudicative Proceedings Pursuant to Utah Code Ann. Section 63G-4-202.

(1) All matters shall be designated as formal proceedings and set for an initial hearing, a status conference, or a scheduling conference pursuant to R861-1A-26.

(2) A matter may be diverted to a mediation process pursuant to R861-1A-32 upon agreement of the parties and the presiding officer.

R861-1A-24. Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-502.5, 63G-4-206, and 63G-4-208.

(1) The following may preside at a formal proceeding:

(a) a commissioner;

(b) an administrative law judge appointed by the commission; or

(c) in the case of a formal proceeding that relates to a matter that is not a tax, fee, or charge as defined under Section 59-1-1402:

(i) a commissioner;

(ii) an administrative law judge appointed by the commission; or

(iii) a hearing officer appointed by the commission.

(2) Assignment of a presiding officer to a case will be made pursuant to agency procedures and not at the request of any party to the appeal.

(a) A party may request that one or more commissioners be present at any hearing. However, the decision of whether the request is granted rests with the commission.

(b) If more than one commissioner, administrative law judge, or hearing officer is present at any hearing, the hearing will be conducted by the presiding officer assigned to the appeal, unless otherwise determined by the commission.

(3) A formal proceeding includes an initial hearing pursuant to Section 59-1-502.5, unless it is waived upon agreement of all parties, and a formal hearing on the record, if the initial hearing is waived or if a party appeals the initial hearing decision.

(a) Initial Hearing.

(i) An initial hearing pursuant to Section 59-1-502.5 shall be in the form of a conference.

(ii) In accordance with Section 59-1-502.5, the commission shall make no record of an initial hearing.

(iii) Any issue may be settled in the initial hearing, but any party has a right to a formal hearing on matters that remain in dispute after the initial hearing decision is issued.

(iv) Any party dissatisfied with the result of the initial hearing must file a timely request for a formal hearing before pursuing judicial review of unsettled matters.

(b) Formal Hearing.

(i) The commission shall make a record of all formal hearings, which may include a written record or an audio recording of the proceeding.

(ii) Evidence presented at the initial hearing will not be included in the record of the formal hearing, unless specifically requested by a party and admitted by the presiding officer.

R861-1A-26. Procedures for Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501 and 63G-4-204 through 63G-4-209.

(1) A scheduling or status conference may be held.

(a) At the conference, the parties and the presiding officer may:

(i) establish deadlines and procedures for discovery;

(ii) discuss scheduling;

(iii) clarify other issues;

(iv) determine whether to refer the action to a mediation

process; and

(v) determine whether the initial hearing will be waived.

(b) The scheduling or status conference may be converted to an initial hearing upon agreement of the parties.

(2) Notice of Hearing. At least ten days prior to a hearing date, the commission shall notify the petitioning party or the petitioning party's representative by mail, e-mail, or facsimile of the date, time and place of any hearing or proceeding.

(3) Proceedings Conducted by Telephone. Any proceeding may be held with one or more of the parties on the telephone if the presiding officer determines that it will be more convenient or expeditious for one or more of the parties and does not unfairly prejudice the rights of any party. Each party to the proceeding is responsible for notifying the presiding officer of the telephone number where contact can be made for purposes of conducting the hearing.

(4) Representation.

(a) A party may pursue an appeal before the commission without assistance of legal counsel or other representation. However, a party may be represented by legal counsel or other representation at every stage of adjudication. Failure to obtain legal representation shall not be grounds for complaint at a later stage in the adjudicative proceeding or for relief on appeal from an order of the commission.

(i) An attorney licensed in a jurisdiction outside Utah may represent a taxpayer before the commission without being admitted pro hac vice in Utah.

(ii) For appeals concerning Utah corporate franchise and income taxes or Utah individual income taxes, legal counsel must file a power of attorney or the taxpayer must submit a signed petition for redetermination (Tax Commission form TC-738) on which the taxpayer has authorized legal counsel to represent him or her in the appeal. For all other appeals, legal counsel may, as an alternative, submit an entry of appearance.

(iii) Any representative other than legal counsel must submit a signed power of attorney authorizing the representative to act on the party's behalf and binding the party by the representative's action, unless the taxpayer submits a signed petition for redetermination (Tax Commission form TC-738) on which the taxpayer has authorized the representative to represent him or her in the appeal.

(iv) If a party is represented by legal counsel or other representation, all documents will be directed to the party's representative. Documents will be mailed to the representative's street or other address as shown in documents submitted by the representative. Documents may also be transmitted by facsimile number, e-mail address or other electronic means.

(b) Any division of the commission named as party to the proceeding may be represented by the Attorney General's Office upon an attorney of that office submitting an entry of appearance.

(5) Subpoena Power.

(a) Issuance. Subpoenas may be issued to secure the attendance of witnesses or the production of evidence.

(i) If all parties are represented by counsel, an attorney admitted to practice law in Utah may issue and sign the subpoena.

(ii) In all other cases, the party requesting the subpoena must prepare it and submit it to the presiding officer for review and, if appropriate, signature. The presiding officer may inform a party of its rights under the Utah Rules of Civil Procedure.

(b) Service. Service of the subpoena shall be made by the party requesting it in a manner consistent with the Utah Rules of Civil Procedure.

(6) Motions.

(a) Consolidation. The presiding officer has discretion to consolidate cases when the same tax assessment, series of assessments, or issues are involved in each, or where the fact situations and the legal questions presented are virtually identical.

(b) Continuance. A continuance may be granted at the discretion of the presiding officer.

(i) In the absence of a scheduling order:

(A) Each party to an appeal may receive one continuance, upon request, prior to the initial hearing.

(B) If the initial hearing is waived or a formal hearing is timely requested after an initial hearing decision is issued, each party may receive one continuance, upon request, prior to the formal hearing.

(C) A request must be submitted no later than ten days prior to the proceeding for which the continuance is requested and may be denied if a party is prejudiced by the continuance.

(ii) If a scheduling order has been issued or the requesting party has already been granted a continuance, a continuance request must be submitted in writing to the presiding officer. The request must set forth specific reasons for the continuance. After reviewing the request with one or more commissioners, the presiding officer shall grant the request only if the presiding officer determines that adequate cause has been shown and that no other party or parties will be unduly prejudiced.

(c) Default. The presiding officer may enter an order of default against a party in accordance with Section 63G-4-209.

(i) The default order shall include a statement of the grounds for default and shall be delivered to all parties.

(ii) A defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure.

(d) Ruling on Motions. Motions may be made during the hearing or by written motion.

(i) Each motion shall include the grounds upon which it is based and the relief or order sought. Copies of written motions shall be served upon all other parties to the proceeding.

(ii) Upon the filing of any motion, the presiding officer may:

(A) grant or deny the motion; or

(B) set the matter for briefing, hearing, or further proceedings.

(iii) If a hearing on a motion is held that may dispose of all or a portion of the appeal or any claim or defense in the appeal, the commission shall make a record of the proceeding, which may include a written record or an audio recording of the proceeding.

(e) Requests to Withdraw Locally-Assessed Property Tax Appeals.

(i) A party who appeals a county board of equalization decision to the commission may unilaterally withdraw its appeal if:

(A) it submits a written request to withdraw the appeal 20 or more days prior to:

(I) the initial hearing; or

(II) the formal hearing, if the parties waived the initial hearing or participated in a mediation conference in lieu of the initial hearing; and

(B) no other party has filed a timely appeal of the county board of equalization decision.

(ii) A party who appeals an initial hearing decision issued by the commission may unilaterally withdraw its appeal if:

(A) it submits a written request to withdraw 20 or more days prior to the formal hearing, regardless of whether the party who appealed the initial hearing order is also the party who appealed the county board of equalization decision; and

(B) no other party has filed a timely appeal of the initial hearing decision.

R861-1A-27. Discovery Pursuant to Utah Code Ann. Section 63G-4-205.

(1) Discovery procedures in formal proceedings shall be established during the scheduling, and status conference in

accordance with the Utah Rules of Civil Procedure and other applicable statutory authority.

(2) The party requesting information or documents may be required to pay in advance the costs of obtaining or reproducing such information or documents.

R861-1A-28. Evidence in Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-210, 63G-4-206, 76-8-502, and 76-8-503.

(1) Except as otherwise stated in this rule, formal proceedings shall be conducted in accordance with the Utah Rules of Evidence, and the degree of proof in a hearing before the commission shall be the same as in a judicial proceeding in the state courts of Utah.

(2) Every party to an adjudicative proceeding has the right to introduce evidence. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

(a) The presiding officer may admit any reliable evidence possessing probative value which would be accepted by a reasonably prudent person in the conduct of his affairs.

(b) The presiding officer may admit hearsay evidence. However, no decision of the commission will be based solely on hearsay evidence.

(c) If a party attempts to introduce evidence into a hearing, and that evidence is excluded, the party may proffer the excluded testimony or evidence to allow the reviewing judicial authority to pass on the correctness of the ruling of exclusion on appeal.

(3) At the discretion of the presiding officer or upon stipulation of the parties, the parties may be required to reduce their testimony to writing and to prefile the testimony.

(a) Prefiled testimony may be placed on the record without being read into the record if the opposing parties have had reasonable access to the testimony before it is presented. Except upon finding of good cause, reasonable access shall be not less than ten working days.

(b) Prefiled testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness.

(c) The presiding officer may require the witness to present a summary of the prefiled testimony. In that case, the witness shall reduce the summary to writing and either file it with the prefiled testimony or serve it on all parties within 10 days after filing the testimony.

(d) If an opposing party intends to cross-examine the witness on prefiled testimony or the summary of prefiled testimony, that party must file a notice of intent to cross-examine at least 10 days prior to the date of the hearing so that witness can be scheduled to appear or within a time frame agreed upon by the parties.

(4) The presiding officer shall rule and sign orders on matters concerning the evidentiary and procedural conduct of the proceeding.

(5) Oral testimony at a formal hearing will be sworn. The oath will be administered by the presiding officer or a person designated by him. Anyone testifying falsely under oath may be subject to prosecution for perjury in accordance with the provisions of Sections 76-8-502 and 76-8-503.

(6) Any party appearing in an adjudicative proceeding may submit a memorandum of authorities. The presiding officer may request a memorandum from any party if deemed necessary for a full and informed consideration of the issues.

R861-1A-29. Decisions, Orders, and Reconsideration Pursuant to Utah Code Ann. Sections 59-1-205 and 63G-4-302.

(1) "Taxpayer" for purposes of the requirement under Section 59-1-205 that in a tie vote of the commission the position of the taxpayer is considered to have prevailed, includes:

(a) a person that has received a license issued by the commission; or

(b) an applicant for a license issued by the commission.

(2) Decisions and Orders.

(a) Initial hearing decisions, formal hearing decisions, and other dispositive orders.

(i) A quorum of the commission shall deliberate all hearing decisions and other orders that could dispose of all or a portion of an appeal or any claim or defense in the appeal.

(ii) A quorum of the commission shall sign all hearing decisions and other orders that dispose of all or a portion of an appeal or any claim or defense in the appeal.

(iii) An administrative law judge, if he or she was the presiding officer for an appeal, may elect not to sign the commission's hearing decisions and other orders that dispose of all or a portion of an appeal or any claim or defense in the appeal.

(iv) An initial hearing decision shall become final upon the expiration of 30 days after the date of its issuance, except in any case where a party has earlier requested a formal hearing in writing.

(A) The date a party requests a formal hearing is the earlier of the date the envelope containing the request is postmarked or the date the request is received at the commission.

(B) If a party withdraws an appeal, the initial decision becomes final as of the date that is 30 days after the date of the issuance of the initial hearing decision.

(b) Orders that are not dispositive.

(i) A quorum of the commission is not required to participate in an order that does not dispose of a portion of an appeal or any claim or defense in the appeal.

(ii) The presiding officer is authorized to sign all orders that do not dispose of a portion of an appeal or any claim or defense in the appeal.

(iii) The commission may, at its option, sign any order that does not dispose of a portion of an appeal or any claim or defense in the appeal.

(3) Reconsideration. Within 20 days after the date that an order that is dispositive of a portion or all of an appeal or any claim or defense in the appeal is issued, any party may file a written request for reconsideration alleging mistake of law or fact, or discovery of new evidence.

(a) The commission shall respond to the petition within 20 days after the date that it was received in the appeals unit to notify the petitioner whether the reconsideration is granted or denied, or is under review.

(i) If no notice is issued within the 20-day period, the commission's lack of action on the request shall be deemed to be a denial and a final order.

(ii) For purposes of calculating the 30-day limitation period for pursuing judicial review, the date of the commission's order on the reconsideration or the order of denial is the date of the final agency action.

(b) If no petition for reconsideration is made, the 30-day limitation period for pursuing judicial review begins to run from the date of the final agency action.

R861-1A-30. Ex Parte Communications Pursuant to Utah Code Ann. Sections 63G-4-203 and 63G-4-206.

(1) No commissioner or administrative law judge shall make or knowingly cause to be made to any party to an appeal any communication relevant to the merits of a matter under appeal unless notice and an opportunity to be heard are afforded to all parties.

(2) No party shall make or knowingly cause to be made to any commissioner or administrative law judge an ex parte communication relevant to the merits of a matter under appeal for the purpose of influencing the outcome of the appeal.

Discussion of procedural matters are not considered ex parte communication relevant to the merits of the appeal.

(3) A presiding officer may receive aid from staff assistants if:

(a) the assistants do not receive ex parte communications of a type that the presiding officer is prohibited from receiving, and,

(b) in an instance where assistants present information which augments the evidence in the record, all parties shall have reasonable notice and opportunity to respond to that information.

(4) Any commissioner or administrative law judge who receives an ex parte communication relevant to the merits of a matter under appeal shall place the communication into the case file and afford all parties an opportunity to comment on the information.

R861-1A-31. Declaratory Orders Pursuant to Utah Code Ann. Section 63G-4-503.

(1) A party has standing to bring a declaratory action if that party is directly and adversely affected or aggrieved by an agency action within the meaning of the relevant statute.

(2) The commission shall not accept a petition for declaratory order on matters pending before the commission in an audit assessment, refund request, collections action or other agency action, or on matters pending before the court on judicial review of a commission decision.

(3) The commission may refuse to render a declaratory order if the order will not completely resolve the controversy giving rise to the proceeding or if the petitioner has other remedies through the administrative appeals processes. The commission's decision to accept or reject a petition for declaratory order rests in part on the petitioner's standing to raise the issue and on a determination that the petitioner has not already incurred tax liability under the statutes or rules challenged.

(4) A declaratory order that invalidates all or part of an administrative rule shall trigger the rulemaking process to amend the rule.

R861-1A-32. Mediation Process Pursuant to Utah Code Section 63G-4-102.

(1) Except as otherwise precluded by law, a resolution to any matter of dispute may be pursued through mediation.

(a) The parties may agree to pursue mediation any time before the formal hearing on the record.

(b) The choice of mediator and the apportionment of costs shall be determined by agreement of the parties.

(2) If mediation produces a settlement agreement, the agreement shall be submitted to the presiding officer pursuant to R861-1A-33.

(a) The settlement agreement shall be prepared by the parties or by the mediator, and promptly filed with the presiding officer.

(b) The settlement agreement shall be adopted by the commission if it is not contrary to law.

(c) If the mediation does not resolve all of the issues, the parties shall prepare a stipulation that identifies the issues resolved and the issues that remain in dispute.

(d) If any issues remain unresolved, the appeal will be scheduled for a formal hearing pursuant to R861-1A-23.

R861-1A-33. Settlement Agreements Pursuant to Utah Code Sections 59-1-210 and 59-1- 502.5.

A. "Settlement agreement" means a stipulation, consent decree, settlement agreement or any other legally binding document or representation that resolves a dispute or issue between the parties.

B. Procedure:

1. Parties with an interest in a matter pending before a division of the Tax Commission may submit a settlement agreement for review and approval, whether or not a petition for hearing has been filed.

2. Parties to an appeal pending before the commission may submit a settlement agreement to the presiding officer for review and approval.

3. Each settlement agreement shall be in writing and executed by each party or each party's legal representative, if any, and shall contain:

a) the nature of the claim being settled and any claims remaining in dispute;

b) a proposed order for commission approval; and

c) a statement that each party has been notified of, and allowed to participate in settlement negotiations.

4. A settlement agreement terminates the administrative action on the issues settled before all administrative remedies are exhausted, and, therefore, precludes judicial review of the issues. Each settlement agreement shall contain a statement that the agreement is binding and constitutes full resolution of all issues agreed upon in the settlement agreement.

5. The signed agreement shall stay further proceedings on the issues agreed upon in the settlement until the agreement is accepted or rejected by the commission or the commission's designee.

a) If approved, the settlement agreement shall take effect by its own terms.

b) If rejected, action on the claim shall proceed as if no settlement agreement had been reached. Offers made during the negotiation process will not be used as an admission against that party in further adjudicative proceedings.

R861-1A-34. Private Letter Rulings Pursuant to Utah Code Ann. Section 59-1-210.

A. Private letter rulings are written, informational statements of the commission's interpretation of statutes or administrative rules, or informational statements concerning the application of statutes and rules to specific facts and circumstances.

1. Private letter rulings address questions that have not otherwise been addressed in statutes, rules, or decisions issued by the commission.

2. The commission shall not knowingly issue a private letter ruling on a matter pending before the commission in an audit assessment, refund request, or other agency action, or regarding matters that are pending before the court on judicial review of a commission decision. Any private letter ruling inadvertently issued on a matter pending agency or judicial action shall be set aside until the conclusion of that action.

3. Requests for private letter rulings must be addressed to the commission in writing. If the requesting party is dissatisfied with the ruling, that party may resubmit the request along with new facts or information for commission review.

B. The weight afforded a private letter ruling in a subsequent audit or administrative appeal depends upon the degree to which the underlying facts addressed in the ruling were adequate to allow thorough consideration of the issues and interests involved.

C. A private letter ruling is not a final agency action. Petitioner must use the designated appeal process to address judiciable controversies arising from the issuance of a private letter ruling.

1. If the private letter ruling leads to a denial of a claim, an audit assessment, or some other agency action at a divisional level, the taxpayer must use the appeals procedures to challenge that action within 30 days of the final division decision.

2. If the only matter at issue in the private letter ruling is a challenge to the commission's interpretation of statutory language or a challenge to the commission's authority under a

statute, the matter may come before the commission as a petition for declaratory order submitted within 30 days of the date of the ruling challenged.

R861-1A-35. Manner of Retaining Records Pursuant to Utah Code Ann. Sections 59-1-210, 59-5-104, 59-5-204, 59-6-104, 59-7-506, 59-8-105, 59-8a-105, 59-10-501, 59-12-111, 59-13-211, 59-13-312, 59-13-403, 59-14-303, and 59-15-105.

A. Definitions.

1. "Database Management System" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

2. "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized, structured electronic format.

3. "Hard copy" means any documents, records, reports, or other data printed on paper.

4. "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

5. "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

6. "Taxpayer" means the person required, under Title 59 or other statutes administered by the Tax Commission, to collect, remit, or pay the tax or fee to the Tax Commission.

B. If a taxpayer retains records in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the commission in machine-sensible format upon request by the commission.

C. Nothing in this rule shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not the taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this rule. However, this does not relieve the taxpayer of the obligation to comply with B.

D. Recordkeeping requirements for machine-sensible records.

1. Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the commission upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this rule are met.

2. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format.

3. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

4. Electronic Data Interchange Requirements.

a) Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record.

b) For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, and shipping detail. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method that allows the commission to interpret the coded information.

c) The taxpayer may capture the information necessary to satisfy D.4.b) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name, i.e., they contain only codes for that information, the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the commission. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

5. Electronic data processing systems requirements.

a) The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this rule.

6. Business process information.

a) Upon the request of the commission, the taxpayer shall provide a description of the business process that created the retained records. The description shall include the relationship between the records and the tax documents prepared by the taxpayer, and the measures employed to ensure the integrity of the records.

b) The taxpayer shall be capable of demonstrating:

(1) the functions being performed as they relate to the flow of data through the system;

(2) the internal controls used to ensure accurate and reliable processing; and

(3) the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

c) The following specific documentation is required for machine-sensible records retained pursuant to this rule:

(1) record formats or layouts;

(2) field definitions, including the meaning of all codes used to represent information;

(3) file descriptions, e.g., data set name; and

(4) detailed charts of accounts and account descriptions.

E. Records maintenance requirements.

1. The commission recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records. The NARA standards may be found at 36 C.F.R., Section 1234,(1995).

2. The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

F. Access to machine-sensible records.

1. The manner in which the commission is provided access to machine-sensible records as required in B. may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

2. Access will be provided in one or more of the following manners:

a) The taxpayer may arrange to provide the commission

with the hardware, software, and personnel resources necessary to access the machine-sensible records.

b) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

c) The taxpayer may convert the machine-sensible records to a standard record format specified by the commission, including copies of files, on a magnetic medium that is agreed to by the commission.

d) The taxpayer and the commission may agree on other means of providing access to the machine-sensible records.

G. Taxpayer responsibility and discretionary authority.

1. In conjunction with meeting the requirements of D., a taxpayer may create files solely for the use of the commission. For example, if a data base management system is used, it is consistent with this rule for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and meets the requirements of D. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

2. A taxpayer may contract with a third party to provide custodial or management services of the records. The contract shall not relieve the taxpayer of its responsibilities under this rule.

H. Alternative storage media.

1. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents that may be stored on these media include general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

2. Microfilm, microfiche and other storage-only imaging systems shall meet the following requirements:

a) Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche, or other storage-only imaging system must be maintained and made available on request. This documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

b) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained.

c) Upon request by the commission, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche, or other storage-only imaging system.

d) When displayed on equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

e) All data stored on microfilm, microfiche, or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.

f) There is no substantial evidence that the microfilm, microfiche or other storage-only imaging system lacks authenticity or integrity.

I. Effect on hard-copy recordkeeping requirements.

1. Except as otherwise provided in this section, the provisions of this rule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations. Hard-copy records may be retained on a recordkeeping medium as provided in H.

2. Hard-copy records not produced or received in the ordinary course of transacting business, e.g., when the taxpayer uses electronic data interchange technology, need not be created.

3. Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule. These details include those listed in D.4.a) and D.4.b).

4. Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

5. Nothing in this section shall prevent the commission from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

R861-1A-36. Signatures Defined Pursuant to Utah Code Ann. Sections 41-1a-209, 59-7-505, 59-10-512, 59-12-107, 59-13-206, and 59-13-307.

(1) Individuals who submit an application to renew their vehicle registration on the Internet web site authorized by the Tax Commission shall use the Tax Commission assigned personal identification number included with their registration renewal information as their signature for the renewal application submitted over the Internet.

(2) Taxpayers who use the Tax Commission authorized Internet web site to file tax return information for tax types that may be filed on that web site shall use the personal identification number provided by the Tax Commission as their signature for the tax return information filed on that web site.

(3) Taxpayers who file a tax return under Title 59, Chapter 10, Individual Income Tax Act, electronically and who meet the signature requirement of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-10-512.

(4) Taxpayers who file a corporate franchise and income tax return electronically and who meet the signature requirement of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-7-505.

R861-1A-37. Provisions Relating to Disclosure of Commercial Information Pursuant to Utah Code Ann. Section 59-1-404.

(1) The provisions of this rule apply to the disclosure of commercial information under Section 59-1-404. For disclosure of information other than commercial information, see rule R861-1A-12.

(2) For purposes of Section 59-1-404, "assessed value of the property" includes any value proposed for a property.

(3) For purposes of Subsection 59-1-404(2), "disclosure" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

(a) named party of a decision or order;

(b) party requesting a private letter ruling; or

(c) designated representative of a party described in Subsection (3)(a) or (3)(b).

(4) For purposes of Subsection 59-1-404(6), "published decision" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

(a) named party of a decision or order;

(b) party requesting a private letter ruling; or

(c) designated representative of a party described in

Subsection (4)(a) or (4)(b).

(5) Information that may be disclosed under Subsection 59-1-404(3) includes:

(a) the following information related to the property's tax exempt status:

(i) information provided on the application for property tax exempt status;

(ii) information used in the determination of whether a property tax exemption should be granted or revoked; and

(iii) any other information related to a property's property tax exemption;

(b) the following information related to penalty or interest relating to property taxes that the commission or county legislative body determines should be abated:

(i) the amount of penalty or interest that is abated;

(ii) information provided on an application or request for abatement of penalty or interest;

(iii) information used in the determination of the abatement of penalty or interest; and

(iv) any other information related to the amount of penalty or interest that is abated; and

(c) the following information related to the amount of property tax due on property:

(i) the amount of taxes refunded or deducted as an erroneous or illegal assessment under Section 59-2-1321;

(ii) information provided on an application or request that property has been erroneously or illegally assessed under Section 59-2-1321; and

(iii) any other information related to the amount of taxes refunded or deducted under Subsection (5)(c)(i).

(6)(a) Except as provided in statute and Subsection (6)(b), commercial information disclosed during an action or proceeding may not be disclosed outside an action or proceeding by any person conducting or participating in any action or proceeding.

(b) Notwithstanding Subsection (6)(a), commercial information contained in a decision issued by the commission may be disclosed outside the action or proceeding if all of the parties named in the decision agree in writing to the disclosure.

(7) The commission may disclose commercial information in a published decision as follows.

(a) If the property taxpayer that provided the commercial information does not respond in writing to the commission within 30 days of the decision's issuance, requesting that the commercial information not be published and identifying the specific commercial information the taxpayer wants protected, the commission may publish the entire decision.

(b) If the property taxpayer that provided the commercial information indicates to the commission in writing the specific commercial information that the taxpayer wants protected, the commission may publish a version of the decision that contains commercial information not identified by the taxpayer under Subsection (7)(a).

(8) The commission may share commercial information gathered from returns and other written statements with the federal government, any other state, any of the political subdivisions of another state, or any political subdivision of this state, if these political subdivisions, or the federal government grant substantially similar privileges to this state.

R861-1A-38. Class Actions Pursuant to Utah Code Ann. Section 59-1-304.

A. Unless the limitations of Section 59-1-304(2) apply, the commission may expedite the exhaustion of administrative remedies required by individuals desiring to be included as a member of the class.

B. In expediting exhaustion of administrative remedies, the commission may take any of the following actions:

1. publish sample claim forms that provide the information necessary to process a claim in a form that will reduce the burden on members of the putative class and expedite processing by the commission;

2. provide for waiver of initial hearings where requested by any party;

3. provide for expedited rulings on motions for summary judgment where the facts are not contested and the legal issues have been previously determined by the commission in ruling on the case brought by class representatives. The parties may waive oral hearing and have final orders issued based upon information submitted in the claims and division responses;

4. consolidate the cases for hearing at the commission, where a group of claims presents identical legal issues and it is agreed by the parties that the resolution of the legal issues would be dispositive of the claims;

5. designate a claim as a test or sample claim with any rulings on that test or sample claim to be applicable to all other similar claims, upon agreement of the claiming parties; or

6. any other action not listed in this rule if that action is not contrary to procedures required by statute.

R861-1A-39. Penalty for Failure to File a Return Pursuant to Utah Code Ann. Sections 10-1-405, 59-1-401, 59-12-118, and 69-2-5.

(1)(a) Subject to Subsection (1)(b), "failure to file a tax return," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes a tax return that does not contain information necessary for the commission to make a correct distribution of tax revenues to counties, cities, and towns.

(b) Subsection (1)(a) applies to a tax return filed under:

(i) Chapter 12, Sales and Use Tax Act;

(ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or

(iii) Title 69, Chapter 2, Emergency Telephone Service Law.

(2)(a) "Unpaid tax," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes tax remitted to the commission under Subsection (2)(b) that is:

(i) not accompanied by a tax return; or

(ii) accompanied by a tax return that is subject to the penalty for failure to file a tax return.

(b) Subsection (2)(a) applies to a tax remitted under:

(i) Chapter 12, Sales and Use Tax Act;

(ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or

(iii) Title 69, Chapter 2, Emergency Telephone Service Law.

R861-1A-40. Waiver of Requirement to Post Security Prior to Judicial Review Pursuant to Utah Code Ann. Section 59-1-611.

(1) "Post security" is as defined in Section 59-1-611.

(2)(a) A taxpayer that seeks judicial review of a final commission determination of a deficiency may apply for a waiver of the requirement to post security with the commission by:

(i) submitting a letter requesting the waiver;

(ii) providing financial information requested by the commission; and

(iii) providing a copy of the financial information to the attorney general that is representing the commission in the judicial review.

(b) The financial information described in Subsection (2)(a) shall be signed by the taxpayer under penalties of perjury.

(3) Upon review of the financial information described in Subsection (2), the commission shall:

(a) determine whether the taxpayer qualifies for a waiver of the requirement to post security with the commission; or

(b) if unable to make the determination under Subsection (3)(a) from the financial information, request additional information from the taxpayer as necessary to make that determination.

R861-1A-42. Waiver of Penalty and Interest for Reasonable Cause Pursuant to Utah Code Ann. Section 59-1-401.

(1) Procedure.

(a) A taxpayer may request a waiver of penalties or interest for reasonable cause under Section 59-1-401 if the following conditions are met:

(i) the taxpayer provides a signed statement, with appropriate supporting documentation, requesting a waiver;

(ii) the total tax owed for the period has been paid;

(iii) the tax liability is based on a return the taxpayer filed with the commission, and not on an estimate provided by the taxpayer or the commission;

(iv) the taxpayer has not previously received a waiver review for the same period; and

(v) the taxpayer demonstrates that there is reasonable cause for waiver of the penalty or interest.

(b) Upon receipt of a waiver request, the commission shall:

(i) review the request;

(ii) notify the taxpayer if additional documentation is needed to consider the waiver request; and

(iii) review the account history for prior waiver requests, taxpayer deficiencies, and historical support for the reason given.

(c) Each request for waiver is judged on its individual merits.

(d) If the request for waiver of penalty or interest is denied, the taxpayer has a right to appeal. Procedures for filing appeals are found in Title 63G, Chapter 4, Administrative Procedures Act, and commission rules.

(e) If a taxpayer first requests a waiver of penalties or interest in an appeal to the commission, the taxpayer is not required to meet Subsections (1)(a)(i) through (iv).

(2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

(3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute reasonable cause for a waiver of penalty:

(a) Timely Mailing:

(i) The taxpayer mailed the return with payment to the commission by the due date and it was not timely delivered by the post office through no fault of the taxpayer.

(ii) In cases where the taxpayer cannot document a post office error, the penalties may be waived if the taxpayer:

(A) has an excellent history of compliance;

(B) proves that sufficient funds were in the bank as of the date of payment, and the check was written in numerical order; and

(C) presents documentation showing that the return or payment was mailed timely.

(b) Wrong Filing Place: The return or payment was filed on time, but was delivered to the wrong office or agency.

(c) Death or Serious Illness:

(i) The death or serious illness of a taxpayer or a member of the taxpayer's immediate family caused the delay.

(ii) With respect to a business, trust or estate, the death or illness must have been of the individual, or the immediate family of the individual, who had sole authority to file the return.

(iii) The death or illness must have occurred on or immediately prior to the due date of the return.

(d) Unavoidable Absence: The person having sole responsibility to file the return was absent from the state due to circumstances beyond his or her control.

(e) Disaster Relief:

(i) A delay in reporting, filing, or paying was due either to a federal or state declared disaster or to a natural disaster, such as fire or accident, that results in the destruction of records or disruption of business.

(ii) If delinquency or delay is due to a federally declared disaster, federal relief guidelines shall be followed.

(iii) In the absence of federal guidelines, and for other listed disasters, the taxpayer must demonstrate the matter was corrected within a reasonable time, given the circumstances.

(f) Reliance on Erroneous Tax Commission Information:

(i) Underpayments and late filings or payments were attributable to incorrect advice obtained from the commission, unless the taxpayer gave the commission inaccurate or insufficient information.

(ii) Proof of erroneous information may be based on written communication provided by the commission or, if the taxpayer clearly documents, verbal communication. Clear documentation of verbal communication should include the dates, times, and names of commission employees who provided the erroneous information.

(iii) A failure to comply will also be excused if it is demonstrated that the taxpayer requested the necessary tax forms and instructions timely, and the commission failed to timely provide the forms and instructions requested.

(g) Tax Commission Office Visit: The taxpayer proves that before expiration of the time for filing the return or making the payment, the taxpayer visited a commission office for information or help in preparing the return and a commission employee was not available for consultation.

(h) Unobtainable Records: For reasons beyond the taxpayer's control, the taxpayer was unable to obtain records to determine the amount of tax due.

(i) Reliance on Competent Tax Advisor: The taxpayer:

(i) furnishes all necessary and relevant information to a competent tax advisor, and the tax advisor:

(A) incorrectly advises the taxpayer;

(B) fails to timely file a return on behalf of the taxpayer; or

(C) fails to make a payment on behalf of the taxpayer; and

(ii) demonstrates that the taxpayer exercised ordinary business care, prudence, and diligence in determining whether to seek further advice.

(j) First Time Filer:

(i) It is the first return required to be filed and the taxes were filed and paid within a reasonable time after the due date.

(ii) The commission may also consider waiving penalties on the first return after a filing period change if the return is filed and tax is paid within a reasonable time after the due date.

(k) Bank Error:

(i) The taxpayer's bank has made an error in returning a check, making a deposit or transferring money.

(ii) A letter from the bank verifying its error is required.

(l) Compliance History:

(i) The commission will consider the taxpayer's recent history for payment, filing, and delinquencies in determining whether a penalty may be waived.

(ii) The commission will also consider whether other tax returns or reports are overdue at the time the waiver is requested.

(m) Employee Embezzlement: The taxpayer shows that failure to pay was due to employee embezzlement of the tax funds and the taxpayer was unable to obtain replacement funds from any other source.

(n) Recent Tax Law Change: The taxpayer's failure to file and pay was due to a recent change in tax law that the taxpayer could not reasonably be expected to be aware of.

(4) Other Considerations for Determining Reasonable

Cause.

(a) The commission allows for equitable considerations in determining whether reasonable cause exists to waive a penalty. Equitable considerations include:

(i) whether the commission had to take legal means to collect the taxes;

(ii) if the error is caught and corrected by the taxpayer;

(iii) the length of time between the event cited and the filing date;

(iv) typographical or other written errors; and

(v) other factors the commission deems appropriate.

(b) Other clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.

(c) In most cases, ignorance of the law, carelessness, or forgetfulness does not constitute reasonable cause for waiver. Nonetheless, other supporting circumstances may indicate that reasonable cause for waiver exists.

(d) Intentional disregard, evasion, or fraud does not constitute reasonable cause for waiver under any circumstance.

R861-1A-43. Electronic Meetings Pursuant to Utah Code Ann. Section 52-4-207.

(1) A commissioner may participate electronically in a meeting open to the public under Section 52-4-207 if:

(a) two commissioners are present at a single anchor location; or

(b) one commissioner is present at the anchor location.

(2) If Subsection (1)(b) applies, the commissioner at the anchor location shall conduct the meeting.

(3)(a) The commission shall indicate in a public notice if the public may participate electronically in a meeting open to the public under Section 52-4-207.

(b) A notice provided under Subsection (3)(a) shall direct the public on how to participate electronically in the meeting.

R861-1A-44. Definition of Delivery Service Pursuant to Utah Code Ann. Section 59-1-1404.

For purposes of determining the date on which a document has been mailed under Section 59-1-1404, "delivery service" means the following delivery services the Internal Revenue Service has determined to be a designated delivery service under Section 7502, Internal Revenue Code:

(1) DHL Express (DHL):

(a) DHL Same Day Service;

(b) DHL Next Day 10:30 a.m.;

(c) DHL Next Day 12:00 p.m.;

(d) DHL DHL Next Day 3:00 p.m.; and

(e) DHL 2nd Day Service;

(2) Federal Express (FedEx):

(a) FedEx Priority Overnight;

(b) FedEx Standard Overnight;

(c) FedEx 2 Day;

(d) FedEx International Priority; and

(e) FedEx International First; and

(3) United Parcel Service (UPS):

(a) UPS Next Day Air;

(b) UPS Next Day Air Saver;

(c) UPS 2nd Day Air;

(c) UPS 2nd Day Air A.M.;

(d) UPS Worldwide Express Plus; and

(e) UPS Worldwide Express.

R861-1A-45. Procedures for Commission Meetings Not Open to the Public Pursuant to Utah Code Ann. Section 59-1-405.

(1) When the commission holds a meeting that is not open to the public pursuant to Section 59-1-405, the commission shall:

(a) follow the procedures set forth in commission rules:

(i) R861-1A-9, Tax Commission as Board of Equalization;

(ii) R861-1A-11, Appeal of Corrective Action;

(iii) R861-1A-20, Time of Appeal;

(iv) R861-1A-22, Petitions for Commencement of Adjudicative Proceedings;

(v) R861-1A-23, Designation of Adjudicative Proceedings;

(vi) R861-1A-24, Formal Adjudicative Proceedings;

(vii) R861-1A-26, Procedures for Formal Adjudicative Proceedings;

(viii) R861-1A-27, Discovery;

(ix) R861-1A-28, Evidence in Adjudicative Proceedings;

(x) R861-1A-29, Decision, Orders, and Reconsideration;

(xi) R861-1A-30, Ex Parte Communications;

(xii) R861-1A-31, Declaratory Orders;

(xiii) R861-1A-32, Mediation Process;

(xiv) R861-1A-33, Settlement Agreements;

(xv) R861-1A-34, Private Letter Rulings;

(xvi) R861-1A-38, Class Actions;

(xvii) R861-1A-40, Waiver of Requirement to Post Security Prior to Judicial Review; and

(xviii) R861-1A-42, Waiver of Penalty and Interest for Reasonable Cause; and

(b) for all meetings other than initial hearings, or the deliberating and issuing of an order relating to adjudicative proceedings, keep confidential written minutes and a confidential recording of the meeting.

(2) Written minutes of a meeting under Subsection (1)(b) shall include:

(a) the date, time, and place of the meeting;

(b) the names of each person present at the meeting;

(c) the substance of all matters proposed, discussed, or decided by the commission, which may include a summary of comments made by the commissioners;

(d) a record, by commissioner, of each vote taken by the commission;

(e) a summary of comments made by a person, other than a commissioner, present at the meeting; and

(f) any other information that is a record of the proceedings of the meeting that any commissioner requests be entered in the minutes or recording.

(3) Recorded minutes of a meeting under Subsection (1)(b) shall be:

(a) properly labeled or identified with the date, time, and place of the meeting; and

(b) a complete and unedited record of the meeting.

R861-1A-46. Procedures for Purchaser Refund Requests Pursuant to Utah Code Ann. Sections 59-1-1410 and 59-12-110.

(1) Definitions.

(a) "Division" means the Auditing Division of the commission.

(b) "Purchaser refund request" means:

(i) a refund request for sales tax overpaid; and

(ii) submitted by a person other than the seller that originally collected and remitted the sales tax to the commission.

(c) "Required information and documents" means, for each transaction included in a purchaser refund request:

(i) a description of the item for which a refund is requested;

(ii) the invoiced transaction date;

(iii) the taxable purchase amount;

(iv) the tax rate applied to the purchase amount;

(v) the invoice number;

(vi) invoices or receipts or other books and records that

show the items purchased and sales tax charged;

(vii) the sales tax paid;

(viii) the reason and basis in Utah law for exempting or excluding the item from sales tax;

(ix) documentation that verifies that the item qualifies for a sales tax exemption or exclusion;

(x) the amount of sales tax overpaid;

(xi) proof of payment of sales tax, such as a canceled check, bank statement, credit card statement or receipt, letter from the seller, or other books and records that demonstrate payment was made;

(xii) if an agent applies for the refund on behalf of a purchaser, a power of attorney;

(xiii) the name and address of the seller; and

(xiv) a signed statement that the seller that calculated and remitted the sales tax:

(A) has not provided a sales tax refund or credit; and

(B) will not be asked to provide a sales tax refund or credit.

(2)(a) Except as provided in Subsection (3), a person submitting a purchaser refund request shall include the required information and documents with the application to the division.

(b) The items described in Subsection (2)(a) shall be provided to the division in the format and manner prescribed by the division.

(c) If the application is not accompanied by all of the required information and documents, the division shall send a notice to the person that submitted the purchaser refund request.

(d) The notice described in Subsection (2)(c) shall:

(i) indicate the required information and documents that are missing; and

(ii) allow the person submitting the purchaser refund request 30 days to provide the missing required information and documents to the division.

(e)(i) A person submitting a purchaser refund request who is unable to provide the information and documents described in Subsection (2)(d)(i) within the time period described in Subsection (2)(d)(ii) may contact the division to request an extension of time to provide the required information and documents that are missing.

(ii) The division shall grant reasonable requests for extension that will not unnecessarily prolong the processing of the refund request. If an extension is granted, the division shall provide written notice to the person submitting the purchaser refund request of the length of an extension of time granted under Subsection (2)(e)(i).

(f) If the division has not received all of the required information and documents within the time period described in Subsection (2)(d), or if applicable, within an extension of time granted under Subsection (2)(e), the division shall:

(i) evaluate the purchaser refund request based solely on the required information and documents received; and

(ii) dismiss for lack of evidence requests for refunds on items for which the division has not received the required information and documents.

(g)(i) Dismissals under Subsection (2)(f) may be appealed to the commission.

(ii) On an appeal under Subsection (2)(g)(i), the only matter that will be reviewed by the commission is whether information and documents adequate to determine the validity of the purchaser refund request were received by the division within the time period prescribed under Subsection (2)(d), or if applicable, within an extension of time granted under Subsection (2)(e).

(3)(a) A person who submits a purchaser refund request may, at the time the application for the refund is filed, request the division use a sampling method in its review of the purchaser refund request.

(b) A person requesting a sampling method of review under Subsection (3)(a) shall include the following information for each transaction included in the purchaser refund request with the application to the division:

(i) the invoice number;

(ii) the invoiced transaction date;

(iii) the taxable purchase amount;

(iv) the tax rate applied to the purchase amount;

(v) the sales tax paid;

(vi) the amount of sales tax overpaid;

(vii) the name and address of the seller

(viii) a description of the item for which a refund is requested; and

(ix) the reason and basis in Utah law the item is exempt or excluded from sales tax.

(c) The items described in Subsection (3)(b) shall be provided to the division in the format and manner prescribed by the division.

(4)(a) If the division and a person submitting a purchaser refund request agree to the division's use of a sampling method in its review of the purchaser refund request, the division shall:

(i) determine the items that will be included in the sample;

(ii) notify the person submitting the purchaser refund request of the items that will be included in the sample and the information and documents that must be submitted to the division; and

(iii) allow the person submitting the purchaser refund request 30 days to provide the information and documents to the division in the format and manner prescribed by the division.

(b)(i) A person submitting a purchaser refund request who is unable to provide the information and documents described in Subsection (4)(a)(ii) within the time period described in Subsection (4)(a)(iii) may contact the division to request an extension of time to provide the information and documents that are missing.

(ii) The division shall grant reasonable requests for extension that will not unnecessarily prolong the processing of the refund request. If an extension is granted, the division shall provide written notice to the person submitting the purchaser refund request of the length of an extension of time granted under Subsection (4)(b)(i).

(c) Information and documents described in Subsection (4)(a)(ii) that are not received by the end of the period described in Subsection(4)(a), or if applicable, within an extension of time granted under Subsection (4)(b), shall be:

(i) considered errors; and

(ii) included in the overall error factor by which the purchaser refund request is decreased.

(d)(i) Errors under Subsection (4)(c) may be appealed to the commission.

(ii) On an appeal under Subsection (4)(d)(i), the only matter that will be reviewed by the commission is whether information and documents adequate to determine the validity of the purchaser refund request were received by the division within the time period prescribed under Subsection (4)(a), or if applicable, within an extension of time granted under Subsection (4)(b).

KEY: developmental disabilities, grievance procedures, taxation, disclosure requirements

September 10, 2018	**10-1-405**
Notice of Continuation November 10, 2016	**41-1a-209**
	52-4-207
	59-1-205
	59-1-207
	59-1-210
	59-1-301
	59-1-302.1
	59-1-304
	59-1-401

59-1-403
59-1-404
59-1-405
59-1-501
59-1-502.5
59-1-602
59-1-611
59-1-705
59-1-706
59-1-1004
59-1-1404
59-7-505
59-10-512
59-10-532
59-10-533
59-10-535
59-12-107
59-12-114
59-12-118
59-13-206
59-13-210
59-13-307
59-10-544
59-14-404
59-2-212
59-2-701
59-2-705
59-2-1003
59-2-1004
59-2-1006
59-2-1007
59-2-704
59-2-924
59-7-517
63G-3-301
63G-4-102
76-8-502
76-8-503
59-2-701
63G-4-201
63G-4-202
63G-4-203
63G-4-204
63G-4-205 through 63G-4-209
63G-4-302
63G-4-401
63G-4-503
63G-3-201(2)
68-3-7
68-3-8.5
69-2-5
42 USC 12201
28 CFR 25.107 1992 Edition

R884. Tax Commission, Property Tax.
R884-24P. Property Tax.
R884-24P-5. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109 and 59-2-1202(5).

A. "Household income" includes net rents, interest, retirement income, welfare, social security, and all other sources of cash income.

B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situation shall not be deducted from the ten-month residency requirement of Section 59-2-1109(4)(a)(ii).

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight- line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Asset value" means the value arrived at using generally accepted cost approaches to value.

3. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

a) purchase price of an asset and its components;
b) transportation costs;
c) installation charges and construction costs; and
d) sales tax.

4. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

5. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into account the industry's current and projected market, financial, and economic conditions.

6. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

7. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

8. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

9. "Fair market value" is as defined in Section 59-2-102.

10. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

11. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

13. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self - consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

14. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

15. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

16. "Product price" for each mineral means the price that is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The representative unit sales price is determined from:

(a) actual sales of like mineral by the taxpayer;
(b) actual sales of like mineral by other taxpayers; or
(c) posted prices of like mineral; or
(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of units mined.

17. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

18. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

19. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and

b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.

b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.

c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.

d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property Tax Division.

a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or any combination thereof.

b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

C. When the fair market value of a productive mining property in more than one tax area exceeds the asset value, the fair market value will be divided into two components and apportioned as follows:

1. Asset value that includes machinery and equipment, improvements, and land surface values will be apportioned to the tax areas where the assets are located.

2. The fair market value less the asset value will give an income increment of value. The income increment will be apportioned as follows:

a) Divide the asset value by the fair market value to determine a quotient. Multiply the quotient by the income increment of value. This value will be apportioned to each tax area based on the percentage of the total asset value in that tax area.

b) The remainder of the income increment will be apportioned to the tax areas based on the percentage of the known mineral reserves according to the mine plan.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

R884-24P-10. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210.

(1) Definitions.

(a) "Person" is as defined in Section 68-3-12.

(b) "Working interest owner" means the owner of an interest in oil, gas, or other hydrocarbon substances burdened with a share of the expenses of developing and operating the property.

(c) "Unit operator" means a person who operates all producing wells in a unit.

(d) "Independent operator" means a person operating an oil or gas producing property not in a unit.

(e) One person can, at the same time, be a unit operator, a working interest owner, and an independent operator and must comply with all requirements of this rule based upon the person's status in the respective situations.

(f) "Expected annual production" means the future economic production of an oil and gas property as estimated by the Property Tax Division using decline curve analysis. Expected annual production does not include production used on the same well, lease, or unit for the purpose of repressuring or pressure maintenance.

(g) "Product price" means:

(i) Oil: The weighted average posted price for the calendar year preceding January 1, specific for the field in which the well is operating as designated by the Division of Oil, Gas, and Mining. The weighted average posted price is determined by weighing each individual posted price based on the number of days it was posted during the year, adjusting for gravity, transportation, escalation, or deescalation.

(ii) Gas:

(A) If sold under contract, the price shall be the stated price as of January 1, adjusted for escalation and deescalation.

(B) If sold on the spot market or to a direct end-user, the price shall be the average price received for the 12-month period immediately preceding January 1, adjusted for escalation and deescalation.

(h) "Future net revenue" means annual revenues less costs of the working interests and royalty interest.

(i) "Revenue" means expected annual gross revenue, calculated by multiplying the product price by expected annual production for the remaining economic life of the property.

(j) "Costs" means expected annual allowable costs applied against revenue of cost-bearing interests:

(i) Examples of allowable costs include management salaries; labor; payroll taxes and benefits; workers' compensation insurance; general insurance; taxes (excluding income and property taxes); supplies and tools; power; maintenance and repairs; office; accounting; engineering; treatment; legal fees; transportation; miscellaneous; capital expenditures; and the imputed cost of self consumed product.

(ii) Interest, depreciation, or any expense not directly related to the unit may not be included as allowable costs.

(k) "Production asset" means any asset located at the well site that is used to bring oil or gas products to a point of sale or transfer of ownership.

(2) The discount rate shall be determined by the Property Tax Division using methods such as the weighted cost of capital method.

(a) The cost of debt shall consider market yields. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow model, a combination thereof, or any other accepted methodology.

(b) The discount rate shall reflect the current yield requirements of investors purchasing similar properties, taking into consideration income, income taxes, risk, expenses, inflation, and physical and locational characteristics.

(c) The discount rate shall contain the same elements as the expected income stream.

(3) Assessment Procedures.

(a) Underground rights in lands containing deposits of oil or gas and the related tangible property shall be assessed by the Property Tax Division in the name of the unit operator, the independent operator, or other person as the facts may warrant.

(b) The taxable value of underground oil and gas rights shall be determined by discounting future net revenues to their present value as of the lien date of the assessment year and then subtracting the value of applicable exempt federal, state, and Indian royalty interests.

(c) The reasonable taxable value of productive underground oil and gas rights shall be determined by the methods described in Subsection (3)(b) or such other valuation method that the Tax Commission believes to be reasonably determinative of the property's fair market value.

(d) The value of the production assets shall be considered in the value of the oil and gas reserves as determined in Subsection (3)(b). Any other tangible property shall be separately valued at fair market value by the Property Tax Division.

(e) The minimum value of the property shall be the value of the production assets.

(4) Collection by Operator.

(a) The unit operator may request the Property Tax Division to separately list the value of the working interest, and the value of the royalty interest on the Assessment Record. When such a request is made, the unit operator is responsible to provide the Property Tax Division with the necessary information needed to compile this list. The unit operator may make a reasonable estimate of the ad valorem tax liability for a given period and may withhold funds from amounts due to royalty. Withheld funds shall be sufficient to ensure payment of the ad valorem tax on each fractional interest according to the estimate made.

(i) If a unit operating agreement exists between the unit operator and the fractional working interest owners, the unit operator may withhold or collect the tax according to the terms of that agreement.

(ii) In any case, the unit operator and the fractional interest owner may make agreements or arrangements for withholding or otherwise collecting this tax. This may be done whether or not that practice is consistent with the preceding paragraphs so long as all requirements of the law are met. When a fractional interest owner has had funds withheld to cover the estimated ad valorem tax liability and the operator fails to remit such taxes to the county when due, the fractional interest owner shall be indemnified from any further ad valorem tax liability to the extent of the withholding.

(iii) The unit operator shall compare the amount withheld to the taxes actually due, and return any excess amount to the fractional interest owner within 60 days after the delinquent date of the tax. At the request of the fractional interest owner the excess may be retained by the unit operator and applied toward the fractional interest owner's tax liability for the subsequent year.

(b) The penalty provided for in Section 59-2-210 is intended to ensure collection by the county of the entire tax due. Any unit operator who has paid this county imposed penalty, and thereafter collects from the fractional interest holders any part of their tax due, may retain those funds as reimbursement against the penalty paid.

(c) Interest on delinquent taxes shall be assessed as set forth in Section 59-2-1331.

(d) Each unit operator may be required to submit to the Property Tax Division a listing of all fractional interest owners and their interests upon specific request of the Property Tax Division. Working interest owners, upon request, shall be required to submit similar information to unit operators.

R884-24P-14. Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303.

(1) The assessor shall take into consideration any preservation easements attached to historically significant real property and structures when determining the property's value.

(2) After the preservation easement has been recorded with the county recorder, the property owner of record shall submit to the county assessor a notice of the preservation easement containing the following information:

(a) the property owner's name;
(b) the address of the property; and
(c) the serial number of the property.
(3) The county assessor shall review the property and incorporate any value change due to the preservation easement in the following year's assessment roll.

R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-302.

(1) Definitions:
(a) "Utah fair market value" means the fair market value of that portion of the property of a project entity located within Utah upon which the fee in lieu of ad valorem property tax may be calculated.
(b) "Fee" means the annual fee in lieu of ad valorem property tax payable by a project entity pursuant to Section 11-13-302.
(c) "Energy supplier" means an entity that purchases any capacity, service or other benefit of a project to provide electrical service.
(d) "Exempt energy supplier" means an energy supplier whose tangible property is exempted by Article XIII, Sec. 3 of the Constitution of Utah from the payment of ad valorem property tax.
(e) "Optimum operating capacity" means the capacity at which a project is capable of operating on a sustained basis taking into account its design, actual operating history, maintenance requirements, and similar information from comparable projects, if any. The determination of the projected and actual optimum operating capacities of a project shall recognize that projects are not normally operated on a sustained basis at 100 percent of their designed or actual capacities and that the optimum level for operating a project on a sustained basis may vary from project to project.
(f) "Property" means any electric generating facilities, transmission facilities, distribution facilities, fuel facilities, fuel transportation facilities, water facilities, land, water or other existing facilities or tangible property owned by a project entity and required for the project which, if owned by an entity required to pay ad valorem property taxes, would be subject to assessment for ad valorem tax purposes.
(g) "Sold," for the purpose of interpreting Subsection (4), means the first sale of the capacity, service, or other benefit produced by the project without regard to any subsequent sale, resale, or lay-off of that capacity, service, or other benefit.
(h) "Taxing jurisdiction" means a political subdivision of this state in which any portion of the project is located.
(i) All definitions contained in Section 11-13-103 apply to this rule.
(2) The Tax Commission shall determine the fair market value of the property of each project entity. Fair market value shall be based upon standard appraisal theory and shall be determined by correlating estimates derived from the income and cost approaches to value described below.
(a) The income approach to value requires the imputation of an income stream and a capitalization rate. The income stream may be based on recognized indicators such as average income, weighted income, trended income, present value of future income streams, performance ratios, and discounted cash flows. The imputation of income stream and capitalization rate shall be derived from the data of other similarly situated companies. Similarity shall be based on factors such as location, fuel mix, customer mix, size and bond ratings. Estimates may also be imputed from industry data generally. Income data from similarly situated companies will be adjusted to reflect differences in governmental regulatory and tax policies.
(b) The cost approach to value shall consist of the total of the property's net book value of the project's property. This total shall then be adjusted for obsolescence if any.
(c) In addition to, and not in lieu of, any adjustments for obsolescence made pursuant to Subsection (2)(b), a phase-in adjustment shall be made to the assessed valuation of any new project or expansion of an existing project on which construction commenced by a project entity after January 1, 1989 as follows:
(i) During the period the new project or expansion is valued as construction work in process, its assessed valuation shall be multiplied by the percentage calculated by dividing its projected production as of the projected date of completion of construction by its projected optimum operating capacity as of that date.
(ii) Once the new project or expansion ceases to be valued as construction work in progress, its assessed valuation shall be multiplied by the percentage calculated by dividing its actual production by its actual optimum operating capacity. After the new project or expansion has sustained actual production at its optimum operating capacity during any tax year, this percentage shall be deemed to be 100 percent for the remainder of its useful life.
(3) If portions of the property of the project entity are located in states in addition to Utah and those states do not apply a unit valuation approach to that property, the fair market value of the property allocable to Utah shall be determined by computing the cost approach to value on the basis of the net book value of the property located in Utah and imputing an estimated income stream based solely on the value of the Utah property as computed under the cost approach. The correlated value so determined shall be the Utah fair market value of the property.
(4) Before fixing and apportioning the Utah fair market value of the property to the respective taxing jurisdictions in which the property, or a portion thereof is located, the Utah fair market value of the property shall be reduced by the percentage of the capacity, service, or other benefit sold by the project entity to exempt energy suppliers.
(5) For purposes of calculating the amount of the fee payable under Section 11-13-302(3), the percentage of the project that is used to produce the capacity, service or other benefit sold shall be deemed to be 100 percent, subject to adjustments provided by this rule, from the date the project is determined to be commercially operational.
(6) In computing its tax rate pursuant to the formula specified in Section 59-2-924(2), each taxing jurisdiction in which the project property is located shall add to the amount of its budgeted property tax revenues the amount of any credit due to the project entity that year under Section 11-13-302(3), and shall divide the result by the sum of the taxable value of all property taxed, including the value of the project property apportioned to the jurisdiction, and further adjusted pursuant to the requirements of Section 59-2-924.
(7) Subsections (2)(a) and (2)(b) are retroactive to the lien date of January 1, 1984. Subsection (2)(c) is effective as of the lien date of January 1, 1989. The remainder of this rule is retroactive to the lien date of January 1, 1988.

R884-24P-19. Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702.

(1) "State certified general appraiser," "state certified residential appraiser," "state licensed appraiser," and trainee are as defined in Section 61-2b-2.
(2) The ad valorem training and designation program consists of several courses and practica.
(a) Certain courses must be sanctioned by either the Appraiser Qualification Board of the Appraisal Foundation (AQB) or the Western States Association of Tax Administrators (WSATA).

(b) The courses comprising the basic designation program are:

(i) Course 101 - Basic Appraisal Principles;

(ii) Course 103 - Uniform Standards of Professional Appraisal Practice (AQB);

(iii) Course 501 - Assessment Practice in Utah;

(iv) Course 502 - Mass Appraisal of Land;

(v) Course 503 - Development and Use of Personal Property Schedules;

(vi) Course 504 - Appraisal of Public Utilities and Railroads (WSATA); and

(vii) Course 505 - Income Approach Application.

(3) Candidates must attend 90 percent of the classes in each course and pass the final examination for each course with a grade of 70 percent or more to be successful.

(4) There are four recognized ad valorem designations: ad valorem residential appraiser, ad valorem general real property appraiser, ad valorem personal property auditor/appraiser, and ad valorem centrally assessed valuation analyst.

(a) These designations are granted only to individuals employed in a county assessor office or the Property Tax Division, working as appraisers, review appraisers, valuation auditors, or analysts/administrators providing oversight and direction to appraisers and auditors.

(b) An assessor, county employee, or state employee must hold the appropriate designation to value property for ad valorem taxation purposes.

(5) Ad valorem residential appraiser.

(a) To qualify for this designation, an individual must:

(i) successfully complete courses 501 and 502;

(ii) successfully complete a comprehensive residential field practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the appraiser may value residential, vacant, and agricultural property for ad valorem taxation purposes.

(6) Ad valorem general real property appraiser.

(a) In order to qualify for this designation, an individual must:

(i) successfully completecourses 501, 502, and 505;

(ii) successfully complete a comprehensive field practicum including residential and commercial properties; and

(iii) attain and maintain state certified appraiser status.

(b) Upon designation, the appraiser may value all types of locally assessed real property for ad valorem taxation purposes.

(7) Ad valorem personal property auditor/appraiser.

(a) To qualify for this designation, an individual must:

(i) successfully complete courses 101, 103, 501, and 503; and

(ii) successfully complete a comprehensive auditing practicum.

(b) Upon designation, the auditor/appraiser may value locally assessed personal property for ad valorem taxation purposes.

(8) Ad valorem centrally assessed valuation analyst.

(a) In order to qualify for this designation, an individual must:

(i) successfully completecourses 501 and 504;

(ii) successfully complete a comprehensive valuation practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the analyst may value centrally assessed property for ad valorem taxation purposes.

(9) If a candidate fails to receive a passing grade on a final examination, two re-examinations are allowed. If the re-examinations are not successful, the individual must retake the failed course. The cost to retake the failed course will not be borne by the Tax Commission.

(10) A practicum involves the appraisal or audit of selected properties. The candidate's supervisor must formally request that the Property Tax Division administer a practicum.

(a) Emphasis is placed on those types of properties the candidate will most likely encounter on the job.

(b) The practicum will be administered by a designated appraiser assigned from the Property Tax Division.

(11) An appraiser trainee referred to in Section 59-2-701 shall be designated an ad valorem associate if the appraiser trainee:

(a) has completed all education and practicum requirements for designation under Subsections (5), (6), or (8); and

(b) has not completed the non-education requirements for licensure or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(12) An individual holding a specified designation can qualify for other designations by meeting the additional requirements under Subsections (5), (6), (7), or (8).

(13)(a) Maintaining designated status for individuals designated under Subsection (7) requires completion of 14 hours of Tax Commission approved classroom work every two years.

(b) Maintaining designated status for individuals designated under Subsections (5), (6), and (8) requires maintaining their appraisal license or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(14) Upon termination of employment from any Utah assessment jurisdiction, or if the individual no longer works primarily as an appraiser, review appraiser, valuation auditor, or analyst/administrator in appraisal matters, designation is automatically revoked.

(a) Ad valorem designation status may be reinstated if the individual secures employment in any Utah assessment jurisdiction within four years from the prior termination.

(b) If more than four years elapse between termination and rehire, and:

(i) the individual has been employed in a closely allied field, then the individual may challenge the course examinations. Upon successfully challenging all required course examinations, the prior designation status will be reinstated; or

(ii) if the individual has not been employed in real estate valuation or a closely allied field, the individual must retake all required courses and pass the final examinations with a score of 70 percent or more.

(15) All appraisal work performed by Tax Commission designated appraisers shall meet the standards set forth in section 61-2b-27.

(16) If appropriate Tax Commission designations are not held by assessor's office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor's office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office. If appraisal work is contracted out, the following requirements must be met:

(a) The private sector appraisers performing the contracted work must hold the state certified residential appraiser or state certified general appraiser license issued by the Division of Real Estate of the Utah Department of Commerce. Only state certified general appraisers may appraise nonresidential properties.

(b) All appraisal work shall meet the standards set forth in Section 61-2b-27.

(17) The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor.

(a) There are no specific licensure, certification, or

educational requirements related to this function.

(b) An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations.

R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301.

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.

2. Project means any undertaking involving construction, expansion or modernization.

3. "Construction" means:

a) creation of a new facility;

b) acquisition of personal property; or

c) any alteration to the real property of an existing facility other than normal repairs or maintenance.

4. Expansion means an increase in production or capacity as a result of the project.

5. Modernization means a change or contrast in character or quality resulting from the introduction of improved techniques, methods or products.

6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. In the case of a cost-regulated utility, a project shall be deemed to be functionally complete when the operating property associated with the project has been capitalized on the books and is part of the rate base of that utility.

7. Allocable preconstruction costs means expenditures associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.

8. Cost regulated utility means a power company, oil and gas pipeline company, gas distribution company or telecommunication company whose earnings are determined by a rate of return applied to rate base. Rate of return and rate base are set and approved by a state or federal regulatory commission.

9. Residential means single-family residences and duplex apartments.

10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. The unit method may employ one or more of the following approaches to value: the income approach, the cost approach, and the stock and debt approach.

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

C. Discount Rates

For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

D. Appraisal of Allocable Preconstruction Costs.

1. If requested by the taxpayer, preconstruction costs associated with properties, other than residential properties, may be allocated to the value of the project in relation to the relative amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:

a) a detailed list of preconstruction cost data is supplied to the responsible agency;

b) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.

2. The preconstruction costs allocated pursuant to D.1. of this rule shall be discounted using the appropriate rate determined in C. The discounted allocated value shall either be added to the values of properties other than residential properties determined under E.1. or shall be added to the values determined under the various approaches used in the unit method of valuation determined under F.

3. The preconstruction costs allocated under D. are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

E. Appraisal of Properties not Valued under the Unit Method.

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced full cash value shall be referred to as the "adjusted full cash value."

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

a) The full cash value of the project expected upon completion.

b) The expected date of functional completion of the project currently under construction.

(1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:

(a) 10 - Excavation-foundation

(b) 30 - Rough lumber, rough labor

(c) 50 - Roofing, rough plumbing, rough electrical, heating

(d) 65 - Insulation, drywall, exterior finish

(e) 75 - Finish lumber, finish labor, painting

(f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical

(g) 100 - Floor covering, appliances, exterior concrete, misc.

(2) In the case of all other projects under construction and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,

b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;

c) adjust the resulting product of E.3.a) or E.3.b) for the expected time of completion using the discount rate determined under C.

F. Appraisal of Properties Valued Under the Unit Method of Appraisal.

1. No adjustments under this rule shall be made to the income indicator of value for a project under construction that is owned by a cost-regulated utility when the project is allowed in rate base.

2. The full cash value of a project under construction as of

January 1 of the tax year, shall be determined by adjusting the cost and income approaches as follows:

a) Adjustments to reflect the time value of money in appraising construction work in progress valued under the cost and income approaches shall be made for each approach as follows:

(1) Each company shall report the expected completion dates and costs of the projects. A project expected to be completed during the tax year for which the valuation is being determined shall be considered completed on January 1 or July 1, whichever is closest to the expected completion date. The Tax Commission shall determine the expected completion date for any project whose completion is scheduled during a tax year subsequent to the tax year for which the valuation is being made.

(2) If requested by the company, the value of allocable preconstruction costs determined in D. shall then be subtracted from the total cost of each project. The resulting sum shall be referred to as the adjusted cost value of the project.

(3) The adjusted cost value for each of the future years prior to functional completion shall be discounted to reflect the present value of the project under construction. The discount rate shall be determined under C.

(4) The discounted adjusted cost value shall then be added to the values determined under the income approach and cost approach.

b) No adjustment will be made to reflect the time value of money for a project valued under the stock and debt approach to value.

G. This rule shall take effect for the tax year 1985.

R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918.5 through 59-2-924.

(1) The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

(a) If a county desires to use a modified version of the Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

(i) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax Changes.

(ii) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

(b) The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

(2) The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

(a) New property is created by a new legal description; or

(b) The status of the improvements on the property has changed.

(c) In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

(d) If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in Subsection (1).

(3) Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value based upon Farmland Assessment Act rates shown parenthetically.

(4)(a) All completion dates specified for the disclosure of property tax information must be strictly observed.

(b) Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in Subsection (1).

(5) If the cost of public notice required under Section 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

(6) Calculation of the amount and percentage increase in property tax revenues required by Section 59-2-919 shall be computed by comparing property taxes levied for the current year with property taxes budgeted the prior year, without adjusting for revenues attributable to new growth.

(7) If a taxing district has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

(8) The value of property subject to the uniform fee under Sections 59-2-405 through 59-2-405.3 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

(9) The value and taxes of property subject to the uniform fee under Sections 59-2-405 through 59-2-405.3 are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-924.

(10) Entities required to set levies for more than one fund must compute an aggregate certified rate. The aggregate certified rate is the sum of the certified rates for individual funds for which separate levies are required by law. The aggregate certified rate computation applies where:

(a) the valuation bases for the funds are contained within identical geographic boundaries; and

(b) the funds are under the levy and budget setting authority of the same governmental entity.

(11) For purposes of determining the certified tax rate of a municipality incorporated on or after July 1, 1996, the levy imposed for municipal-type services or general county purposes shall be the certified tax rate for municipal-type services or general county purposes, as applicable.

(12) No new entity, including a new city, may have a certified tax rate or levy a tax for any particular year unless that entity existed on the first day of that calendar year.

R884-24P-27. Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5.

(1) Definitions.

(a) "Coefficient of dispersion (COD)" means the average deviation of a group of assessment ratios taken around the median and expressed as a percent of that measure.

(b) "Coefficient of variation (COV)" means the standard deviation expressed as a percentage of the mean.

(c) "Division" means the Property Tax Division of the commission.

(d) "Nonparametric" means data samples that are not normally distributed.

(e) "Parametric" means data samples that are normally distributed.

(f) "Urban counties" means counties classified as first or second class counties pursuant to Section 17-50-501.

(2) The commission adopts the following standards of assessment performance.

(a) For assessment level in each property class, subclass, and geographical area in each county, the measure of central

tendency shall meet one of the following measures.

(i) The measure of central tendency shall be within 10 percent of the legal level of assessment.

(ii) The 95 percent confidence interval of the measure of central tendency shall contain the legal level of assessment.

(b) For uniformity of the property assessments in each class of property for which a detailed review is conducted during the current year, the measure of dispersion shall be within the following limits.

(i) In urban counties:

(A) a COD of 15 percent or less for primary residential property, and 20 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 19 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property.

(ii) In rural counties:

(A) a COD of 20 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 25 percent or less for primary residential property, and 31 percent or less for commercial property, vacant land, and secondary residential property.

(iii) For a rural or small jurisdiction with limited development, or for a jurisdiction with a depressed market, the county assessor may petition the division for a five percentage point increase in the COD or COV for one year only. After sufficient examination, the division may determine that a one-year expansion of the COD or COV is appropriate.

(c) Statistical measures.

(i) The measure of central tendency shall be the mean for parametric samples and the median for nonparametric samples.

(ii) The measure of dispersion shall be the COV for parametric samples and the COD for nonparametric samples.

(iii) To achieve statistical accuracy in determining assessment level under Subsection (2)(a) and uniformity under Subsection (2)(b) for any property class, subclass, or geographical area, the minimum sample size shall consist of 10 or more ratios.

(3) Each year the division shall conduct and publish an assessment-to-sale ratio study to determine if each county complies with the standards in Subsection (2).

(a) To meet the minimum sample size, the study period may be extended.

(b) A smaller sample size may be used if:

(i) that sample size is at least 10 percent of the class or subclass population; or

(ii) both the division and the county agree that the sample may produce statistics that imply corrective action appropriate to the class or subclass of property.

(c) If the division, after consultation with the counties, determines that the sample size does not produce reliable statistical data, an alternate performance evaluation may be conducted, which may result in corrective action. The alternate performance evaluation shall include review and analysis of the following:

(i) the county's procedures for collection and use of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

(ii) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

(iii) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties; and

(iv) the county's level of personnel training, ratio of appraisers to parcels, level of funding, and other workload and resource considerations.

(d) All input to the sample used to measure performance shall be completed by March 31 of each study year.

(e) The division shall conduct a preliminary annual assessment-to-sale ratio study by April 30 of the study year, allowing counties to apply adjustments to their tax roll prior to the May 22 deadline.

(f) The division shall complete the final study immediately following the closing of the tax roll on May 22.

(4) The division shall order corrective action if the results of the final study do not meet the standards set forth in Subsection (2).

(a) Assessment level adjustments, or factor orders, shall be calculated by dividing the legal level of assessment by one of the following:

(i) the measure of central tendency, if the uniformity of the ratios meets the standards outlined in Subsection (2)(b); or

(ii) the 95 percent confidence interval limit nearest the legal level of assessment, if the uniformity of the ratios does not meet the standards outlined in Subsection (2)(b).

(b) Uniformity adjustmentsor other corrective action shall be ordered if the property fails to meet the standards outlined in Subsection (2)(b).(c) A corrective action order may contain language requiring a county to create, modify, or follow its five-year plan for a detailed review of property characteristics.

(d) All corrective action orders shall be issued by June 10 of the study year, or within five working days after the completion of the final study, whichever is later.

(5) The commission adopts the following procedures to insure compliance and facilitate implementation of ordered corrective action.

(a) Prior to the filing of an appeal, the division shall retain authority to correct errors and, with agreement of the affected county, issue amended orders or stipulate with the affected county to any appropriate alternative action without commission approval. Any stipulation by the division subsequent to an appeal is subject to commission approval.

(b) A county receiving a corrective action order resulting from this rule may file and appeal with the commission pursuant to rule R861-1A-11.

(c) A corrective action order will become the final commission order if the county does not appeal in a timely manner, or does not prevail in the appeals process.

(d) The division may assist local jurisdictions to ensure implementation of any corrective action orders by the following deadlines.

(i) Factor orders shall be implemented in the current study year prior to the mailing of valuation notices.

(ii) Other corrective action shall be implemented prior to May 22 of the year following the study year.

(e) The division shall complete audits to determine compliance with corrective action orders as soon after the deadlines set forth in Subsection (5)(d) as practical. The division shall review the results of the compliance audit with the county and make any necessary adjustments to the compliance audit within 15 days of initiating the audit. These adjustments shall be limited to the analysis performed during the compliance audit and may not include review of the data used to arrive at the underlying factor order. After any adjustments, the compliance audit will then be given to the commission for any necessary action.

(f) The county shall be informed of any adjustment required as a result of the compliance audit.

R884-24P-28. Reporting Requirements For Leased or Rented Personal Property Pursuant to Utah Code Ann. Section 59-2-306.

(1) The procedure set forth herein is required in reporting heavy equipment leased or rented during the tax year.

(2) The owner of leased or rented heavy equipment shall file annual reports with the commission, either on forms

provided by the commission or electronically, for the periods January 1 through June 30, and July 1 through December 31 of each year. The reports shall contain the following information:

(a) a description of the leased or rented equipment;

(b) the year of manufacture and acquisition cost;

(c) a listing, by month, of the counties where the equipment has situs; and

(d) any other information required.

(3) For purposes of this rule, situs is established when leased or rented equipment is kept in an area for thirty days. Once situs is established, any portion of thirty days during which that equipment stays in that area shall be counted as a full month of situs. In no case may situs exceed twelve months for any year.

(4)(a) The completed report shall be submitted to the Property Tax Division of the commission within thirty days after each reporting period.

(b) Noncompliance will require accelerated reporting.

R884-24P-29. Taxable Household Furnishings Pursuant to Utah Code Ann. Section 59-2-1113.

(1) Except as provided in Section 59-2-1115, household furnishings, furniture, and equipment are subject to property taxation if:

(a) the owner of the dwelling unit commonly receives legal consideration for its use, whether in the form of rent, exchange, or lease payments; or

(b) the dwelling unit is held out as available for the rent, lease, or use by others.

(2) Household furnishings, furniture, and equipment that meet the definition of qualifying exempt primary residential rental personal property in Section 59-2-102:

(a) qualify for the primary residential exemption under Section 59-2-103; and

(b) are valued for tax under this chapter by:

(i) calculating the value of the personal property using the tables in Tax Commission rule R884-24P-33; and

(ii) multiplying the value calculated under Subsection (2)(b)(i) by 0.55.

R884-24P-32. Leasehold Improvements Pursuant to Utah Code Ann. Section 59-2-303.

A. The value of leasehold improvements shall be included in the value of the underlying real property and assessed to the owner of the underlying real property.

B. The combined valuation of leasehold improvements and underlying real property required in A. shall satisfy the requirements of Section 59-2-103(1).

C. The provisions of this rule shall not apply if the underlying real property is owned by an entity exempt from tax under Section 59-2-1101.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2000.

R884-24P-33. 2018 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.

(1) Definitions.

(a)(i) "Acquisition cost" does not include indirect costs such as debugging, licensing fees and permits, insurance, or security.

(ii) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

(b)(i) "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

(ii) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

(c) "Cost new" means the actual cost of the property when purchased new.

(i) Except as otherwise provided in this rule, the Tax Commission and assessors shall rely on the following sources to determine cost new:

(A) documented actual cost of the new or used vehicle; or

(B) recognized publications that provide a method for approximating cost new for new or used vehicles.

(ii) For the following property purchased used, the taxing authority may determine cost new by dividing the property's actual cost by the percent good factor for that class:

(A) class 6 heavy and medium duty trucks;

(B) class 13 heavy equipment;

(C) class 14 motor homes;

(D) class 17 vessels equal to or greater than 31 feet in length; and

(E) class 21 commercial trailers.

(d) For purposes of Sections 59-2-108 and 59-2-1115, "item of taxable tangible personal property" means a piece of equipment, machinery, furniture, or other piece of tangible personal property that is functioning at its highest and best use for the purpose it was designed and constructed and is generally capable of performing that function without being combined with other items of personal property. An item of taxable tangible personal property is not an individual component part of a piece of machinery or equipment, but the piece of machinery or equipment. For example, a fully functioning computer is an item of taxable tangible personal property, but the motherboard, hard drive, tower, or sound card are not.

(e) "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

(i) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

(ii) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, other data sources or research, and vehicle valuation guides such as Penton Price Digests.

(2) Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

(a) Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

(b) A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

(c) County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

(d) A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value.

(3) The provisions of this rule do not apply to:

(a) a vehicle subject to the age-based uniform fee under Section 59-2-405.1;

(b) the following personal property subject to the age-based uniform fee under Section 59-2-405.2:

(i) an all-terrain vehicle;

(ii) a camper;

(iii) an other motorcycle;

(iv) an other trailer;

(v) a personal watercraft;

(vi) a small motor vehicle;
(vii) a snowmobile;
(viii) a street motorcycle;
(ix) a tent trailer;
(x) a travel trailer; and
(xi) a vessel, including an outboard motor of the vessel, that is less than 31 feet in length and
(c) an aircraft subject to the uniform statewide fee under Section 59-2-404.
(4) Other taxable personal property that is not included in the listed classes includes:
(a) Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.
(b) Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.
(c) Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.
(5) Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.
(6) All taxable personal property, other than personal property subject to an age-based uniform fee under Section 59-2-405.1 or 59-2-405.2, or a uniform statewide fee under Section 59-2-404, is classified by expected economic life as follows:
(a) Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.
(i) Examples of property in the class include:
(A) barricades/warning signs;
(B) library materials;
(C) patterns, jigs and dies;
(D) pots, pans, and utensils;
(E) canned computer software;
(F) hotel linen;
(G) wood and pallets;
(H) video tapes, compact discs, and DVDs; and
(I) uniforms.
(ii) With the exception of video tapes, compact discs, and DVDs, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.
(iii) A licensee of canned computer software shall use one of the following substitutes for acquisition cost of canned computer software if no acquisition cost for the canned computer software is stated:
(A) retail price of the canned computer software;
(B) if a retail price is unavailable, and the license is a nonrenewable single year license agreement, the total sum of expected payments during that 12-month period; or
(C) if the licensing agreement is a renewable agreement or is a multiple year agreement, the present value of all expected licensing fees paid pursuant to the agreement.
(iv) Video tapes, compact discs, and DVDs are valued at $15.00 per tape or disc for the first year and $3.00 per tape or disc thereafter.

TABLE 1

Year of Acquisition	Percent Good of Acquisition Cost
17	70%
16	41%
15 and prior	10%

(b) Class 2 - Computer Integrated Machinery.
(i) Machinery shall be classified as computer integrated machinery if all of the following conditions are met:
(A) The equipment is sold as a single unit. If the invoice breaks out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.
(B) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.
(C) The machine can perform multiple functions and is controlled by a programmable central processing unit.
(D) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.
(E) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.
(ii) Examples of property in this class include:
(A) CNC mills;
(B) CNC lathes;
(C) high-tech medical and dental equipment such as MRI equipment, CAT scanners, and mammography units.
(iii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

Year of Acquisition	Percent Good of Acquisition Cost
17	89%
16	80%
15	69%
14	58%
13	47%
12	37%
11	24%
10 and prior	12%

(c) Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.
(i) Examples of property in this class include:
(A) office machines;
(B) alarm systems;
(C) shopping carts;
(D) ATM machines;
(E) small equipment rentals;
(F) rent-to-own merchandise;
(G) telephone equipment and systems;
(H) music systems;
(I) vending machines;
(J) video game machines; and
(K) cash registers.
(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 3

Year of Acquisition	Percent Good of Acquisition Cost
17	84%
16	68%
15	51%
14	35%
13 and prior	18%

(d) Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.
(i) Examples of property in this class include:
(A) furniture;
(B) bars and sinks:
(C) booths, tables and chairs;
(D) beauty and barber shop fixtures;

(E) cabinets and shelves;
(F) displays, cases and racks;
(G) office furniture;
(H) theater seats;
(I) water slides;
(J) signs, mechanical and electrical; and
(K) LED component of a billboard.
(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 5

Year of Acquisition	Percent Good of Acquisition Cost
17	90%
16	82%
15	72%
14	62%
13	53%
12	44%
11	33%
10	22%
09 and prior	12%

(e) Class 6 - Heavy and Medium Duty Trucks.
(i) Examples of property in this class include:
(A) heavy duty trucks;
(B) medium duty trucks;
(C) crane trucks;
(D) concrete pump trucks; and
(E) trucks with well-boring rigs.
(ii) Taxable value is calculated by applying the percent good factor against the cost new.
(iii) Cost new of vehicles in this class is defined as follows:
(A) the documented actual cost of the vehicle for new vehicles; or
(B) 75 percent of the manufacturer's suggested retail price.
(iv) For state assessed vehicles, cost new shall include the value of attached equipment.
(v) The 2018 percent good applies to 2018 models purchased in 2017.
(vi) Trucks weighing two tons or more have a residual taxable value of $1,750.

TABLE 6

Model Year	Percent Good of Cost New
18	90%
17	73%
16	67%
15	62%
14	56%
13	51%
12	45%
11	40%
10	35%
09	29%
08	20%
07	15%
06	10%
05 and prior	4%

(f) Class 7 - Medical and Dental Equipment. Class 7 property is subject to a high degree of technological development by the health industry.
(i) Examples of property in this class include:
(A) medical and dental equipment and instruments;
(B) exam tables and chairs;
(C) microscopes; and
(D) optical equipment.
(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 7

Year of Acquisition	Percent Good of Acquisition Cost
17	92%
16	85%
15	77%
14	69%
13	62%
12	55%
11	46%
10	37%
09	29%
08	21%
07 and prior	11%

(g) Class 8 - Machinery and Equipment. Property in this class is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.
(i) Examples of property in this class include:
(A) manufacturing machinery;
(B) amusement rides;
(C) bakery equipment;
(D) distillery equipment;
(E) refrigeration equipment;
(F) laundry and dry cleaning equipment;
(G) machine shop equipment;
(H) processing equipment;
(I) auto service and repair equipment;
(J) mining equipment;
(K) ski lift machinery;
(L) printing equipment;
(M) bottling or cannery equipment;
(N) packaging equipment; and
(O) pollution control equipment.
(ii) Except as provided in Subsection (6)(g)(iii), taxable value is calculated by applying the percent good factor against the acquisition cost of the property.
(iii)(A) Notwithstanding Subsection (6)(g)(ii), the taxable value of the following oil refinery pollution control equipment required by the federal Clean Air Act shall be calculated pursuant to Subsection (6)(g)(iii)(B):
(I) VGO (Vacuum Gas Oil) reactor;
(II) HDS (Diesel Hydrotreater) reactor;
(III) VGO compressor;
(IV) VGO furnace;
(V) VGO and HDS high pressure exchangers;
(VI) VGO, SRU (Sulfur Recovery Unit), SWS (Sour Water Stripper), and TGU; (Tail Gas Unit) low pressure exchangers;
(II) VGO, amine, SWS, and HDS separators and drums;
(VIII) VGO and tank pumps;
(IX) TGU modules; and
(X) VGO tank and VGO tank air coolers.
(B) The taxable value of the oil refinery pollution control equipment described in Subsection (6)(g)(iii)(A) shall be calculated by:
(I) applying the percent good factor in Table 8 against the acquisition cost of the property; and
(II) multiplying the product described in Subsection (6)(g)(iii)(B)(I) by 50%.

TABLE 8

Year of Acquisition	Percent Good of Acquisition Cost
17	92%
16	85%
15	77%
14	69%
13	62%
12	55%
11	46%

10	37%
09	29%
08	21%
07 and prior	11%

(h) Class 9 - Off-Highway Vehicles.

(i) Because Section 59-2-405.2 subjects off-highway vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(i) Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 10

Year of Acquisition	Percent Good of Acquisition Cost
17	94%
16	89%
15	82%
14	76%
13	71%
12	66%
11	58%
10	52%
09	47%
08	41%
07	34%
06	28%
05	19%
04 and prior	9%

(j) Class 11 - Street Motorcycles.

(i) Because Section 59-2-405.2 subjects street motorcycles to an age-based uniform fee, a percent good schedule is not necessary.

(k) Class 12 - Computer Hardware.

(i) Examples of property in this class include:

(A) data processing equipment;

(B) personal computers;

(C) main frame computers;

(D) computer equipment peripherals;

(E) cad/cam systems; and

(F) copiers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 12

Year of Acquisition	Percent Good of Acquisition Cost
17	62%
16	46%
15	21%
14	9%
13 and prior	7%

(l) Class 13 - Heavy Equipment.

(i) Examples of property in this class include:

(A) construction equipment;

(B) excavation equipment;

(C) loaders;

(D) batch plants;

(E) snow cats; and

(F) pavement sweepers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) 2018 model equipment purchased in 2017 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
17	48%
16	45%
15	42%
14	40%
13	37%
12	34%
11	32%
10	29%
09	26%
08	23%
07	21%
06	18%
05	15%
04 and prior	13%

(m) Class 14 - Motor Homes.

(i) Taxable value is calculated by applying the percent good against the cost new.

(ii) The 2018 percent good applies to 2018 models purchased in 2017.

(iii) Motor homes have a residual taxable value of $1,000.

TABLE 14

Model Year	Percent Good of Cost New
18	90%
17	69%
16	65%
15	61%
14	58%
13	54%
12	50%
11	47%
10	43%
09	39%
08	35%
07	32%
06	28%
05	24%
04	21%
03	17%
02 and prior	15%

(n) Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products. Equipment used in the semiconductor manufacturing industry is subject to significant economic and functional obsolescence due to rapidly changing technology and economic conditions.

(i) Examples of property in this class include:

(A) crystal growing equipment;

(B) die assembly equipment;

(C) wire bonding equipment;

(D) encapsulation equipment;

(E) semiconductor test equipment;

(F) clean room equipment;

(G) chemical and gas systems related to semiconductor manufacturing;

(H) deionized water systems;

(I) electrical systems; and

(J) photo mask and wafer manufacturing dedicated to semiconductor production.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 15

Year of Acquisition	Percent Good of Acquisition Cost
17	47%
16	34%
15	24%
14	15%
13 and prior	6%

(o) Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.

(i) Examples of property in this class include:

(A) billboard (excluding LED component);

(B) sign towers;

(C) radio towers;

(D) ski lift and tram towers;

(E) non-farm grain elevators;

(F) bulk storage tanks;

(G) underground fiber optic cable;

(H) solar panels and supporting equipment; and

(I) pipe laid in or affixed to land.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 16

Year of Acquisition	Percent Good of Acquisition Cost
17	95%
16	92%
15	87%
14	83%
13	80%
12	77%
11	71%
10	67%
09	64%
08	62%
07	59%
06	55%
05	50%
04	44%
03	37%
02	30%
01	23%
00	15%
99 and prior	8%

(p) Class 17 - Vessels Equal to or Greater Than 31 Feet in Length.

(i) Examples of property in this class include:

(A) houseboats equal to or greater than 31 feet in length;

(B) sailboats equal to or greater than 31 feet in length; and

(C) yachts equal to or greater than 31 feet in length.

(ii) A vessel, including an outboard motor of the vessel, under 31 feet in length:

(A) is not included in Class 17;

(B) may not be valued using Table 17; and

(C) is subject to an age-based uniform fee under Section 59-2-405.2.

(iii) Taxable value is calculated by applying the percent good factor against the cost new of the property.

(iv) The Tax Commission and assessors shall rely on the following sources to determine cost new for property in this class:

(A) the following publications or valuation methods:

(I) the manufacturer's suggested retail price listed in the ABOS Marine Blue Book;

(II) for property not listed in the ABOS Marine Blue Book but listed in the NADA Marine Appraisal Guide, the NADA average value for the property divided by the percent good factor; or

(III) for property not listed in the ABOS Marine Blue Book or the NADA Appraisal Guide:

(aa) the manufacturer's suggested retail price for comparable property; or

(bb) the cost new established for that property by a documented valuation source; or

(B) the documented actual cost of new or used property in this class.

(v) The 2018 percent good applies to 2018 models purchased in 2017.

(vi) Property in this class has a residual taxable value of $1,000.

TABLE 17

Model Year	Percent Good of Cost New
18	90%
17	65%
16	63%
15	61%
14	58%
13	56%
12	54%
11	52%
10	49%
09	47%
08	45%
07	43%
06	41%
05	38%
04	36%
03	34%
02	32%
01	30%
00	27%
99	25%
98	21%
97 and prior	17%

(q) Class 17a - Vessels Less Than 31 Feet in Length

(i) Because Section 59-2-405.2 subjects vessels less than 31 feet in length to an age-based uniform fee, a percent good schedule is not necessary.

(r) Class 18 - Travel Trailers and Class 18a - Tent Trailers/Truck Campers.

(i) Because Section 59-2-405.2 subjects travel trailers and tent trailers/truck campers to an age-based uniform fee, a percent good schedule is not necessary.

(s) Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

(i) Examples of property in this class include:

(A) oil and gas exploration equipment;

(B) distillation equipment;

(C) wellhead assemblies;

(D) holding and storage facilities;

(E) drill rigs;

(F) reinjection equipment;

(G) metering devices;

(H) cracking equipment;

(I) well-site generators, transformers, and power lines;

(J) equipment sheds;

(K) pumps;

(L) radio telemetry units; and

(M) support and control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

Year of Acquisition	Percent Good of Acquisition Cost
17	93%
16	85%
15	80%
14	73%
13	66%
12	60%
11	54%
10	46%
09	40%
08	33%
07	26%
06	19%
05 and prior	10%

(t) Class 21 - Commercial Trailers.

(i) Examples of property in this class include:
(A) dry freight van trailers;
(B) refrigerated van trailers;
(C) flat bed trailers;
(D) dump trailers;
(E) livestock trailers; and
(F) tank trailers.
(ii) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, cost new shall include the value of attached equipment.
(iii) The 2018 percent good applies to 2018 models purchased in 2017.
(iv) Commercial trailers have a residual taxable value of $1,000.

TABLE 21

Model Year	Percent Good of Cost New
18	95%
17	86%
16	82%
15	78%
14	74%
13	70%
12	66%
11	62%
10	58%
09	54%
08	51%
07	47%
06	41%
05	36%
04	30%
03	25%
02 and prior	17%

(u) Class 21a - Other Trailers (Non-Commercial).
(i) Because Section 59-2-405.2 subjects this class of trailers to an age-based uniform fee, a percent good schedule is not necessary.
(v) Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.
(i) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.
(ii) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary.
(w) Class 22a - Small Motor Vehicles.
(i) Because Section 59-2-405.2 subjects small motor vehicles to an age-based uniform fee, a percent good schedule is not necessary.
(x) Class 23 - Aircraft Required to be Registered With the State.
(i) Because Section 59-2-404 subjects aircraft required to be registered with the state to a statewide uniform fee, a percent good schedule is not necessary.
(y) Class 24 - Leasehold Improvements on Exempt Real Property.
(i) The Class 24 schedule is to be used only for those leasehold improvements where the underlying real property is owned by an entity exempt from property tax under Section 59-2-1101. See Tax Commission rule R884-24P-32. Leasehold improvements include:
(A) walls and partitions;
(B) plumbing and roughed-in fixtures;
(C) floor coverings other than carpet;
(D) store fronts;
(E) decoration;
(F) wiring;
(G) suspended or acoustical ceilings;
(H) heating and cooling systems; and
(I) iron or millwork trim.
(ii) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.
(iii) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24

Year of Installation	Percent of Installation Cost
17	94%
16	88%
15	82%
14	77%
13	71%
12	65%
11	59%
10	54%
09	48%
08	42%
07	36%
06 and prior	30%

(z) Class 25 - Aircraft Parts Manufacturing Tools and Dies. Property in this class is generally subject to rapid physical, functional, and economic obsolescence due to rapid technological and economic shifts in the airline parts manufacturing industry. Heavy wear and tear is also a factor in valuing this class of property.
(i) Examples of property in this class include:
(A) aircraft parts manufacturing jigs and dies;
(B) aircraft parts manufacturing molds;
(C) aircraft parts manufacturing patterns;
(D) aircraft parts manufacturing taps and gauges; and
(E) aircraft parts manufacturing test equipment.
(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 25

Year of Acquisition	Percent Good of Acquisition Cost
17	84%
16	69%
15	52%
14	36%
13	19%
12 and prior	4%

(aa) Class 26 - Personal Watercraft.
(i) Because Section 59-2-405.2 subjects personal watercraft to an age-based uniform fee, a percent good schedule is not necessary.
(bb) Class 27 - Electrical Power Generating Equipment and Fixtures
(i) Examples of property in this class include:
(A) electrical power generators; and
(B) control equipment.
(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 27

Year of Acquisition	Percent Good of Acquisition Cost
17	97%
16	95%
15	92%
14	90%
13	87%
12	84%
11	82%
10	79%
09	77%

08	74%
07	71%
06	69%
05	66%
04	64%
03	61%
02	58%
01	56%
00	53%
99	51%
98	48%
97	45%
96	43%
95	40%
94	38%
93	35%
92	32%
91	30%
90	27%
89	25%
88	22%
87	19%
86	17%
85	14%
84	12%
83 and prior	9%

(cc) Class 28 - Noncapitalized Personal Property. Property shall be classified as noncapitalized personal property if the following conditions are met:

(i) the property is an item of taxable tangible personal property with an acquisition cost of $1,000 or less; and

(ii) the property is eligible as a deductible expense under Section 162 or Section 179, Internal Revenue Code, in the year of acquisition, regardless of whether the deduction is actually claimed.

TABLE 28

Year of Acquisition	Percent Good of Acquisition Cost
17	75%
16	50%
15	25%
14 and prior	0%

The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2018.

R884-24P-35. Annual Statement for Certain Exempt Uses of Property Pursuant to Utah Code Ann. Section 59-2-1102.

(1) The purpose of this rule is to provide guidance to property owners required to file an annual statement under Section 59-2-1102 in order to claim a property tax exemption under Subsection 59-2-1101(3)(a)(iv) or (v).

(2) The annual statement filed pursuant to Section 59-2-1102 shall contain the following information for the specific property for which an exemption is sought:

(a) the owner of record of the property;

(b) the property parcel, account, or serial number;

(c) the location of the property;

(d) the tax year in which the exemption was originally granted;

(e) a description of any change in the use of the real or personal property since January 1 of the prior year;

(f) the name and address of any person or organization conducting a business for profit on the property;

(g) the name and address of any organization that uses the real or personal property and pays a fee for that use that is greater than the cost of maintenance and utilities associated with the property;

(h) a description of any personal property leased by the owner of record for which an exemption is claimed;

(i) the name and address of the lessor of property described in Subsection (2)(h);

(j) the signature of the owner of record or the owner's authorized representative; and

(k) any other information the county may require.

(3) The annual statement shall be filed:

(a) with the county legislative body in the county in which the property is located;

(b) on or before March 1; and

(c) using:

(i) Tax Commission form PT-21, Annual Statement for Continued Property Tax Exemption; or

(ii) a form that contains the information required under Subsection (2).

R884-24P-36. Contents of Real Property Tax Notice Pursuant to Utah Code Ann. Section 59-2-1317.

A. In addition to the information required by Section 59-2-1317, the tax notice for real property shall specify the following:

1. the property identification number;

2. the appraised value of the property and, if applicable, any adjustment for residential exemptions expressed in terms of taxable value;

3. if applicable, tax relief for taxpayers eligible for blind, veteran, or poor abatement or the circuit breaker, which shall be shown as credits to total taxes levied; and

4. itemized tax rate information for each taxing entity and total tax rate.

R884-24P-37. Separate Values of Land and Improvements Pursuant to Utah Code Ann. Sections 59-2-301 and 59-2-305.

A. The county assessor shall maintain an appraisal record of all real property subject to assessment by the county. The record shall include the following information:

1. owner of the property;

2. property identification number;

3. description and location of the property; and

4. full market value of the property.

B. Real property appraisal records shall show separately the value of the land and the value of any improvements.

R884-24P-38. Nonoperating Railroad Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1)(a) "Railroad right of way" (RR-ROW) means a strip of land upon which a railroad company constructs the road bed.

(b) RR-ROW within incorporated towns and cities shall consist of 50 feet on each side of the main line main track, branch line main track or main spur track. Variations to the 50-foot standard shall be approved on an individual basis.

(c) RR-ROW outside incorporated towns and cities shall consist of the actual right-of-way owned if not in excess of 100 feet on each side of the center line of the main line main track, branch line main track, or main spur track. In cases where unusual conditions exist, such as mountain cuts, fills, etc., and more than 100 feet on either side of the main track is required for ROW and where small parcels of land are otherwise required for ROW purposes, the necessary additional area shall be reported as RR-ROW.

(2) Assessment of nonoperating railroad properties. Railroad property formerly assessed by the unitary method that has been determined to be nonoperating, and that is not necessary to the conduct of the business, shall be assessed separately by the local county assessor.

(3) Assessment procedures.

(a) Properties charged to nonoperating accounts are reviewed by the Property Tax Division, and if taxable, are assessed and placed on the local county assessment rolls separately from the operating properties.

(b) RR-ROW is considered operating and necessary to the conduct and contributing to the income of the business. Any revenue derived from leasing of property within the RR-ROW is considered railroad operating revenues.

(c) Real property outside of the RR-ROW that is necessary to the conduct of the railroad operation is considered part of the unitary value. Some examples are:

(i) company homes occupied by superintendents and other employees on 24-hour call;

(ii) storage facilities for railroad operations;

(iii) communication facilities; and

(iv) spur tracks outside of RR-ROW.

(d) Abandoned RR-ROW is considered nonoperating and shall be reported as such by the railroad companies.

(e) Real property outside of the RR-ROW that is not necessary to the conduct of the railroad operations is classified as nonoperating and therefore assessed by the local county assessor. Some examples are:

(i) land leased to service station operations;

(ii) grocery stores;

(iii) apartments;

(iv) residences; and

(v) agricultural uses.

(f) RR-ROW obtained by government grant or act of Congress is deemed operating property.

(4) Notice of Determination. It is the responsibility of the Property Tax Division to provide a notice of determination to the owner of the railroad property and the assessor of the county where the railroad property is located immediately after such determination of operating or nonoperating status has been made. If there is no appeal to the notice of determination, the Property Tax Division shall notify the assessor of the county where the property is located so that the property may be placed on the roll for local assessment.

(5) Appeals. Any interested party who wishes to contest the determination of operating or nonoperating property may do so by filing a request for agency action within ten days of the notice of determination of operating or nonoperating properties. Request for agency action may be made pursuant to Title 63G, Chapter 4.

R884-24P-40. Exemption of Parsonages, Rectories, Monasteries, Homes and Residences Pursuant to Utah Code Annotated 59-2-1101(d) and Article XIII, Section 2 of the Utah Constitution.

A. Parsonages, rectories, monasteries, homes and residences if used exclusively for religious purposes, are exempt from property taxes if they meet all of the following requirements:

1. The land and building are owned by a religious organization which has qualified with the Internal Revenue Service as a Section 501(c)(3) organization and which organization continues to meet the requirements of that section.

2. The building is occupied only by persons whose full time efforts are devoted to the religious organization and the immediate families of such persons.

3. The religious organization, and not the individuals who occupy the premises, pay all payments, utilities, insurance, repairs, and all other costs and expenses related to the care and maintenance of the premises and facilities.

B. The exemption for one person and the family of such person is limited to the real estate that is reasonable for the residence of the family and which remains actively devoted exclusively to the religious purposes. The exemption for more than one person, such as a monastery, is limited to that amount of real estate actually devoted exclusively to religious purposes.

C. Vacant land which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes, and is therefore not exempt from property taxes.

1. Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.

2. Vacant land is tax exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.

R884-24P-42. Farmland Assessment Audits and Personal Property Audits Pursuant to Utah Code Ann. Subsection 59-2-508, and Section 59-2-705.

(1) Upon completion of commission audits of personal property accounts or land subject to the Farmland Assessment Act, the following procedures shall be implemented:

(a) If an audit reveals an incorrect assignment of property, or an increase or decrease in value, the county assessor shall correct the assessment on the assessment roll and the tax roll.

(b) A revised Notice of Property Valuation and Tax Changes or tax notice or both shall be mailed to the taxpayer for the current year and any previous years affected.

(c) The appropriate tax rate for each year shall be applied when computing taxes due for previous years.

(2) Assessors shall not alter results of an audit without first submitting the changes to the commission for review and approval.

(3) The commission shall review assessor compliance with this rule. Noncompliance may result in an order for corrective action.

R884-24P-44. Farm Machinery and Equipment Exemption Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-1101.

A. The use of the machinery and equipment, whether by the claimant or a lessee, shall determine the exemption.

1. For purposes of this rule, the term owner includes a purchaser under an installment purchase contract or capitalized lease where ownership passes to the purchaser at the end of the contract without the exercise of an option on behalf of the purchaser or seller.

B. Farm machinery and equipment is used primarily for agricultural purposes if it is used primarily for the production or harvesting of agricultural products.

C. The following machinery and equipment is used primarily for the production or harvesting of agricultural products:

1. Machinery and equipment used on the farm for storage, cooling, or freezing of fruits or vegetables;

2. Except as provided in C.3., machinery and equipment used in fruit or vegetable growing operations if the machinery and equipment does not physically alter the fruit or vegetables; and

3. Machinery and equipment that physically alters the form of fruits or vegetables if the operations performed by the machinery or equipment are reasonable and necessary in the preparation of the fruit or vegetables for wholesale marketing.

D. Machinery and equipment used for processing of agricultural products are not exempt.

R884-24P-49. Calculating the Utah Apportioned Value of a Rail Car Fleet Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Average market value per rail car" means the fleet rail car market value divided by the number of rail cars in the fleet.

2. "Fleet rail car market value" means the sum of:

a)(1) the yearly acquisition costs of the fleet's rail cars;

(2) multiplied by the appropriate percent good factors contained in Class 10 of R884-24P- 33, Personal Property Valuation Guides and Schedules; and

b) the sum of betterments by year.

(1) Except as provided in A.2.b)(2), the sum of betterments by year shall be depreciated on a 14-year straight

line method.

(2) Notwithstanding the provisions of A.2.b)(1), betterments shall have a residual value of two percent.

3. "In-service rail cars" means the number of rail cars in the fleet, adjusted for out-of- service rail cars.

4. a) "Out-of-service rail cars" means rail cars:

(1) out-of-service for a period of more than ten consecutive hours; or

(2) in storage.

b) Rail cars cease to be out-of-service once repaired or removed from storage.

c) Out-of-service rail cars do not include rail cars idled for less than ten consecutive hours due to light repairs or routine maintenance.

5. "System car miles" means both loaded and empty miles accumulated in the U.S., Canada, and Mexico during the prior calendar year by all rail cars in the fleet.

6. "Utah car miles" mean both loaded and empty miles accumulated within Utah during the prior calendar year by all rail cars in the fleet.

7. "Utah percent of system factor" means the Utah car miles divided by the system car miles.

B. The provisions of this rule apply only to private rail car companies.

C. To receive an adjustment for out-of-service rail cars, the rail car company must report the number of out-of-service days to the commission for each of the company's rail car fleets.

D. The out-of-service adjustment is calculated as follows.

1. Divide the out-of-service days by 365 to obtain the out-of-service rail car equivalent.

2. Subtract the out-of-service rail car equivalent calculated in D.1. from the number of rail cars in the fleet.

E. The taxable value for each rail car fleet apportioned to Utah, for which the Utah percent of system factor is more than 50 percent, shall be determined by multiplying the Utah percent of system factor by the fleet rail car market value.

F. The taxable value for each rail car company apportioned to Utah, for which the Utah percent of system factor is less than or equal to 50 percent, shall be determined in the following manner.

1. Calculate the number of fleet rail cars allocated to Utah under the Utah percent of system factor. The steps for this calculation are as follows.

a) Multiply the Utah percent of system factor by the in-service rail cars in the fleet.

b) Multiply the product obtained in F.1.a) by 50 percent.

2. Calculate the number of fleet rail cars allocated to Utah under the time speed factor. The steps for this calculation are as follows.

a) Divide the fleet's Utah car miles by the average rail car miles traveled in Utah per year. The Commission has determined that the average rail car miles traveled in Utah per year shall equal 200,000 miles.

b) Multiply the quotient obtained in F.2.a) by the percent of in-service rail cars in the fleet.

c) Multiply the product obtained in F.2.b) by 50 percent.

3. Add the number of fleet rail cars allocated to Utah under the Utah percent of system factor, calculated in F.1.b), and the number of fleet rail cars allocated to Utah under the time speed factor, calculated in F.2.c), and multiply that sum by the average market value per rail car.

R884-24P-50. Apportioning the Utah Proportion of Commercial Aircraft Valuations Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Commercial air carrier" means any air charter service, air contract service or airline as defined by Section 59-2-102.

2. "Ground time" means the time period beginning at the time an aircraft lands and ending at the time an aircraft takes off.

B. The commission shall apportion to a tax area the assessment of the mobile flight equipment owned by a commercial air carrier in the proportion that the ground time in the tax area bears to the total ground time in the state.

C. The provisions of this rule shall be implemented and become binding on taxpayers beginning with the 1999 calendar year.

R884-24P-52. Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102, 59-2-103, and 59-2-103.5.

(1) "Household" is as defined in Section 59-2-102.

(2) "Primary residence" means the location where domicile has been established.

(3) Except as provided in Subsections (4) and (6)(c) and (f), the residential exemption provided under Section 59-2- 103 is limited to one primary residence per household.

(4) An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.

(5) Factors or objective evidence determinative of domicile include:

(a) whether or not the individual voted in the place he claims to be domiciled;

(b) the length of any continuous residency in the location claimed as domicile;

(c) the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;

(d) the presence of family members in a given location;

(e) the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;

(f) the physical location of the individual's place of business or sources of income;

(g) the use of local bank facilities or foreign bank institutions;

(h) the location of registration of vehicles, boats, and RVs;

(i) membership in clubs, churches, and other social organizations;

(j) the addresses used by the individual on such things as:

(i) telephone listings;

(ii) mail;

(iii) state and federal tax returns;

(iv) listings in official government publications or other correspondence;

(v) driver's license;

(vi) voter registration; and

(vii) tax rolls;

(k) location of public schools attended by the individual or the individual's dependents;

(l) the nature and payment of taxes in other states;

(m) declarations of the individual:

(i) communicated to third parties;

(ii) contained in deeds;

(iii) contained in insurance policies;

(iv) contained in wills;

(v) contained in letters;

(vi) contained in registers;

(vii) contained in mortgages; and

(viii) contained in leases.

(n) the exercise of civil or political rights in a given location;

(o) any failure to obtain permits and licenses normally required of a resident;

(p) the purchase of a burial plot in a particular location;

(q) the acquisition of a new residence in a different location.

(6) Administration of the Residential Exemption.

(a) Except as provided in Subsections (6)(b), (d), and (e), the first one acre of land per residential unit shall receive the residential exemption.

(b) If a parcel has high density multiple residential units, such as an apartment complex or a mobile home park, the amount of land, up to the first one acre per residential unit, eligible to receive the residential exemption shall be determined by the use of the land. Land actively used for residential purposes qualifies for the exemption.

(c) If the county assessor determines that a property under construction will qualify as a primary residence upon completion, the property shall qualify for the residential exemption while under construction.

(d) A property assessed under the Farmland Assessment Act shall receive the residential exemption only for the homesite.

(e) A property with multiple uses, such as residential and commercial, shall receive the residential exemption only for the percentage of the property that is used as a primary residence.

(f) If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.

(g)(i) An application for the residential exemption required by an ordinance enacted under Section 59-2-103.5 shall contain the following information for the specific property for which the exemption is requested:

(A) the owner of record of the property;

(B) the property parcel number;

(C) the location of the property;

(D) the basis of the owner's knowledge of the use of the property;

(E) a description of the use of the property;

(F) evidence of the domicile of the inhabitants of the property; and

(G) the signature of all owners of the property certifying that the property is residential property.

(ii) The application under Subsection (6)(g)(i) shall be:

(A) on a form provided by the county; or

(B) in a writing that contains all of the information listed in Subsection (6)(g)(i).

R884-24P-53. 2018 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.

(1) Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.

(a) The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

(b) Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

(c) County assessors may not deviate from the schedules.

(d) Not all types of agricultural land exist in every county. If no taxable value is shown for a particular county in one of the tables, that classification of agricultural land does not exist in that county.

(2) All property qualifying for agricultural use assessment pursuant to Section 59-2-503 shall be assessed on a per acre basis as follows:

(a) Irrigated farmland shall be assessed under the following classifications.

(i) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed below:

TABLE 1
Irrigated I

1)	Box Elder	758
2)	Cache	654
3)	Carbon	501
4)	Davis	804
5)	Emery	476
6)	Iron	759
7)	Kane	398
8)	Millard	753
9)	Salt Lake	680
10)	Utah	715
11)	Washington	620
12)	Weber	769

(ii) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2
Irrigated II

1)	Box Elder	666
2)	Cache	558
3)	Carbon	399
4)	Davis	708
5)	Duchesne	465
6)	Emery	383
7)	Grand	367
8)	Iron	665
9)	Juab	424
10)	Kane	306
11)	Millard	661
12)	Salt Lake	584
13)	Sanpete	511
14)	Sevier	538
15)	Summit	438
16)	Tooele	426
17)	Utah	618
18)	Wasatch	463
19)	Washington	528
20)	Weber	674

(iii) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed below:

TABLE 3
Irrigated III

1)	Beaver	532
2)	Box Elder	524
3)	Cache	423
4)	Carbon	265
5)	Davis	569
6)	Duchesne	326
7)	Emery	241
8)	Garfield	201
9)	Grand	232
10)	Iron	528
11)	Juab	285
12)	Kane	169
13)	Millard	523
14)	Morgan	366
15)	Piute	317
16)	Rich	169
17)	Salt Lake	445
18)	San Juan	163
19)	Sanpete	375
20)	Sevier	400
21)	Summit	299
22)	Tooele	285
23)	Uintah	353
24)	Utah	474
25)	Wasatch	322
26)	Washington	388
27)	Wayne	313
28)	Weber	536

(iv) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4
Irrigated IV

1)	Beaver	438
2)	Box Elder	433
3)	Cache	328

4)	Carbon	170
5)	Daggett	180
6)	Davis	475
7)	Duchesne	229
8)	Emery	149
9)	Garfield	108
10)	Grand	140
11)	Iron	432
12)	Juab	189
13)	Kane	76
14)	Millard	425
15)	Morgan	271
16)	Piute	222
17)	Rich	78
18)	Salt Lake	344
19)	San Juan	74
20)	Sanpete	282
21)	Sevier	307
22)	Summit	206
23)	Tooele	194
24)	Uintah	261
25)	Utah	381
26)	Wasatch	229
27)	Washington	292
28)	Wayne	220
29)	Weber	438

(b) Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

1)	Beaver	620
2)	Box Elder	671
3)	Cache	620
4)	Carbon	620
5)	Davis	676
6)	Duchesne	620
7)	Emery	620
8)	Garfield	620
9)	Grand	620
10)	Iron	620
11)	Juab	620
12)	Kane	620
13)	Millard	620
14)	Morgan	620
15)	Piute	620
16)	Salt Lake	620
17)	San Juan	620
18)	Sanpete	620
19)	Sevier	620
20)	Summit	620
21)	Tooele	620
22)	Uintah	620
23)	Utah	681
24)	Wasatch	620
25)	Washington	733
26)	Wayne	620
27)	Weber	676

(c) Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

1)	Beaver	225
2)	Box Elder	242
3)	Cache	251
4)	Carbon	125
5)	Daggett	149
6)	Davis	253
7)	Duchesne	159
8)	Emery	132
9)	Garfield	99
10)	Grand	127
11)	Iron	250
12)	Juab	145
13)	Kane	104
14)	Millard	185
15)	Morgan	187
16)	Piute	181
17)	Rich	100
18)	Salt Lake	218
19)	Sanpete	185
20)	Sevier	191
21)	Summit	193
22)	Tooele	177
23)	Uintah	198
24)	Utah	239
25)	Wasatch	199
26)	Washington	217
27)	Wayne	164
28)	Weber	287

(d) Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:

(i) Dry III. The following counties shall assess Dry III property based upon the per acre values listed below:

TABLE 7
Dry III

1)	Beaver	49
2)	Box Elder	88
3)	Cache	112
4)	Carbon	47
5)	Davis	49
6)	Duchesne	52
7)	Garfield	46
8)	Grand	47
9)	Iron	47
10)	Juab	49
11)	Kane	46
12)	Millard	45
13)	Morgan	61
14)	Rich	46
15)	Salt Lake	52
16)	San Juan	50
17)	Sanpete	52
18)	Summit	46
19)	Tooele	50
20)	Uintah	52
21)	Utah	48
22)	Wasatch	46
23)	Washington	46
24)	Weber	75

(ii) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8
Dry IV

1)	Beaver	14
2)	Box Elder	56
3)	Cache	79
4)	Carbon	14
5)	Davis	15
6)	Duchesne	18
7)	Garfield	14
8)	Grand	14
9)	Iron	14
10)	Juab	15
11)	Kane	14
12)	Millard	13
13)	Morgan	26
14)	Rich	14
15)	Salt Lake	15
16)	San Juan	16
17)	Sanpete	18
18)	Summit	14
19)	Tooele	14
20)	Uintah	18
21)	Utah	15
22)	Wasatch	14
23)	Washington	13
24)	Weber	42

(e) Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:

(i) Graze 1. The following counties shall assess Graze I property based upon the per acre values listed below:

TABLE 9
GR I

1)	Beaver	67
2)	Box Elder	71
3)	Cache	67
4)	Carbon	50

5)	Daggett	50
6)	Davis	58
7)	Duchesne	66
8)	Emery	68
9)	Garfield	73
10)	Grand	74
11)	Iron	71
12)	Juab	62
13)	Kane	72
14)	Millard	73
15)	Morgan	64
16)	Piute	86
17)	Rich	62
18)	Salt Lake	67
19)	San Juan	71
20)	Sanpete	60
21)	Sevier	62
22)	Summit	69
23)	Tooele	68
24)	Uintah	77
25)	Utah	63
26)	Wasatch	50
27)	Washington	62
28)	Wayne	84
29)	Weber	67

(ii) Graze II. The following counties shall assess Graze II property based upon the per acre values listed below:

TABLE 10
GR II

1)	Beaver	21
2)	Box Elder	22
3)	Cache	21
4)	Carbon	14
5)	Daggett	13
6)	Davis	18
7)	Duchesne	18
8)	Emery	20
9)	Garfield	22
10)	Grand	21
11)	Iron	21
12)	Juab	18
13)	Kane	23
14)	Millard	23
15)	Morgan	20
16)	Piute	25
17)	Rich	19
18)	Salt Lake	20
19)	San Juan	23
20)	Sanpete	17
21)	Sevier	17
22)	Summit	19
23)	Tooele	19
24)	Uintah	27
25)	Utah	22
26)	Wasatch	16
27)	Washington	20
28)	Wayne	27
29)	Weber	19

(iii) Graze III. The following counties shall assess Graze III property based upon the per acre values below:

TABLE 11
GR III

1)	Beaver	15
2)	Box Elder	16
3)	Cache	14
4)	Carbon	12
5)	Daggett	11
6)	Davis	12
7)	Duchesne	13
8)	Emery	13
9)	Garfield	15
10)	Grand	14
11)	Iron	14
12)	Juab	13
13)	Kane	14
14)	Millard	15
15)	Morgan	12
16)	Piute	17
17)	Rich	12
18)	Salt Lake	14
19)	San Juan	16
20)	Sanpete	13
21)	Sevier	13
22)	Summit	13
23)	Tooele	13
24)	Uintah	18
25)	Utah	13
26)	Wasatch	12
27)	Washington	12
28)	Wayne	17
29)	Weber	13

(iv) Graze IV. The following counties shall assess Graze IV property based upon the per acre values listed below:

TABLE 12
GR IV

1)	Beaver	5
2)	Box Elder	5
3)	Cache	5
4)	Carbon	5
5)	Daggett	5
6)	Davis	5
7)	Duchesne	5
8)	Emery	5
9)	Garfield	5
10)	Grand	5
11)	Iron	5
12)	Juab	5
13)	Kane	5
14)	Millard	5
15)	Morgan	5
16)	Piute	5
17)	Rich	5
18)	Salt Lake	5
19)	San Juan	5
20)	Sanpete	5
21)	Sevier	5
22)	Summit	5
23)	Tooele	5
24)	Uintah	5
25)	Utah	5
26)	Wasatch	5
27)	Washington	5
28)	Wayne	5
29)	Weber	5

(f) Land classified as nonproductive shall be assessed as follows on a per acre basis:

TABLE 13
Nonproductive Land

Nonproductive Land		
1)	All Counties	5

R884-24P-55. Counties to Establish Ordinance for Tax Sale Procedures Pursuant to Utah Code Ann. Section 59-2-1351.1.

A. "Collusive bidding" means any agreement or understanding reached by two or more parties that in any way alters the bids the parties would otherwise offer absent the agreement or understanding.

B. Each county shall establish a written ordinance for real property tax sale procedures.

C. The written ordinance required under B. shall be displayed in a public place and shall be available to all interested parties.

D. The tax sale ordinance shall address, as a minimum, the following issues:

1. bidder registration procedures;
2. redemption rights and procedures;
3. prohibition of collusive bidding;
4. conflict of interest prohibitions and disclosure requirements;
5. criteria for accepting or rejecting bids;
6. sale ratification procedures;
7. criteria for granting bidder preference;
8. procedures for recording tax deeds;
9. payments methods and procedures;
10. procedures for contesting bids and sales;

11. criteria for striking properties to the county;

12. procedures for disclosing properties withdrawn from the sale for reasons other than redemption; and

13. disclaimers by the county with respect to sale procedures and actions.

R884-24P-56. Assessment, Collection, and Apportionment of Property Tax on Commercial Transportation Property Pursuant to Utah Code Ann. Sections 41-1a-301 and 59-2-801.

A. For purposes of Section 59-2-801, the previous year's statewide rate shall be calculated as follows:

1. Each county's overall tax rate is multiplied by the county's percent of total lane miles of principal routes.

2. The values obtained in A.1. for each county are summed to arrive at the statewide rate.

B. The assessment of vehicles apportioned under Section 41-1a-301 shall be apportioned at the same percentage ratio that has been filed with the Motor Vehicle Division of the State Tax Commission for determining the proration of registration fees.

C. For purposes of Section 59-2-801(2), principal route means lane miles of interstate highways and clover leafs, U.S. highways, and state highways extending through each county as determined by the Commission from current state Geographic Information System databases.

R884-24P-57. Judgment Levies Pursuant to Utah Code Ann. Sections 59-2-918.5, 59-2-924, 59-2-1328, and 59-2-1330.

(1) Definitions.

(a) "Issued" means the date on which the judgment is signed.

(b) "2.5% of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year" includes any revenues collected by a judgment levy imposed in the prior year.

(2) A taxing entity's share of a judgment or order shall include the taxing entity's share of any interest that must be paid with the judgment or order.

(3) The judgment levy public hearing required by Section 59-2-918.5 shall be held as follows:

(a) For taxing entities operating under a July 1 through June 30 fiscal year, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

(b) For taxing entities operating under a January 1 through December 31 fiscal year:

(i) for judgments issued from the prior March 1 through September 15, the public hearing shall be held at the same time as the hearing at which the annual budget is adopted;

(ii) for judgments issued from the prior September 16 through the last day of February, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

(c) If the taxing entity is required to hold a hearing under Section 59-2-919, the judgment levy hearing required by Subsections (3)(a) and (3)(b)(ii) shall be held at the same time as the hearing required under Section 59-2-919.

(4) If the Section 59-2-918.5 advertisement is combined with the Section 59-2-919 advertisement, the combined advertisement shall aggregate the general tax increase and judgment levy information.

(5) In the case of taxing entities operating under a January 1 through December 31 fiscal year, the advertisement for judgments issued from the previous December 16 through May 31 shall include any judgments issued from the previous June 1 through December 15 that the taxing entity advertised and budgeted for at its December budget hearing.

(6) All taxing entities imposing a judgment levy shall file with the commission a signed statement certifying that all judgments for which the judgment levy is imposed have met the statutory requirements for imposition of a judgment levy.

(a) The signed statement shall contain the following information for each judgment included in the judgment levy:

(i) the name of the taxpayer awarded the judgment;

(ii) the appeal number of the judgment; and

(iii) the taxing entity's pro rata share of the judgment.

(b) Along with the signed statement, the taxing entity must provide the commission the following:

(i) a copy of all judgment levy newspaper advertisements required;

(ii) the dates all required judgment levy advertisements were published in the newspaper;

(iii) a copy of the final resolution imposing the judgment levy;

(iv) a copy of the Notice of Property Valuation and Tax Changes, if required; and

(v) any other information required by the commission.

(7) The provisions of House Bill 268, Truth in Taxation - Judgment Levy (1999 General Session), do not apply to judgments issued prior to January 1, 1999.

R884-24P-58. One-Time Decrease in Certified Rate Based on Estimated County Option Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated sales tax revenue to be distributed to a county under Section 59-12-1102 shall be determined based on the following formula:

1. sharedown of the commission's sales tax econometric model based on historic patterns, weighted 40 percent;

2. time series models, weighted 40 percent; and

3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, weighted 20 percent.

R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated additional resort communities sales tax revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:

1. time series model, econometric model, or simple average, based upon the availability of and variation in the data, weighted 75 percent; and

2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P- 33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. mobile and manufactured homes;

5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-405.1, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the age of the vehicle under E. on the first day of the registration period for which the registrant:

1. in the case of an original registration, registers the vehicle; or

2. in the case of a renewal of registration, renews the registration of the vehicle in accordance with Section 41-1a-216.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.

A. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

b) Recreational vehicle does not include a van unless specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2- 405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value

as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2- 217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2- 104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-62. Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1) Purpose. The purpose of this rule is to:

(a) specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and

(b) identify preferred valuation methodologies to be considered by any party making an appraisal of an individual unitary property.

(2) Definitions:

(a) "Cost regulated utility" means any public utility assessable by the Commission whose allowed revenues are determined by a rate of return applied to a rate base set by a state or federal regulatory commission.

(b) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

(c) "Rate base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

(d) "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a) through (c).

(i) Unitary properties include:

(A) all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; and

(B) all property of public utilities as defined in Section 59-2-102.

(ii) These properties, some of which may be cost regulated utilities, are defined under one of the following categories.

(A) "Telecommunication properties" include the operating property of local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar properties.

(B) "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations, including electric generation, transmission, and distribution companies, and other similar entities.

(C) "Transportation properties" include the operating property of all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar properties.

(3) All tangible operating property owned, leased, or used by unitary companies is subject to assessment and taxation according to its fair market value as of January 1, and as provided in Utah Constitution Article XIII, Section 2. Intangible property as defined under Section 59-2-102 is not subject to assessment and taxation.

(4) General Valuation Principles. Unitary properties shall be assessed at fair market value based on generally accepted appraisal theory as provided under this rule.

(a) The assemblage or enhanced value attributable to the tangible property should be included in the assessed value. See Beaver County v. WilTel, Inc., 995 P.2d 602 (Utah 2000). The value attributable to intangible property must, when possible, be

identified and removed from value when using any valuation method and before that value is used in the reconciliation process.

(b) The preferred methods to determine fair market value are the cost approach and a yield capitalization income indicator as set forth in Subsection (5).

(i) Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary to more accurately estimate fair market value.

(ii) Direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the reconciliation process, as set forth in Subsection (5)(d).

(iii) Preferred valuation methods as set forth in this rule are, unless otherwise stated, rebuttable presumptions, established for purposes of consistency in mass appraisal. Any party challenging a preferred valuation method must demonstrate, by a preponderance of evidence, that the proposed alternative establishes a more accurate estimate of fair market value.

(c) Non-operating Property. Property that is not necessary to the operation of unitary properties and is assessed by a local county assessor, and property separately assessed by the Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

(5) Appraisal Methodologies.

(a) Cost Approach. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. A cost indicator may be developed under one or more of the following methods: replacement cost new less depreciation (RCNLD), reproduction cost less depreciation (reproduction cost), and historic cost less depreciation (HCLD).

(i) "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.

(A) Accounting. Depreciation, often called "book" or "accumulated" depreciation, is calculated according to generally accepted accounting principles or regulatory guidelines. It is the amount of capital investment written off on a firm's accounting records in order to allocate the original or historic cost of an asset over its life. Book depreciation is typically applied to historic cost to derive HCLD.

(B) Appraisal. Depreciation, sometimes referred to as "accrued" depreciation, is the difference between the market value of an improvement and its cost new. Depreciation is typically applied to replacement or reproduction cost, but should be applied to historic cost if market conditions so indicate. There are three types of depreciation:

(I) Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.

(II) Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.

(III) External, or economic, obsolescence is an impairment of an improvement due to negative influences from outside the boundaries of the property, and is generally incurable. These influences usually cannot be controlled by the property owner or user.

(ii) Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout. The use of replacement cost instead of reproduction cost eliminates the need to estimate some forms of functional obsolescence.

(iii) Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying any functional obsolescence.

(iv) Historic cost is the original construction or acquisition cost as recorded on a firm's accounting records. Depending upon the industry, it may be appropriate to trend HCLD to current costs. Only trending indexes commonly recognized by the specific industry may be used to adjust HCLD.

(v) RCNLD may be impractical to implement; therefore the preferred cost indicator of value in a mass appraisal environment for unitary property is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value.

(b) Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.

(i) Yield Capitalization. The yield capitalization formula is CF/(k-g), where "CF" is a single year's normalized cash flow, "k" is the nominal, risk adjusted discount or yield rate, and "g" is the expected growth rate of the cash flow.

(A) Cash flow is restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function. Cash flow is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to working capital necessary to achieve the expected growth "g". Information necessary for the Division to calculate the cash flow shall be summarized and submitted to the Division by March 1 on a form provided by the Division.

(I) NOI is defined as net income plus interest.

(II) Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.

(III) Cash flow is to be projected for the year immediately following the lien date, and may be estimated by reviewing historic cash flows, forecasting future cash flows, or a combination of both.

(Aa) If cash flows for a subsidiary company are not available or are not allocated on the parent company's cash flow statements, a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. The subsidiary's total is divided by the parent's total to derive the allocation percentage to estimate the subsidiary's cash flow.

(Bb) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, the Division may estimate cash flow using the best information available.

(B) The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields. WACC should reflect a typical capital structure for comparable companies within the industry.

(I) The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

(II) The cost of equity is estimated using standard methods such as the capital asset pricing model (CAPM), the Risk Premium and Dividend Growth models, or other recognized models.

(Aa) The CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.

(Bb) The CAPM formula is k(e) = R(f) + (Beta x Risk Premium), where k(e) is the cost of equity and R(f) is the risk

free rate.

(Cc) The risk free rate shall be the current market rate on 20-year Treasury bonds.

(Dd) The beta should reflect an average or value-weighted average of comparable companies and should be drawn consistently from Value Line or an equivalent source. The beta of the specific assessed property should also be considered.

(Ee) The risk premium shall be the arithmetic average of the spread between the return on stocks and the income return on long term bonds for the entire historical period contained in the Ibbotson Yearbook published immediately following the lien date.

(C) The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and any future replacement assets.

(I) If insufficient information is available to the Division, either from public sources or from the taxpayer, to determine a rate, "g" will be the expected inflationary rate in the Gross Domestic Product Price Deflator obtained in Value Line. The growth rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

(ii) A discounted cash flow (DCF) method may be impractical to implement in a mass appraisal environment, but may be used when reliable cash flow estimates can be established.

(A) A DCF model should incorporate for the terminal year, and to the extent possible for the holding period, growth and discount rate assumptions that would be used in the yield capitalization method defined under Subsection (5)(b)(i).

(B) Forecasted growth may be used where unusual income patterns are attributed to

(I) unused capacity;

(II) economic conditions; or

(III) similar circumstances.

(C) Growth may not be attributed to assets not in place as of the lien date.

(iii) Direct Capitalization is an income technique that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by a capitalization rate or by multiplying the normalized income estimate by an income factor.

(c) Market or Sales Comparison Approach. The market value of property is directly related to the prices of comparable, competitive properties. The market approach is estimated by comparing the subject property to similar properties that have recently sold.

(I) Sales of comparable property must, to the extent possible, be adjusted for elements of comparison, including market conditions, financing, location, physical characteristics, and economic characteristics. When considering the sales of stock, business enterprises, or other properties that include intangible assets, adjustments must be made for those intangibles.

(II) Because sales of unitary properties are infrequent, a stock and debt indicator may be viewed as a surrogate for the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's equity.

(d) Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator. Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.

(6) Property Specific Considerations. Because of unique characteristics of properties and industries, modifications or alternatives to the general value indicators may be required for specific industries.

(a) Cost Regulated Utilities.

(i) HCLD is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. HCLD is calculated by taking the historic cost less depreciation as reflected in the utility's net plant accounts, and then:

(A) subtracting intangible property;

(B) subtracting any items not included in the utility's rate base (e.g., deferred income taxes and, if appropriate, acquisition adjustments); and

(C) adding any taxable items not included in the utility's net plant account or rate base.

(ii) Deferred Income Taxes, also referred to as DFIT, is an accounting entry that reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude deferred income taxes from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by deferred income taxes for rate base regulated companies, they shall be removed from HCLD.

(iii) Items excluded from rate base under Subsections (6)(a)(i)(A) or (B) should not be subtracted from HCLD to the extent it can be shown that regulators would likely permit the rate base of a potential purchaser to include a premium over existing rate base.

(b)(i) Railroads.

(ii) The cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value.

(c) Airlines, air charter services, and air contract services.

(i) For purposes of this Subsection (6)(c):

(A) "aircraft pricing guide" means a nationally recognized publication that assigns value estimates for individual commercial aircraft that are in average condition typical for their type and vintage, and identified by year, make and model;

(B) "airline" means an:

(I) airline under Section 59-2-102;

(II) air charter service under Section 59-2-102; and

(III) air contract service under Section 59-2-102;

(C) "airline market indicator" means an estimate of value based on an aircraft pricing guide; and

(D) "non-mobile flight equipment" means all operating property of an airline, air charter service, or air contract service that is not within the definition of mobile flight equipment under Section 59-2-102.

(ii) In situations where the use of preferred methods for determining fair market value under Subsection (5) does not produce a reasonable estimate of the fair market value of the property of an airline operating as a unit, an airline market indicator published in an aircraft pricing guide, and adjusted as provided in Subsections (6)(c)(ii)(A) and (6)(c)(ii)(B), may be used to estimate the fair market value of the airline property.

(A)(I) In order to reflect the value of a fleet of aircraft as part of an operating unit, an aircraft market indicator shall include a fleet adjustment or equivalent valuation for a fleet.

(II) If a fleet adjustment is provided in an aircraft pricing guide, the adjustment under Subsection (6)(c)(ii)(A)(I) shall follow the directions in that guide. If no fleet adjustment is provided in an aircraft pricing guide, the standard adjustment under Subsection (6)(c)(ii)(A)(I) shall be 20 percent from a wholesale value or equivalent level of value as published in the guide.

(B) Non-mobile flight equipment shall be valued using the

cost approach under Subsection (5)(a) or the market or sales comparison approach under Subsection (5)(c), and added to the value of the fleet.

(iii) An income capitalization approach under Subsection (5)(b) shall incorporate the information available to make an estimate of future cash flows.

(iv)(A) When an aircraft market indicator under Subsection (6)(c)(ii) is used to estimate the fair market value of an airline, the Division shall:

(I) calculate the fair market value of the airline using the preferred methods under Subsection (5);

(II) retain the calculations under Subsection (6)(c)(iv)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(iv)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) When an aircraft market indicator under Subsection (6)(c)(ii) is used, the Division shall justify in any appraisal report issued with an assessment why the preferred methods under Subsection (5) were not used.

(v)(A) When the preferred methods under Subsection (5) are used to estimate the fair market value of an airline, the Division shall:

(I) calculate an aircraft market indicator under Subsection (6)(c)(ii);

(II) retain the calculations under Subsection (6)(c)(v)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(v)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) Value estimates from an aircraft pricing guide under Subsection (6)(c)(i)(A) along with the valuation of non-mobile flight equipment under Subsection (6)(c)(ii)(B) shall, when possible, also be included in an assessment or appraisal report for purposes of comparison.

(C) Reasons for not including a value estimate required under Subsection (6)(c)(v)(B) include:

(I) failure to file a return; or

(II) failure to identify specific aircraft.

R884-24P-63. Performance Standards and Training Requirements Pursuant to Utah Code Ann. Section 59-2-406.

A. The party contracting to perform services shall develop a written customer service performance plan within 60 days after the contract for performance of services is signed.

1. The customer service performance plan shall address:

a) procedures the contracting party will follow to minimize the time a customer waits in line; and

b) the manner in which the contracting party will promote alternative methods of registration.

2. The party contracting to perform services shall provide a copy of its customer service performance plan to the party for whom it provides services.

3. The party for whom the services are provided may, no more often than semiannually, audit the contracting party's performance based on its customer service performance plan, and may report the results of the audit to the county commission or the state tax commissioners, as applicable.

B. Each county office contracting to perform services shall conduct initial training of its new employees.

C. The Tax Commission shall provide regularly scheduled training for all county offices contracting to perform motor vehicle functions.

R884-24P-64. Determination and Application of Taxable Value for Purposes of the Property Tax Exemptions for Veterans With a Disability and the Blind Pursuant to Utah Code Ann. Sections 59-2-1104 and 59-2-1106.

For purposes of Sections 59-2-1104 and 59-2-1106, the taxable value of tangible personal property subject to a uniform fee under Sections 59-2-405.1 or 59-2-405.2 shall be calculated by dividing the uniform fee the tangible personal property is subject to by .015.

R884-24P-65. Assessment of Transitory Personal Property Pursuant to Utah Code Ann. Section 59-2-402.

A. "Transitory personal property"means tangible personal property that is used or operated primarily at a location other than a fixed place of business of the property owner or lessee.

B. Transitory personal property in the state on January 1 shall be assessed at 100 percent of fair market value.

C. Transitory personal property that is not in the state on January 1 is subject to a proportional assessment when it has been in the state for 90 consecutive days in a calendar year.

1. The determination of whether transitory personal property has been in the state for 90 consecutive days shall include the days the property is outside the state if, within 10 days of its removal from the state, the property is:

a) brought back into the state; or

b) substituted with transitory personal property that performs the same function.

D. Once transitory personal property satisfies the conditions under C., tax shall be proportionally assessed for the period:

1. beginning on the first day of the month in which the property was brought into Utah; and

2. for the number of months remaining in the calendar year.

E. An owner of taxable transitory personal property who removes the property from the state prior to December and who qualifies for a refund of taxes assessed and paid, shall receive a refund based on the number of months remaining in the calendar year at the time the property is removed from the state and for which the tax has been paid.

1. The refund provisions of this subsection apply to transitory personal property taxes assessed under B. and C.

2. For purposes of determining the refund under this subsection, any portion of a month remaining shall be counted as a full month.

F. If tax has been paid for transitory personal property and that property is subsequently moved to another county in Utah:

1. No additional assessment may be imposed by any county to which the property is subsequently moved; and

2. No portion of the assessed tax may be transferred to the subsequent county.

R884-24P-66. County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Sections 59-2-1001 and 59-2-1004.

(1)(a) "Factual error" means an error that is:

(i) objectively verifiable without the exercise of discretion, opinion, or judgment;

(ii) demonstrated by clear and convincing evidence; and

(iii) agreed upon by the taxpayer and the assessor.

(b) Factual error includes:

(i) a mistake in the description of the size, use, or ownership of a property;

(ii) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization;

(iii) an error in the classification of a property that is eligible for a property tax exemption under:

(A) Section 59-2-103; or

(B) Title 59, Chapter 2, Part 11;

(iv) an error in the classification of a property that is eligible for assessment under Title 59, Chapter 2, Part 5;

(v) valuation of a property that is not in existence on the lien date; and

(vi) a valuation of a property assessed more than once, or

by the wrong assessing authority.

(c) Factual error does not include:

(i) an alternative approach to value;

(ii) a change in a factor or variable used in an approach to value; or

(iii) any other adjustment to a valuation methodology.

(2) To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

(a) the name and address of the property owner;

(b) the identification number, location, and description of the property;

(c) the value placed on the property by the assessor;

(d) the taxpayer's estimate of the fair market value of the property;

(e) evidence or documentation that supports the taxpayer's claim for relief; and

(f) the taxpayer's signature.

(3) If the evidence or documentation required under Subsection (2)(e) is not attached, the county will notify the taxpayer in writing of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.

(4) If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation described under Subsection (2)(e) and the county has notified the taxpayer under Subsection (3), the county may dismiss the matter for lack of evidence to support a claim for relief.

(5) If the information required under Subsection (2) is supplied, the county board of equalization shall render a decision on the merits of the case.

(6) The county board of equalization may dismiss an appeal for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.

(7) The county board of equalization shall prepare and maintain a record of the appeal.

(a) For appeals concerning property value, the record shall include:

(i) the name and address of the property owner;

(ii) the identification number, location, and description of the property;

(iii) the value placed on the property by the assessor;

(iv) the basis for appeal stated in the taxpayer's appeal;

(v) facts and issues raised in the hearing before the county board that are not clearly evident from the assessor's records; and

(vi) the decision of the county board of equalization and the reasons for the decision.

(b) The record may be included in the minutes of the hearing before the county board of equalization.

(8)(a) The county board of equalization shall notify the taxpayer in writing of its decision.

(b) The notice required under Subsection (8)(a) shall include:

(i) the name and address of the property owner;

(ii) the identification number of the property;

(iii) the date the notice was sent;

(iv) a notice of appeal rights to the commission; and

(v) a statement of the decision of the county board of equalization; or

(vi) a copy of the decision of the county board of equalization.

(9) A county shall maintain a copy of a notice sent to a taxpayer under Subsection (8).

(10) If a decision affects the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.

(11) Decisions by the county board of equalization are final orders on the merits.

(12) Except as provided in Subsection (14), a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the time period prescribed by Section 59-2-1004(2)(a) if any of the following conditions apply:

(a) During the period prescribed by Section 59-2-1004(2)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.

(b) During the period prescribed by Section 59-2-1004(2)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was capable of filing an appeal.

(c) The county did not comply with the notification requirements of Section 59-2-919.1.

(d) A factual error is discovered in the county records pertaining to the subject property.

(e) The property owner was unable to file an appeal within the time period prescribed by Section 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Section 59-2-1004(2)(a), and no co-owner of the property was capable of filing an appeal.

(13) Appeals accepted under Subsection (12)(d) shall be limited to correction of the factual error and any resulting changes to the property's valuation.

(14) The provisions of Subsection (12) apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

(15) The provisions of this rule apply only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see Section 59-2-1006 and R861-1A-9.

R884-24P-67. Information Required for Valuation of Low-Income Housing Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-301.3.

(1) The purpose of this rule is to provide an annual reporting mechanism to assist county assessors in gathering data necessary for accurate valuation of low-income housing projects.

(2) The Utah Housing Corporation shall provide the following information that it has obtained from the owner of a low-income housing project to the commission:

(a) for each low-income housing project in the state that is eligible for a low-income housing tax credit:

(i) the Utah Housing Corporation project identification number;

(ii) the project name;

(iii) the project address;

(iv) the city in which the project is located;

(v) the county in which the project is located;

(vi) the building identification number assigned by the Internal Revenue Service for each building included in the project;

(vii) the building address for each building included in the project;

(viii) the total apartment units included in the project;

(ix) the total apartment units in the project that are eligible for low-income housing tax credits;

(x) the period of time for which the project is subject to rent restrictions under an agreement described in Subsection (2)(b);

(xi) whether the project is:

(A) the rehabilitation of an existing building; or

(B) new construction;

(xii) the date on which the project was placed in service;

(xiii) the total square feet of the buildings included in the project;

(xiv) the maximum annual federal low-income housing tax credits for which the project is eligible;

(xv) the maximum annual state low-income housing tax credits for which the project is eligible; and

(xvi) for each apartment unit included in the project:

(A) the number of bedrooms in the apartment unit;

(B) the size of the apartment unit in square feet; and

(C) any rent limitation to which the apartment unit is subject; and

(b) a recorded copy of the agreement entered into by the Utah Housing Corporation and the property owner for the low-income housing project; and

(c) construction cost certifications for the project received from the low-income housing project owner.

(3) The Utah Housing Corporation shall provide the commission the information under Subsection (2) by January 31 of the year following the year in which a project is placed into service.

R884-24P-68. Property Tax Exemption for Taxable Tangible Personal Property With a Total Aggregate Fair Market Value That is At or Below the Statutorily Prescribed Amount Pursuant to Utah Code Ann. Section 59-2-1115.

(1) The purpose of this rule is to provide for the administration of the property tax exemption for a taxpayer whose taxable tangible personal property has a total aggregate fair market value that is at or below the statutorily prescribed amount.

(a) Total aggregate fair market value is determined by aggregating the fair market value of all taxable tangible personal property owned by a taxpayer within a county.

(b) If taxable tangible personal property is required to be apportioned among counties, the determination of whether taxable tangible personal property has a total aggregate fair market value that is at or below the statutorily prescribed amount shall be made after apportionment.

(2) A taxpayer shall apply for the exemption provided under Section 59-2-1115:

(a) if the county assessor has requested a signed statement from the taxpayer under Section 59-2-306, within the time frame set forth under Section 59-2-306 for filing the signed statement; or

(b) if the county assessor has not requested a signed statement from the taxpayer under Section 59-2-306, within 30 days from the day the taxpayer is requested to indicate whether the taxpayer has taxable tangible personal property in the county that is at or below the statutorily prescribed amount.

R884-24P-70. Real Property Appraisal Requirements for County Assessors Pursuant to Utah Code Ann. Sections 59-2-303.1 and 59-2-919.1.

(1) Definitions.

(a) "Accepted valuation methodologies" means those methodologies approved or endorsed in the Standard on Mass Appraisal of Real Property and the Standard on Automated Valuation Models published by the International Association of Assessing Officers (IAAO).

(b) "Database," as referenced in Section 59-2-303.1(6), means an electronic storage of data using computer hardware and software that is relational, secure and archival, and adheres to generally accepted information technology standards of practice.

(2) County mass appraisal systems, as defined in Section 59-2-303.1, shall use accepted valuation methodologies to perform the annual update of all residential parcels.

(3)(a) A detailed review of property characteristics shall include a sufficient inspection to determine any changes to real property due to:

(i) new construction, additions, remodels, demolitions, land segregations, changes in use, or other changes of a similar nature; and

(ii) a change in condition or effective age.

(b)(i) A detailed review of property characteristics shall be made in accordance with the IAAO Standard on Mass Appraisal of Real Property.

(ii) When using aerial photography, including oblique aerial photography, the date of the photographic flight is the property review date for purposes of Section 59-2-303.1.

(4) The last property review date to be included in the county's computer system shall include the actual day, month, and year that the last detailed review of a property's characteristics was conducted.

(5) The last property review date to be included on the notice shall include at least the actual year or tax year that the last detailed review of a property's characteristics was conducted. The month and day of the review may also be included on the notice at the discretion of the county assessor and auditor.

(6)(a) The five-year plan shall detail the current year plus four subsequent years into the future. The plan shall define the properties being reviewed for each of the five years by one or more of the following:

(i) class;

(ii) property type;

(iii) geographic location; and

(iv) age.

(b) The five-year plan shall also include parcel counts for each defined property group.

R884-24P-71. Agreements with Commercial or Industrial Taxpayers for Equal Property Tax Payments Pursuant to Utah Code Ann. Section 59-2-1308.5.

(1) An agreement with a commercial or industrial taxpayer for equal property tax payments under Section 59-2-1308.5 is effective:

(a) the current calendar year, if the agreement is agreed to by all parties on or before May 31; or

(b) the subsequent calendar year, if the agreement is agreed to by all parties after May 31.

(2) An agreement under Subsection (1) affects only those taxing entities that are a party to the agreement.

(3) The commission shall ensure that an agreement under Subsection (1) does not affect the calculation of the certified tax rate by adjusting the formula under Section 59-2-924 so that the collection ratio for each taxpayer that is a party to the agreement is based on the amount that would have been collected according to the same valuation and assessment methodologies that would have been applied in the absence of the agreement.

R884-24P-72. State Farmland Evaluation Advisory Committee Procedures Pursuant to Utah Code Ann. Section 59-2-514.

(1) "Committee" means the State Farmland Evaluation Advisory Committee established in Section 59-2-514.

(2) The committee is subject to Title 52, Chapter 4, Open and Public Meetings Act.

(3) A committee member may participate electronically in a meeting open to the public under Section 52-4-207 if:

(a) the agenda posted for the meeting establishes one or more anchor locations for the meeting where the public may attend;

(b) at least one committee member is at an anchor location; and

(c) all of the committee members may be heard by any person attending an anchor location.

KEY: taxation, personal property, property tax, appraisals
November 30, 2017 **Art. XIII, Sec 2**
Notice of Continuation November 10, 2016 **9-2-201**
11-13-302
41-1a-202
41-1a-301
59-1-210
59-2-102
59-2-103
59-2-103.5
59-2-104
59-2-201
59-2-210
59-2-211
59-2-301
59-2-301.3
59-2-302
59-2-303
59-2-303.1
59-2-305
59-2-306
59-2-401
59-2-402
59-2-404
59-2-405
59-2-405.1
59-2-406
59-2-508
59-2-514
59-2-515
59-2-701
59-2-702
59-2-703
59-2-704
59-2-704.5
59-2-705
59-2-801
59-2-918 through 59-2-924
59-2-1002
59-2-1004
59-2-1005
59-2-1006
59-2-1101
59-2-1102
59-2-1104
59-2-1106
59-2-1107 through 59-2-1109
59-2-1113
59-2-1115
59-2-1202
59-2-1202(5)
59-2-1302
59-2-1303
59-2-1308.5
59-2-1317
59-2-1328
59-2-1330
59-2-1347
59-2-1351
59-2-1365
59-2-1703

R930. Transportation, Preconstruction.
R930-8. Utility Relocations Required by Highway Projects.
R930-8-1. Purpose.

This Rule sets forth the Department's requirements and authority as to a Utility Company's coordination and cooperation when removal, relocation, or alteration of a Utility Facility is made necessary by a highway project and sets forth the options the Department may pursue to proceed with a highway project in the event that a Utility Company fails to cooperate or coordinate with the Department as required by statute or rule.

R930-8-2. Authority.

This Rule is enacted pursuant to Utah Code Sections 54-3-29(5)(b), (6), and (7), and 72-6-116(2) and (6).

R930-8-3. Definitions.

As used in this Rule R930-8:

(1) "Department" means the Utah Department of Transportation.

(2) "Non-operating Property" and "Non-operating Real Property" refer to property owned by a Utility Company that is not directly part of the Utility Company's physical plant or facilities that provide the utility service.

(3) "Utility Company" and "Utility" shall have the same definition as in Utah Code Section 72-6-116(b) and (c) and may be used interchangeably.

(4) "Utility Facility" shall have the same definition as in Utah Code Section 54-3-29(1)(g).

R930-8-4. Utility Company Coordination and Cooperation.

When the Department notifies a Utility that relocation of a Utility Facility may be necessary due to a highway project, both the Department and the Utility shall use their best efforts to identify conflicts, minimize utility relocation costs and operational impacts, highway project costs and delays, and to coordinate and cooperate with one another, as directed in Utah Code Sections 54-3-29(6)-(7) and 72-6-116(6). When the Department believes a conflict exists, it will offer an initial scoping meeting and provide authorization for the Utility to do preliminary design work. The Utility shall:

(1) Provide to the Department, the location of each Utility Facility likely to be affected following the process set forth in Rule R930-7-11(6).

(2) Identify to the Department conflicts between the Department's proposed highway work and the Utility's operation of its Utility Facilities.

(3) Submit to the Department all conveyances, vesting documents, or other evidence of title to real property related to the potential relocation of Utility Facilities as early as practicable.

(4) Submit to the Department the Utility's proposed design for relocation; detailed cost estimates; a reasonable relocation schedule to accommodate the highway project; reasonable limits on highway project work, including utility outage windows and construction loadings by the Department; and communication procedures between the parties. A reasonable relocation schedule for the project includes, but is not limited to, work sequencing, task durations, material ordering, notification requirements, mobilization, third-party coordination, communication between the parties, and any other activity necessary for the relocation of the Utility Facility to accommodate the highway project. If the relocation work is to be completed prior to the Department awarding the highway project to its contractor, the Utility shall include specific dates in the schedule.

(5) Execute a written relocation agreement with the Department. The agreement shall include terms and conditions, including but not limited to, the relocation scope of work, reimbursement provisions, federal requirements, description and location of the work to be undertaken, plans and drawings, and detailed cost estimates.

(6) After the Department has awarded the highway project to the contractor, coordinate with the contractor to develop a detailed work plan and schedule and address all other matters of mutual concern during construction. Submit to the Department written acknowledgement of the approved schedule.

(7) Perform the work necessary for removal, relocation, or alteration of the Utility Facility in accordance with the detailed work plan and schedule developed in (4) and (6) above, and as described in the relocation agreement and supplemental agreements.

R930-8-5. Timeliness.

The work listed in Subsections R930-8-4(1) through (7) must be timely completed by the Utility as not to delay the highway project or otherwise increase costs to the project. The Department will provide reasonable deadlines for the Utility, so the Utility can meet the deadlines and not unnecessarily delay the highway project. The Department will also provide the Utility with reasonable updates of highway project schedule changes.

R930-8-6. Relocation.

The basic concept when relocating Utility Facilities is to functionally restore the Utility's operation facilities that existed prior to the Department constructing a highway project.

(1) The Department incorporates by reference 23 CFR Section 645, subpart A (05/15/1985), for all Utility Facility relocations required by the Department's highway projects. For deviations in determining whether the Utility's real property needed for the highway project should be handled as a utility relocation or right-of-way acquisition, Rule R930-7-13(5) shall apply.

(2) If the Utility's regulatory and construction requirements can be met, the Department may require Utility Companies to jointly occupy trenches for the highway construction projects. To the extent Utilities have valid agreements concerning the joint use of above ground facilities, the Utilities shall cooperate with each other for the relocated joint use.

(3) If a Utility determines the existing Utility Facilities do not need to be replaced or are not needed to maintain its operational facilities, payment for the real property, which is needed to accommodate the construction of the highway project where the Utility Facilities are located, shall be handled as a right-of-way acquisition.

R930-8-7. Replacement of Property Rights.

(1) When the Department replaces a Utility's fee interest or easement, the Utility shall transfer title to the prior fee or easement to the Department without charge.

(2) If the Utility has facilities within a fee or easement and the facilities are relocated within the Department's right-of-way, the Utility shall transfer title to the fee or easement without charge to the Department and the Department shall reimburse the Utility 100% of the future utility relocation costs in compliance with 23 CFR Section 645, subpart A.

(3) When the Utility's Utility Facilities are located in a public utility easement as defined in Utah Code Section 54-3-27, the Department may purchase a replacement public utility easement and may require the Utility to relocate its facilities to the replacement public utility easement.

(4) The Utility shall pay UDOT for any betterment between the existing real property interest and the real property interest acquired for relocation.

(5) If the Department obtains a court ordered occupancy or right-of-entry from a property owner, the Utility shall relocate

its facilities onto the replacement property rights while the Department obtains the final order or deeds from the property owner.

(6) Acquisition of Non-Operating Real Property from a Utility shall be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and applicable right-of-way procedures in 23 CFR Section 710.203.

R930-8-8. Reimbursement of Relocation Costs.

(1) Reimbursement costs shall be determined in accordance with 23 CFR Section 645, subpart A, and the Program Guide, Utility Relocation and Accommodation on Federal-Aid Highway Projects, Sixth Edition, January 2003, as amended, Cost Development and Reimbursement, pages B-21 to B-23.

(2) If a Utility cannot provide a copy of a permit that shows the Department's acceptance of the deviation from the rule in effect at the time of installation of the Utility Facilities and the Utility Facilities do not meet the overhead clearance requirements, the Utility must relocate its facilities without any reimbursement from the Department. The Utility shall be responsible for 100% of its relocation costs for non-compliant utility facilities.

(3) When reimbursement is made on the basis of actual costs, the Utility's estimate and final billing shall be itemized to show the totals for labor, overhead construction costs, travel expenses, transportation, equipment, materials and supplies, handling costs, and other services.

(4) The Utility's final billing statement shall be provided in a format that facilitates making comparisons with the Department's approved estimates.

(5) A Utility must submit final billings to the Department within six months following the completion of the Utility Facility relocation work. The Department may make a final payment when the final bill is received from a Utility more than six months after the completion of the Utility Facility relocation work if the Department and the Utility have agreed in advance that a longer time period is needed.

(6) The costs incurred by the Department and a Utility for compliance with federal and state statutes, rules, and regulations will be included as part of the utility relocation costs.

(7) Temporary Utility Facility relocations required by the highway project will be included as part of the utility relocation costs.

(8) Telecommunication utility companies granted longitudinal interstate access are required to pay all relocation costs pursuant to Utah Code Section 72-7-108.

R930-8-9. Betterments.

No betterment credit is required for the replacement of utility devices or materials that are:

(1) Required by the highway project;

(2) Of equivalent standards although not identical;

(3) Of the next highest grade or size when the existing devices or materials are no longer regularly manufactured;

(4) Required by law pursuant to governmental and appropriate regulatory commission code; or

(5) Required by current design practices regularly followed by the Utility in its own work, and there is a resulting direct benefit to the highway project.

R930-8-10. Issuance of Administrative Order; Enforcement.

(1) In the event that a Utility fails to timely coordinate and cooperate with the Department at any point in the utility relocation process, the Department may issue an administrative order pursuant to Utah Code Section 72-6-116(2)(b) to the Utility to accommodate the highway project. The administrative order shall be issued by the Department's Statewide Railroad and Utilities Director and will include a reasonable timeframe for Utility Company actions to be complete the relocation of the Utility Facilities, including any design.

(2) If the Utility fails to comply with the Department's administrative order, and the failure to comply is not caused by a third party who the Utility has no control over, the Department may issue an administrative order to remedy non-compliance. The Department may order any or all the following remedies:

(a) The Department may recover from the Utility increased costs caused by the Utility's unreasonable or unjustified delays. Such actual and indirect costs may include, but are not limited to, increased costs on the current highway project or related projects, added expenses from loss of a construction season, and loss of project funding.

(b) The Department may deny further permits for utility installation under R930-7 until the Utility's non-compliance is resolved.

(c) The Department may perform design work and construction work on behalf of the Utility for those Utility Facilities located within the highway right-of-way, except for fiber for telecommunications, electricity, and natural gas. The Department will only perform such work if the work can be performed without violating any state or federal statute, regulation, or safety requirement. The Utility shall reimburse the Department for the costs the Department incurs to relocate the Utility's facilities, in amounts allowed by Utah Code Section 72-6-116(3).

(3) In addition, the Department may pursue additional remedies or claims against a Utility in a district court in Utah.

(4) The Department shall not limit or waive any of its remedies or claims allowed in this rule or law.

(5) The Department may require a Utility to comply with a practicable shortened process or expedited schedule when an emergency exists that could affect public safety or the structural or functional integrity of the highway.

R930-8-11. Agency review.

A Utility aggrieved by an administrative order issued under Rule R930-8-10 and Utah Code Section 72-6-116(2)(b) may file a written request for agency review with the Department pursuant to the Administrative Procedures Act, Utah Code Title 63G, Chapter 4, and Rule R907-1. The presiding officer for the agency review will be the Department's Director of Operations, who will issue the Department's Final Order. The administrative proceedings shall be informal.

KEY: right-of-way, utility accommodation, utility facilities, utilities

September 28, 2018

54-3-29(5)(b)
54-3-29(6)
54-3-29(7)
72-6-116(2)
72-6-116(6)

R945. UTech Board of Trustees, Administration.
R945-1. UTech Scholarship.
R945-1-1. Purpose and Authority.

(1) The purpose of this rule is to establish requirements related to the technical college scholarships described in Section 53B-2a-116, including a college's administration of the scholarships, student eligibility and priority, application processes, and determination of satisfactory progress.

(2) This rule is authorized and directed by Subsection 53B-2a-116(6).

R945-1-2. Definitions.

As used in this rule:

(1) "Career and Technical Education Pathway" means:

(a) For a technical college, a certificate-granting program approved in accordance with Utah System of Technical Colleges (USTC) policy;

(b) For an institution of higher education, a program approved in accordance with State Board of Regents policy that leads to a certificate and/or associate degree and that prepares students for an occupation; or

(c) For a school district or charter school, a sequence of courses that leads to a secondary school credential of labor market value approved by the State Board of Education.

(2) "Deferral" means the carrying forward of a UTech Scholarship, as described in Subsection R945-1-6(4).

(3) "Graduate from High School" means to qualify for a high school diploma as specified in Subsection R277-705-2(3).

(4) "High Demand Program" means the same as that term is defined in Subsection 53B-2a-116(1)(a).

(5) "Institution of Higher Education" means an institution within the Utah System of Higher Education described in Subsection 53B-1-102(1)(a).

(6) "Satisfactory Progress" means completion of any course, as included in an official transcript from the provider of a career and technical education pathway, that is specific to a career and technical education pathway discipline. Courses in a career and technical education pathway that are not specific to a pathway discipline, such as general education courses, are not eligible.

(7) "Secondary School" means grades 7-12 in whatever kind of school the grade levels exist, as provided in Subsection R277-705-2(5).

(8) "Technical College" means an institution within the Utah System of Technical Colleges described in Section 53B-2a-105.

(9) "Underserved Population" means any individual of ethnic or racial minority status; any individual with a disability; any individual identified as a displaced homemaker, single parent, economically disadvantaged, or of limited English proficiency under Carl D. Perkins Grant reporting procedures; or any individual receiving Pell Grant, Bureau of Indian Affairs, or Department of Workforce Services benefits.

(10) "UTech Scholarship" means a financial award provided by a technical college in accordance with Section 53B-2a-116 and this rule to a student enrolled in a technical college.

R945-1-3. Award Requirements.

To receive a UTech Scholarship, an applicant shall satisfy the following criteria:

(1) Graduate from high school within the seven months prior to receiving a scholarship;

(2) Enroll in, or show intent to enroll in, a high demand program at a technical college within the seven months after high school graduation, except as granted in a deferral; and

(3) While enrolled in a secondary school, make satisfactory progress in a career and technical education pathway offered by a technical college, an institution of higher education, or a school district or charter school.

R945-1-4. Application Process.

The process for an individual to apply to a technical college to receive a UTech Scholarship shall be administered by the technical college, and shall include the following:

(1) College Application: The technical college shall provide an application form, process, and instructions which include the elements provided in this rule, and which may be integrated with other scholarship application forms and processes administered by the college.

(2) UTech Scholarship Specificity: In its application forms and processes, the technical college shall clearly identify the UTech Scholarship's name, award requirements, use, and application process, and shall provide for the applicant to specify that the applicant is applying to be considered for the UTech Scholarship.

(3) Application Deadline: The technical college shall establish deadlines for submission of applications in accordance with the college's scholarship application processes.

(4) Required Documentation: The technical college shall require and retain the following information from each applicant in its application forms and accompanying documents:

(a) Identity and contact information consistent with the college's regular scholarship applications, such as name, address, and date of birth.

(b) Application date.

(c) UTech Scholarship specificity as described in Subsection R945-1-4(2).

(d) Demographic information to include underserved population identification.

(e) High school information, on transcripts or otherwise documented, to include:

(i) Name of high school attended;

(ii) Expected or actual high school graduation date; and

(iii) Expected or actual satisfactory progress in a career and technical education pathway offered by a technical college, an institution of higher education, or a school district or charter school.

(f) Technical college enrollment intentions to include:

(i) Name of technical college;

(ii) High demand program in which the student is enrolled or intends to enroll;

(iii) Date on which the student began or expects to begin the high demand program;

(iv) Intended enrollment hours per week;

(v) Expected program completion date; and

(vi) If a deferral is requested, justification for the deferral in accordance with 945-1-6(4)(a).

R945-1-5. Determination of Scholarship Awards and Amounts.

A technical college shall determine scholarship eligibility, prioritize selection of award recipients and the amount of each award, and grant scholarships according to the following provisions and sequence.

(1) Determination of Eligibility: For each application deadline in Subsection R945-1-4(3), the college shall identify from the application documentation:

(a) Eligible Applicant: Each applicant that satisfies or is expected to satisfy all award requirements in Section R945-1-3.

(b) Eligible Award Period: For each eligible applicant, the period determined by:

(i) Start Date: The date on which the applicant expects to begin a high demand program, or, in the case of an applicant who has previously begun the intended high demand program, the day after the high school graduation date; and

(ii) End Date: Seven months after the high school graduation date, or, in the case of a requested deferral, seven months after the start date.

(c) Eligible Award Amount: For each eligible applicant,

the total cost of tuition, program fees, and required textbooks projected to accrue for the high demand program in which the applicant intends to be enrolled during the eligible award period, informed by the applicant's intended enrollment hours per week.

(2) Prioritizing and Awarding of Scholarships: The college shall award scholarships within an application deadline group as follows:

(a) Underserved Populations: The college shall first award a scholarship to each eligible applicant who is a member of an underserved population, in the amount provided in Subsection R945-1-5(3).

(b) Remaining Applicants: The college shall, with any funds remaining after awarding scholarships to members of underserved populations, award scholarships to all other eligible applicants in the amounts provided in Subsection R945-1-5(3).

(3) Calculation of Award Amounts: The college shall determine award amounts for each scholarship recipient identified in Subsection R945-1-5(2) as follows:

(a) Full Eligible Award Amount: If available funds provided in Section R945-1-7 are sufficient for the total of all eligible award amounts identified in Subsection R945-1-5(1)(c) in a given priority group designated in Subsection R945-1-5(2), then each eligible applicant in the group shall be awarded 100% of the applicant's eligible award amount.

(b) Partial Eligible Award Amount: If available funds are less than the total of all eligible award amounts for the priority group, the available funds shall be divided by the number of eligible applicants in the group to determine the maximum award per recipient. Each eligible applicant shall be awarded up to the maximum award, not to exceed 100% of the applicant's eligible award amount. Any unobligated funds remaining for applicants awarded less than the maximum award shall be retained in the scholarship fund for future applicants.

(c) Unavailability of Funds: If there are no available scholarship funds remaining after awards have been determined for a higher priority group, no scholarships shall be awarded for remaining applicants.

R945-1-6. Conditions and Utilization of Scholarship.

(1) Eligibility Verification: Before applying funds for a scholarship awarded in Subsection R945-1-5(2) to a student, a technical college shall verify that all award requirements in Section R945-1-3 have been met by obtaining and retaining additional documentation of actual qualifications which at the time of application were expected or intended to have been met.

(2) Use of Funds: Scholarship funds may be used only for tuition, program fees, and required textbooks in a high demand program in which the recipient is enrolled, up to the recipient's award amount determined in Subsection R945-1-5(3). Funds shall be applied by the college directly to authorized costs and shall not be issued to a recipient in cash.

(3) Time Limitation: Except in the case of a granted deferral, a technical college may only apply a scholarship toward a recipient's costs described in Subsection R945-1-6(2) from the day on which the college awards the scholarship as identified in Subsection R945-1-5(2) until seven months after the day on which the recipient graduates from high school.

(4) Deferral: A college may, by request from the recipient at any time before or during the recipient's award period, defer all or any portion of a scholarship for up to three years after the day on which the recipient graduates from high school.

(a) Deferrals may be granted at the discretion of the college for military service, humanitarian/religious service, documented medical reasons, or other exigent reasons.

(b) The duration of a deferred scholarship shall be for the time remaining in the recipient's award period, not to exceed seven months.

(5) Cancellation: A technical college may cancel a scholarship if the recipient does not, as determined by the college:

(a) Maintain enrollment in the college on at least a half-time basis; or

(b) Make satisfactory progress toward the completion of a certificate in a high demand program.

(6) Unused Funds: Upon termination of a recipient's scholarship due to non-acceptance, completion, cancellation, or any other reason, any unused award amounts shall be removed from liability/obligated status under Subsection R945-1-7(4) and retained in the college's restricted UTech Scholarship account.

R945-1-7. UTech Scholarship Funds.

(1) Distribution of Award Funds: The annual distribution of UTech Scholarship award funds to technical colleges by the Board of Trustees shall be as provided in Subsection 53B-2a-116(2).

(2) Restricted Funds: UTech Scholarship funds shall be considered restricted funds by a technical college, shall be recorded only in restricted UTech Scholarship accounts, and shall be used only for scholarship recipients' tuition, program fees, and required textbooks during their award periods.

(3) Unused/Carryover Funds: Each technical college is encouraged to annually utilize all UTech Scholarship funds for qualified students. Surplus funds (i.e., fund balance or net assets) shall be retained in the restricted fund and carried over from one fiscal year to the next.

(4) Obligated Funds: The projected value of a given student's scholarship award shall be recorded as a liability from the time of the student's selection until the student's scholarship ends, and shall be regarded as utilized funds when determining unused/carryover funds. Obligated funds remaining after the student's scholarship ends shall be returned to unused/carryover funds.

R945-1-8. Appeals.

A technical college shall provide a process and criteria, to be referenced in application materials, by which an applicant may appeal a decision made by the college that is related to this rule, to include provision for any unresolved appeal to be submitted to the Commissioner of Technical Education for final agency action.

R945-1-9. Reporting.

A technical college shall submit calendar year-end data regarding its UTech Scholarships to the Office of the USTC Commissioner by January 15 of each year, and at other times as required by the Office of the Commissioner, to include information pertaining to the provisions of this rule with respect to applications, awards, enrollments, utilization, funding, or other information as directed by the Commissioner.

KEY: scholarships, technical college, career and technical education, secondary education
September 7, 2018 53B-2a-116

R986. Workforce Services, Employment Development.
R986-700. Child Care Assistance.
R986-700-701. Authority for Child Care Assistance (CC) and Other Applicable Rules.

(1) The Department administers Child Care Assistance (CC) pursuant to the authority granted in Section 35A-3-310.

(2) Rule R986-100 applies to CC except as noted in this rule.

(3) Applicable provisions of R986-200 apply to CC, except as noted in this rule or where in conflict with this rule.

R986-700-702. General Provisions.

(1) CC is provided to support employment for U.S. citizens and qualified aliens authorized to work in the U.S. Child care for approved education and training activities, job search, or for an approved temporary change as defined in R986-700-703 may be authorized in accordance with rule.

(2) CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:

(a) parents;

(b) specified relatives; or

(c) clients who have been awarded custody or appointed guardian of the child by court order and both parents are absent from the home. If there is no court order, an exception can be made on a case by case basis in unusual circumstances by the Department program specialist.

(3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children. To be eligible, the child must have a need for at least eight hours of child care per month as determined by the Department.

(4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:

(a) children under the age of 13; and

(b) children up to the age of 18 years if the child;

(i) meets the requirements of rule R986-700-717, and/or

(ii) is under court supervision.

(5) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" is defined in rule R986-700-717.

(6) Payments are issued monthly based on a client's eligibility for services in that month. The amount of CC might not cover the entire cost of care.

(7) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(8) CC can only be provided by an eligible provider approved by the Department and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(9) CC will not be paid to a client for the care of his or her own child(ren) when the client is working in a residential setting. CC may be approved where the client is working for an approved child care center, does not regularly watch his or her own children at the center, and does not have an ownership interest in the child care center. CC will not be paid to a client for the care of his or her own child(ren) if the client is also the licensee or is a stockholder, officer, director, partner, manager or member of a corporation, partnership, limited liability partnership or company or similar legal entity providing the CC.

(10) Neither the Department nor the state of Utah is liable for injuries that may occur when a child is placed in child care even if the parent receives a subsidy from the Department.

(11) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC for the foster children.

(12) Once eligibility for CC has been established, eligibility must be reviewed once every twelve months. The review is not complete until the client has completed, signed and returned all necessary review forms to the local office. All requested verifications must be provided at the time of the review. If the Department determines the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in R986-700-710(3), the Department may terminate CC even if the certification period has not expired.

R986-700-703. Client Rights and Responsibilities.

In addition to the client rights and responsibilities found in R986-100, the following client rights and responsibilities apply:

(1) A client has the right to select the type of child care which best meets the family's needs.

(2) If a client requests help in selecting a provider, the Department will refer the client to the local Care About Child Care agency.

(3) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.

(4) A client is responsible to pay all costs of care charged by the provider. If the child care assistance payment provided by the Department is less than the amount charged by the provider, the client is responsible for paying the provider the difference.

(5) The only changes a client must report to the Department within ten days of the change occurring are:

(a) that the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in R986-700-710(3);

(b) if the client's schedule changes so that child care is no longer needed during the hours of approved employment and/or training activities;

(c) the client is separated from his or her employment;

(d) a change of address;

(e) any of the following changes in household composition; a parent, stepparent, spouse, or former spouse moves into the home, a child receiving child care moves out of the home, or the client gets married;

(f) a change in the child care provider, including when care is provided at no cost;

(g) when the child has stopped attending child care or has not attended child care for at least eight hours during the month for which CC was authorized;

(h) a change in child custody, visitation, or parent-time, including any regular periods of extended change in visitation or parent-time such as extended holidays or vacations with a non-custodial parent;

(i) a change in the total cost of care for a client that is based on a change in a person(s) paying some or all of the total cost of care; and

(j) any other changes that would affect a client's eligibility for ESCC as described in rule R986-700-709.

(6)(a) The following are allowable temporary changes:

(i) Time-limited absences from work due to medical or other emergency, such as maternity leave, bed rest, or temporary medical issues of the client or an immediate family member living in the client's home if the client is responsible for the immediate family member's care;

(ii) Temporary fluctuations in earnings or hours, such as summer break for teachers or seasonal hours changes for IRS

employees, that would otherwise have the effect of causing the client to fail to meet the minimum work requirements for eligibility;

(iii) Scheduled holidays or breaks in a client's educational training schedule;

(iv) An eligible child turning 13 years old during an eligibility review period, unless the child no longer has a need for child care.

(b) A client who experiences an allowable temporary change and has been approved for ongoing employment support child care (ESCC) may continue to receive child care payments at the same level for the remainder of the certification period. If the allowable temporary change is a temporary loss of employment, the client must comply with Department procedures regarding eligibility verification, including but not limited to reporting the temporary loss of employment to the Department within ten days and requesting the child care continue.

(7) Once an eligibility determination is made and a full month's payment and copayment is assessed, benefits will be paid at the same level during the remainder of the certification period so long as the client remains eligible, except that:

(a) The Department may act on reported changes that result in a subsidy increase or copayment decrease, and

(b) Benefits may be reduced if a child care provider reports a lower monthly charge or the client changes to a different child care provider.

(8) If an overpayment is established and it is determined that the client was at fault in the creation of the overpayment, the client must repay the overpayment to the Department. In some situations, the client and provider may be jointly liable. In the case of joint liability, both parties can be held liable for the entire overpayment.

(9) The Department is authorized to release the following information to the designated provider:

(a) limited information regarding the status of a CC payment including that no payment was issued or services were denied;

(b) the date the child care subsidy was issued;

(c) the subsidy amount for that provider;

(d) the copayment amount;

(e) information available in the Department Provider Portal. The Provider Portal provides a provider with computer access to limited, secure information;

(f) the month the client is scheduled for review;

(g) the date the client's application was received; and

(h) general information about what additional information and/or verification is needed to approve CC such as the client's work schedule and income.

(10) If a client uses a child care provider at least eight hours in the calendar month, and that provider has been paid for that month, the Department will not pay another provider for child care for the rest of that month, even if the client changed providers, unless the maximum subsidy payment amount for the month will not be exceeded by paying the second provider and one of the following exceptions also applies:

(a) The initial provider is no longer providing child care, is no longer an approved provider, or has been disqualified by the Department;

(b) The client relocates his or her residence and it is no longer reasonably feasible to continue using the initial provider due to travel time or distance;

(c) There is a substantial change in the days or times of day when child care is needed, such as a change in the timing of the shifts the client is working, that cannot be accommodated by the initial provider; or

(d) The Department determines a change in child care providers is necessary due to an endangerment finding for the child. The Department may, in its discretion, approve payment to a second provider due to an endangerment finding even if the maximum subsidy payment amount would be exceeded.

R986-700-704. Establishment of Paternity.

The provisions of rules R986-100 and R986-200 pertaining to cooperation with ORS in the establishment of paternity and collection of child support do not apply to ES CC.

R986-700-705. Eligible Providers and Provider Settings.

(1) The Department will only pay CC to clients who select eligible providers. All eligible providers, including providers who receive CC grants from the Department, must meet all Child Care Development Fund (CCDF) requirements. The only eligible providers are:

(a) providers regulated through Department of Health Child Care Licensing (CCL):

(i) licensed homes;

(ii) licensed child care centers, except hourly centers; and

(iii) homes with a residential certificate.

(b) license exempt providers who are not required by law to be licensed and are either;

(i) license exempt centers as defined in R430-8-3. Programs or centers must have a current letter of exempt status with Department approval from CCL; or

(ii) DWS Family, Friend and Neighbor providers (FFN) as approved by CCL. The requirements for FFN approval are provided in subsection (3) of this section and in Department policy.

(2) The following providers are not eligible for receipt of a CC payment:

(a) a provider living in the same home as the parent client and providing child care in the home where they live, unless the provider is caring for a child who has special needs who cannot be otherwise accommodated;

(b) a sibling of the child living in the home can never be approved, even for a special needs child;

(c) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(d) undocumented aliens;

(e) persons under age 18;

(f) a provider providing care for the child in another state;

(g) a sponsor of a qualified alien client applying for child care assistance;

(h) a provider who has committed an IPV as a provider, or as a recipient of any funds from the Office of Child Care including subsidy and grant payments, as determined by the Department or by a court. The disqualification for an IPV will remain in effect until the IPV disqualification period has run, any resulting overpayment has been satisfied, and the provider is otherwise eligible;

(i) any provider disqualified under R986-700-718;

(j) a provider who does not provide necessary information or cooperate with a Department investigation or audit or is not an approved provider;

(k) a provider whose child care subsidies are being taken pursuant to an IRS levy or garnishment; or

(l) a provider living in the same home as a non-custodial parent and providing child care for a child of that parent.

(3) FFN providers must comply with all CCDF and Department requirements and will not be approved for a CC subsidy payment unless all of the following requirements have been successfully completed and verification has been provided to CCL:

(a) complete, sign and submit an application to CCL;

(b) provide a copy of a certificate of completion of New Provider orientation and agree to comply with Department requirements and policy, including ongoing training, as explained in the orientation;

(c) pass a home inspection as provided in Department

policy;

(d) complete an infant/child CPR training;

(e) complete first aid training; and,

(f) the provider and all individuals 12 years old or older living in the home where care is provided must submit to and pass a background check as provided in R986-700-751 et seq.

(4) A FFN provider must also comply with all Department policy including abiding by the ratio requirements.

(5) FFN approval must be renewed annually. Renewal information is found in Department or CCL policy. The FFN CC Provider must complete an announced inspection and show compliance with all regulations at least 30 calendar days before the expiration date of the current approval.

(6) FFN CCL provider approval is for the provider and the location(s) and is not assignable or transferable.

(7) If a program or provider is not subject to licensing requirements, and the program or provider receives or wishes to receive CCDF funds but has had adverse action taken against it by CCL regarding DWS approval status or health and safety compliance, the program or provider's appeal shall be made to CCL according to CCL's procedures. An appeal based on adverse action by the Department shall be made to the Department in accordance with R986-100-123 et seq.

R986-700-706. Provider Rights and Responsibilities.

(1) Providers assume the responsibility to collect copayments and any other fees for child care services rendered. Neither the Department nor the state of Utah assumes responsibility for payment to providers.

(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a CC subsidy.

(3) Providers may retain the full monthly subsidy payment so long as at least eight hours of care were provided during the month and the provider is otherwise in compliance with Department rules and policies. The subsidy payment is to support an eligible client's monthly employment and training activities and allows for temporary absences and unforeseen circumstances. Having a child only attend one day per month or sporadically to receive a child care payment is a misuse of funds and will result in an overpayment and possible child care disqualification. Additionally, the subsidy payment is intended to be used to cover the provider's business expenses during the month for reserving the slot(s) and shall not be used to cover the client's out of pocket expenses, copayments, or carried forward for future months of service. Providers who choose not to apply the funds as required will be subject to an overpayment and possible child care disqualification.

(4) Providers must keep accurate records of subsidized child care payments, and time and attendance. The Department has the right to investigate child care providers and audit their records. Audits and investigations may be performed by a person or entity under contract with the Department. Time and attendance records for all subsidized clients must be kept for at least three years.

(5) Providers must provide initial verification information to determine eligibility. Providers must also cooperate with an investigation or audit to determine ongoing eligibility or if eligibility was correctly determined. Cooperation includes providing information and verification and returning telephone calls or responding to emails from Department employees or other persons authorized by the Department to obtain information such as an employee of ORS in a timely manner. "A timely manner" is usually considered to be ten business days for written documentation and two business days to return a phone call or email request. Providing incomplete or incorrect information will be treated the same as a failure to provide information if the incorrect or insufficient information results in an improper decision with regard to the eligibility. Failure to disclose a material fact that might affect the eligibility determination can also lead to criminal prosecution. If a provider fails to cooperate with an investigation or audit, provide any and all information or verification requested, or fails to keep records for three years without good cause, the provider will no longer be an approved provider. Good cause is limited to circumstances where the provider can show that the reasons for the delay in filing were due to circumstances beyond the provider's control or were compelling and reasonable. The period the provider will not be an approved provider will be from the date the information or verification was due until when it is received by the Department.

(6) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider is responsible for repayment of the resulting overpayment and there may be a disqualification period and/or criminal prosecution.

(7) CCL will keep a list of all providers that have been disqualified as a provider or against whom a referral or complaint is received.

(8) All providers, except FFN providers as defined in R986-700-705(1)(b)(ii), are required to report their monthly, full-time child care rates to the local Care About Child Care agency. All providers must also report the rate for each individual child to the Department if the amount is less than the rate reported to Care About Child Care. Failure to report reduced rates may result in an overpayment.

(9) Providers are required to access the Provider Portal at jobs.utah.gov/childcare and:

(a) submit and manage bank account information;

(b) read and agree to the terms and conditions contained in the Portal;

(c) view child care payment information;

(d) manage Provider Portal user access to ensure only those users with authority to make changes can do so. The provider is liable for all changes made and information provided through the Provider Portal;

(e) report the following changes within 10 days, or by the 25th of the month, whichever is sooner:

(i) a reduced or part-time rate for an individual child in care, as applicable. This includes reporting any rate changes or updates that occur for each child once a rate has been submitted in the portal;

(ii) a child is no longer in child care;

(iii) a child is not expected to be in child care the following month;

(iv) that the provider received a greater subsidy payment amount than what was charged to the client for the month of service. Excess subsidy funds cannot be used to cover outstanding balances, copayments, or future services. The provider should notify the Department and the difference will either be deducted from the next month's subsidy payment or the funds must be returned to the Department;

(v) that a child has not attended for at least eight hours by the 25th of the month, regardless of whether the child attends or is expected to attend for at least eight hours following the 25th of the month; and

(vi) a change in financial institution account information for direct deposit.

(f) Effective February 1, 2018, between the 25th of each month and the end of the month, a licensed provider shall certify, in a manner specified by the Department, that the licensed provider has reviewed each child's attendance and reported any reportable changes in each child's attendance, including future changes known or expected by the provider.

(10) Providers are required to read and agree to the terms and conditions contained in the Provider Guide annually.

(11) Providers must submit a W-9 Form, Federal Employer Identification Number (EIN) or Social Security

Number via the DWS Provider Portal, if required by the Department, and a 1099 will be issued annually. The Federal EIN or Social Security Number must be provided within 30 days of receipt of the first subsidy payment from the Department. Failure to submit this information shall result in the provider being removed from approved provider status.

(12) A provider who provides services for any part of a month and then terminates services with the client/child during the month, must reimburse the Department for the days when care was not provided. However, if it was necessary to remove the child from care because the child or others were endangered, and the incident was reported to CCL or local authorities, the Department may waive repayment.

R986-700-707. Copayment.

(1) "Copayment" means a dollar amount which is deducted by the Department from the standard CC subsidy for Employment Support CC. The copayment is determined on a sliding scale and the amount of the copayment is based on the parent(s) countable earned and unearned income and household size.

(2) The parent is responsible for paying the amount of the copayment directly to the child care provider.

(3) If the copayment exceeds the actual cost of child care, the family is not eligible for child care assistance.

(4) The Department will deduct the full monthly copayment from the subsidy even if the client receives CC for only part of the month.

(5) The following clients are not subject to the copayment requirement:

(a) clients at or below 100% of the poverty level;

(b) clients receiving transitional child care and FEP CC as provided in rule R986-700-708.

R986-700-708. FEP CC Transitional Child Care.

(1) FEP CC may be provided to clients receiving financial assistance from FEP or FEPTP. FEP CC will only be provided to cover the hours a client needs child care to support the activities required by the employment plan.

(2) Transitional child care is available during the six months immediately following a FEP or FEPTP termination if the termination was due to increased earned income and the household meets the work requirement and income rules for ESCC. Clients receiving transitional child care are not subject to the copayment requirement. The copayment will resume in the seventh month after the termination of FEP or FEPTP. The six month time limit is the same regardless of whether the client receives TCA or not. A client does not need to fill out a new application for child care during the six month transitional period even if there is a gap in services during those six months.

R986-700-709. Employment Support (ES) CC.

(1) Parents who are not eligible for FEP CC may be eligible for Employment Support (ES) CC. To be eligible, a parent must be employed or be employed while participating in educational or training activities. Work Study is not considered employment. A parent who attends school but is not employed at least 15 hours per week, is not eligible for ES CC. ES CC will only be provided to cover the hours a client needs child care for work or work and approved educational or training activities.

(2) If the household has only one parent, the parent must be employed at least an average of 15 hours per week. An exception may be made to the minimum work requirements with Department approval when a parent with a disability is employed at his or her full capacity and provides requested documentation and/or verification.

(3) If the family has two parents, CC can be provided if:

(a) one parent is employed at least an average of 30 hours per week and the other parent is employed at least an average of 15 hours per week and their work schedules cannot be changed to provide care for the child(ren). An exception may be made to the minimum work requirements with Department approval when both parents are employed at their full capacity and provide requested documentation and/or verification. CC will only be provided during the time both parents are in approved activities and neither is available to care for the children; or

(b) one parent is employed and the other parent cannot work, or is not capable of earning $500 per month and cannot provide care for their own children because of a physical, emotional or mental incapacity. Any employment or educational or training activities invalidate a claim of incapacity except if approved by the Department. The incapacity must be expected to last 30 days or longer. The individual claiming incapacity must verify the incapacity and why the incapacity prohibits them from providing care for their children in the following ways:

(i) receipt of disability benefits from SSA if it proves the incapacity prohibits the client from providing care for their children;

(ii) 100% disabled by VA if it proves the incapacity prohibits the client from providing care for their children; or

(iii) by submitting a written statement from:

(A) a licensed medical doctor;

(B) a doctor of osteopathy;

(C) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(D) a licensed Advanced Practice Registered Nurse; or

(E) a licensed Physician's Assistant.

(4) Employed or self-employed parent client(s) must make, either through wages or profit from self-employment, a rate of pay equal to or greater than minimum wage multiplied by the number of hours the parent is working. To be eligible for ES CC, a self employed parent must provide business records for the most recent three month time period to establish that the parent is likely to make at least minimum wage. If a parent has a barrier to other types of employment, exceptions can be made in extraordinary cases with the approval of the state program specialist.

(5) Americorps*Vista is not supported. Job Corps activities are considered to be training and a client in the Job Corps would also have to meet the work requirements to be eligible for ES CC.

(6) Applicants must verify identity but are not required to provide a Social Security Number (SSN) for household members. Benefits will not be denied or withheld if a customer chooses not to provide a SSN if all factors of eligibility are met. SSN's that are supplied will be verified. If an SSN is provided but is not valid, further verification will be requested to confirm identity.

R986-700-710. Income and Asset Limits for ES CC.

(1) Rule R986-200 is used to determine:

(a) who must be included in the household assistance unit for determining whose income must be counted to establish eligibility. In some circumstances, determining household composition for a ES CC household is different from determining household composition for a FEP or FEPTP household. ES CC follows the parent and the child, not just the child so, for example, if a parent in the household is ineligible, the entire ES CC household is ineligible. A specified relative may not opt out of the household assistance unit when determining eligibility for CC. The income of the specified relatives needing ES CC in the household must be counted. For ES CC, only the income of the parent/client is counted in determining eligibility regardless of who else lives in the household. If both parents are living in the household, the income of both parents is counted. Recipients of SSI benefits are included in the household assistance unit.

(b) what is counted as income except:

(i) the earned income of a minor child who is not a parent is not counted;

(ii) child support, including in kind child support payments, is counted as unearned income, even if it exceeds the court or ORS ordered amount of child support, if the payments are made directly to the client. If the child support payments are paid to a third party, only the amount up to the court or ORS ordered child support amount is counted; and

(iii) earned and unearned income of SSI recipients is counted with the exception of the SSI benefit.

(c) how to estimate income.

(2) The following income deductions are the only deductions allowed on a monthly basis:

(a) the first $50 of child support received by the family;

(b) court ordered and verified child support and alimony paid out by the household;

(c) $100 for each person with countable earned income; and

(d) a $100 medical deduction. The medical deduction is automatic and does not require proof of expenditure.

(3) The household's countable income, less applicable deductions in paragraph (2) above, must be at, or below, a percentage of the state median income as determined by the Department. The Department will make adjustments to the percentage of the state median income as funding permits. The percentage currently in use is available at the Department's administrative office.

(4) Charts establishing income limits and the copayment amounts are available at all local Department offices.

(5) An independent living grant paid by DHS to a minor parent is not counted as income.

(6) If a non-applicant parent pays a portion of the child care costs directly to the applicant parent, that amount is counted as income. If the non-applicant parent pays the child care provider directly, that amount will be deducted from the subsidy amount. If the court orders the non-applicant to pay one-half of the child care costs, the non-applicant parent must pay one-half of the total cost of child care.

(7) Clients must meet the CCDF asset limit.

R986-700-711. ES CC to Support Education and Training Activities.

(1) CC may be provided when the client(s) is engaged in education or training and employment, provided the client(s) meet the work requirements under Section R986-700-709(1).

(2) The education or training is limited to courses that directly relate to improving the parent(s)' employment skills.

(3) ES CC will only be paid to support education or training activities for a total of 24 calendar months. The months need not be consecutive.

(a) On a case by case basis, and for a reasonable length of time, months do not count toward the 24-month time limit when a client is enrolled in a formal course of study for any of the following:

(i) obtaining a high school diploma or equivalent,

(ii) adult basic education, and/or

(iii) learning English as a second language.

(b) Months during which the client received FEP child care while receiving education and training do not count toward the 24-month time limit.

(c) CC can not ordinarily be used to support short term workshops unless they are required or encouraged by the employer. If a short term workshop is required or encouraged by the employer, and approved by the Department, months during which the client receives child care to attend such a workshop do not count toward the 24- month time limit.

(4) Education or training can only be approved if the parent can realistically complete the course of study within 24 months.

(5) A client may choose to receive continued child care coverage of training participation hours for up to three months during a break in semesters to allow for continuity of care and to reserve the child care slot(s).

(6) Any child care assistance payment to cover training participation hours made for a calendar month, or a partial calendar month, counts as one month toward the 24-month limit.

(7) There are no exceptions to the 24-month time limit, and no extensions can be granted.

(8) CC is not allowed to support education or training if the parent already has a bachelor's degree.

(9) CC cannot be approved for graduate study or obtaining a teaching certificate if the client already has a bachelor's degree.

R986-700-712. CC for Certain Homeless Families.

(1) CC can be provided for homeless families with one or two parents when the family meets the following criteria:

(a) The family must present a referral for CC from an agency known by the local office to be an agency that works with homeless families, including shelters for abused women and children. This referral will serve as proof of their homeless state. Local offices will provide a list of recognized homeless agencies in local office area.

(b) The family must show a need for child care to resolve an emergency crisis.

(c) The family must meet all other relationship and income eligibility criteria.

(2) CC for homeless families is only available for up to three months in any 12-month period. When a payment is made for any part of a calendar month, that month counts as one of the three months. The months need not be consecutive.

(3) Qualifying families may use child care assistance for any activity including, but not limited to, employment, job search, training, shelter search or working through a crisis situation.

(4) If the family is eligible for a different type of CC, the family will be paid under the other type of CC.

R986-700-713. Amount of CC Payment.

CC will be paid at the lower of the following levels:

(1) the maximum monthly local market rate as calculated using the Local Market Survey. The Local Market Survey is conducted by the Department and based on the provider category and age of the child. The Survey results are available for review at any Department office through the Department web site on the Internet; or

(2) the rate established by the provider for services and, if required, reported to the local Care About Child Care agency; or

(3) the unit cost multiplied by the number of hours approved by the Department. The unit cost is determined by dividing the maximum monthly local market rate by 137.6 hours.

R986-700-714. CC Payment Method.

(1) The provider must provide a valid financial account and routing number to allow for payment by direct deposit. For open, ongoing cases, payment will be issued on the first day of the month for services to be provided during that month. The provider is not an employee of the Department, the Office of Child Care, or the state of Utah even if the provider is only providing care for one client.

(2) Under unusual or extraordinary circumstances, the Department can issue payment by check. If a provider cannot obtain a financial account for direct deposit, the provider must contact the Department and explain why direct deposit is not

possible.

(3) In the event that a check is reported as lost or stolen, the provider is required to sign a statement that they have not received funds from the original check before a replacement check can be issued. The check must be reported as lost or stolen within 60 days of the date the check was mailed. The statement must be signed on an approved Department form. If the original check has been redeemed, the Department will conduct an investigation and the provider may be required to provide a sworn, notarized statement that the signature on the endorsed check is a forgery. If the Department determines the redeemed check was a forgery, the Department may require a waiting period prior to issuing a replacement check.

(4) The Department is authorized to stop payment on a CC check without prior notice if:

(a) the Department has determined that the client or the provider was not eligible for the CC payment, the Department has confirmed with the child care provider that no services were provided for the month in question or the provider cannot be located, and the Department has made an attempt to contact the provider: or

(b) when the check has been outstanding for at least 90 days; or

(c) the check is lost or stolen.

(5) No stop payment will be issued by the Department without prior notice to the provider unless the provider is not providing services or cannot be contacted.

R986-700-715. Overpayments.

(1) An overpayment occurs when a client or provider received CC for which they were not eligible including when a provider accepts payment but does not provide care. If the Department fails to establish one or more of the eligibility criteria and through no fault of the client, payments are made, it will not be considered to have been an overpayment if the client would have been eligible and the amount of the subsidy would not have been affected.

(2)(i) Even if CC funds are authorized by the Department, a CC provider cannot receive and retain funds for any month during which no CC services were provided. If authorized or unauthorized subsidy funds received and retained by a provider but no CC services were provided during the month, the provider will be required to reimburse the Department for the excess funds and may be disqualified from receipt of further CC subsidy funds as provided in R986-700-718.

(ii) A provider is considered to have retained subsidy funds if the provider knew or should have known the child would not receive services that month and fails to notify the Department within ten days, or if the provider does not notify the Department by the 25th of the month when the child was not in care at least eight hours that month.

(iii) If the client does not use at least eight hours of child care by the 25th of the month but the child returns after the 25th of the month and attends for at least eight hours total in the month, it may result in a partial overpayment for that month. The partial overpayment may not be assessed if the provider reports by the 25th of the month that a child was not in care during that month or stopped attending care during that month and the child returns after the 25th of the month and attends for at least eight hours total in the month.

(3) In the event that excess funds were issued for the month of service, the payment cannot be used to cover the client's out of pocket expenses, copayments, or carried forward for future months of service with a provider. The payment must be returned to the Department or, if possible, the payment for the following month may be reduced to offset the over-issuance. An overpayment may also occur when a provider receives a greater subsidy payment amount than the client was charged for the month of service.

(4) All CC overpayments must be repaid to the Department.

(a) Client overpayments may be deducted from ongoing CC payments for clients who are receiving CC. If the Department is at fault in the creation of an overpayment, the Department will deduct $10 from each month's CC payment unless the client requests a larger amount.

(b) Provider overpayments. If a provider does not repay any outstanding overpayment within 30 days of notice of the overpayment, the Department will commence collection procedures which may include recouping the overpayment by deducting a portion of the overpayment from ongoing child care subsidies from the Department. This is true even if the child or client no longer receives child care from the provider. The decision whether to recoup the overpayment from ongoing child care payments or to commence collection procedures lies with the Department and not the provider or client/s.

(i) If the Department elects to recoup the overpayment from ongoing child care payments, and the overpayment is less than $1,000, the Department will recoup the full amount within 90 days. If the overpayment is more than $1,000 the Department will recoup the amount within six months. If the recoupment presents a hardship because it is more than 50% of the provider's ongoing monthly subsidy amount, the provider can contact the Department to discuss alternative arrangements for repayment.

(ii) If a provider stops providing care and has a balance due on an overpayment, and seeks approval to become a provider at a later date, approval cannot be granted until the overpayment is paid in full even if any disqualification period has expired.

(5) CC will be terminated if a client fails to cooperate with the Department's efforts to investigate alleged overpayments.

(6) If the Department has reason to believe an overpayment has occurred and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined.

(7) A CC provider may appeal an overpayment as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of the notice of agency action establishing the overpayment.

(8) If a provider or individual facility fails to enter into a payment plan to repay the overpayment or abide by the terms of the payment plan for 12 consecutive months, the provider will be taken off the approved provider list until all overpayments are paid in full or the arrearage on the payment plan is brought current. This is true even if there is only one overpayment.

R986-700-716. CC in Unusual Circumstances.

(1) CC may be provided for study time, to support clients in education or training activities if the parent has classes scheduled in such a way that it is not feasible or practical to pick up the child between classes. For example, if a client has one class from 8:00 a.m. to 9:00 a.m. and a second class from 11:00 a.m. to noon it might not be practical to remove the child from care between 9:00 a.m. and 11:00 a.m. These additional hours may be supported with child care.

(2) An away-from-home study hall or lab may be required as part of the class course. A client who takes courses with this requirement must verify study hall or lab class attendance. The Department will not approve more study hall hours or lab hours in this setting than hours for which the client is enrolled in school. For example: A client enrolled for ten hours of classes each week may not receive more than ten hours of this type of study hall or lab.

(3) CC may be authorized to support employment for clients who work graveyard shifts and need child care services

during the day for sleep time. If no other child care options are available, child care services may be authorized for the graveyard shift or during the day, but not for both. Hours of need cannot exceed actual work hours.

(4) CC may be authorized to support employment for clients who work at home, provided the client makes at least minimum wage from the at home work, and the client has a need for child care services. The client must choose a provider setting outside the home.

R986-700-717. Child Care for Children With Disabilities or Special Needs.

(1) The Department will fund child care for children with disabilities or special needs at a higher rate if the child has a physical, social, or mental condition or special health care need that requires;

(a) an increase in the amount of care or supervision and/or

(b) special care, which includes but is not limited to the use of special equipment, assistance with movement, feeding, toileting or the administration of medications that require specialized procedures.

(2) To be eligible under this section, the client must submit a statement from one of the professionals listed in rule R986-700-709(3)(b)(ii) or one of the following documenting the child's disability and special child care needs;

(a) Social Security Administration showing that the child is a SSI recipient,

(b) Division of Services for People with Disabilities,

(c) Division of Mental Health,

(d) State Office of Education,

(e) Baby Watch, Early Intervention Program, or

(f) by submitting a written statement from:

(i) a licensed medical doctor;

(ii) a licensed Advanced Practice Registered Nurse;

(iii) a licensed Physician's Assistant;

(iv) a licensed or certified Psychologist.

(3) Verification to support that the child is disabled and has a special need must be dated and signed by the preparer and include the following;

(a) the child's name,

(b) a description of the child's disability, and

(c) the special provisions that justify a higher payment rate.

(4) The Department may require additional information and may deny requests if adequate or complete information or justification is not provided.

(5) The higher rate is available through the month the child turns 18 years of age.

(6) Clients qualify for child care under this section if the household is at or below 85% of the state median income.

(7) The higher rate in effect for each child care category is available at any Department office.

R986-700-718. Provider Disqualification; Removal From Approved Provider Status.

(1) If a parent or provider commits an IPV, as defined in R986-100-117, the parent or provider will be responsible for repayment of the overpayment, if there is one, and will be disqualified from receipt of any funds from the Office of Child Care, including subsidy funds, grants and funds as a provider or as a parent:

(a) for a period of one year for the first IPV;

(b) for a period of two years for the second IPV; and

(c) for life for the third IPV.

(2) If the overpayment resulted from parent or provider fault not amounting to fraud or an agency error, the client and or provider will be responsible for repayment of the overpayment. There is no disqualification or ineligibility period for a fault overpayment.

(3) Effective February 1, 2018, a licensed provider that, in any six-month period, fails three times to timely certify attendance during the monthly certification period as required in rule R986-700-706(9)(f) shall be disqualified.

(4) A CC provider may appeal an overpayment, removal from approved provider status, or disqualification as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of the notice of agency action establishing the overpayment or disqualification. A provider who has been disqualified or removed from approved provider status may not continue to receive CC subsidy funds pending appeal. The disqualification period will take effect even if the provider files an appeal of the decision issued by the ALJ. If the provider fails to file an appeal within 30 days of the date of the notice of agency action and the Department issues a default decision, and the provider files a request to set aside the default, CC subsidy funds will not continue unless or until the default is set aside by the ALJ. If the request to set aside the default is denied, the provider will be disqualified pending appeal of the denial to set aside the default.

(5) A provider is ineligible for CC subsidy funds after a disqualification until all overpayments established in conjunction with the disqualification have been paid in full even if the disqualification period has ended.

(6) A provider that intentionally breaches any program rule as provided in R986-100-117, except as provided in subsection (1) of this section, or violates CC rule R986-700-706(2) through (5) or who assumes a client's identity in order to gain access to client information or payment of Department funds will be disqualified for one year for the first offense, two years for the second offense and for life for the third offense.

(7) All disqualification periods run concurrently.

(8) A disqualification issued to a provider under this subsection will follow the facility, any successor facilities, and the principal(s) of the facility.

(a) A "successor facility" is any facility that acquires the business or acquires substantially all of the assets of a facility that has been disqualified. This includes a facility whose provider changes from one status to another like a provider who was disqualified as a licensed family provider who then changes to be a license exempt provider.

(b) "Acquired" means to come into possession of, obtain control of, or obtain the right to use the assets of a business by any legal means including a gift, lease, repossession or purchase. For purposes of succession, a purchase through bankruptcy court proceedings where assets are being liquidated is not considered an acquisition, if the court places restrictions on the transfer of liabilities to the purchaser. It is not necessary to purchase the assets in order to have acquired the right to their use, nor is it necessary for the predecessor to have actually owned the assets for the successor to have acquired them. The right to the use of the asset is the determining factor.

(c) "Assets" include any property, tangible or intangible, which has value. Assets may include the acquisition of the name of the business, customers, accounts receivable, patent rights, goodwill, employees, or an agreement by the predecessor not to compete.

(d) "Substantially all" means acquisition of 90 percent or more of all of the predecessor's assets.

(f) A "principal" is the individual or individuals who were responsible for the day to day business of the child care center provided that individual had an ownership interest in the center. An ownership interest includes a shareholder, director or officer of a corporation and a partner, member or manager of a limited liability partnership or company.

R986-700-719. Job Search Child Care (JS CC).

(1) JS CC is available to a client who is otherwise eligible for child care but is separated from his or her job and meets the

eligibility criteria.

(2) JS CC is available for a maximum of three additional months provided the client:

(a) met the minimum work requirement for a single or two-parent household, and was permanently separated from his or her job or was receiving child care for an allowable temporary change when permanently separated from his or her job;

(b) was receiving ES CC in the month of the job separation and;

(c) reports the job loss within 10 days and requests continued child care payments while searching for a job. In that case, the client will be eligible for one additional month of child care. The month of the job loss does not count.

(3) If the client verifies the job loss in a timely manner, as directed by the Department, a second and third month of CC will be paid while the client looks for a job.

(4) The JS CC copayment will be at the lowest copayment amount required by the Department for the lowest income group, disregarding all earned income during the JS CC period.

R986-700-751. Background Checks.

(1) Sections R986-700-751 through 756 apply to child care providers identified in Utah Code Section 35A-3-310.5(1) and license-exempt providers and other programs and grantees not subject to CCL requirements.

(2) The following persons must submit to a background check:

(a) The provider;

(b) Each person age 12 years old or older who is living in the household where the child care is provided; and

(c) Each person who is employed or volunteering at the facility where the child care is provided, if the person's activities involve care or supervision of children or unsupervised access to children.

(3) If child care is provided in the child's home, a background check must be done on each person age 12 years old or older living in the child's home who is not on the client's child care case.

(4) A client is not eligible for a subsidy if the client chooses a provider and any person described in Subsection (2) above has:

(a) a supported finding of severe abuse or neglect by the Department of Human Services, a substantiated finding by a Juvenile court under Subsection 78-3a-320 or a criminal conviction related to neglect, physical abuse, or sexual abuse of any person; or

(b) a conviction for an offense as identified in R986-700-754; or

(c) an adjudication in juvenile court of an act which if committed by an adult would be an offense identified in R986-700-754.

R986-700-752. Definitions.

Terms used in the section R986-700-751 through 756 are defined as followed:

(1) "Convicted" includes a conviction by a jury or court, a guilty plea or a plea of no contest, an adjudication in juvenile court or an individual who is currently subjected to a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, or a plea in abeyance.

(2) "Covered Individual" means:

(a) each person providing child care;

(b) all individuals 12 years old or older residing in a residence where child care is provided;

(c) each person who is employed or volunteering at the facility where the child care is provided, if the person's activities involve care or supervision of children or unsupervised access to children.

(3) "Supported" means a finding by the Utah Department of Human Services (DHS), at the completion of an investigation by DHS, that there is a reasonable basis to conclude that one or more of the following severe types of abuse or neglect has occurred:

(a) if committed by a person 18 years of age or older;

(i) severe or chronic physical abuse;

(ii) sexual abuse;

(iii) sexual exploitation;

(iv) abandonment;

(v) medical neglect resulting in death, disability, or serious illness;

(vi) chronic or severe neglect; or

(vii) chronic or severe emotional abuse

(b) if committed by a person under the age of 18:

(i) serious physical injury, as defined in Subsection 76-5-109(1)(f) to another child which indicates a significant risk to other children, or

(ii) sexual behavior with or upon another child which indicates a significant risk to other children.

R986-700-753. Criminal Background Checks.

(1) The Department will contract with the CCL to perform a criminal background check, which includes a review of the Bureau of Criminal Identification, (BCI) database maintained by the Department of Public Safety pursuant to Part 2 of Chapter 10, Title 53; and if a fingerprint card, waiver and fee are submitted, CCL will submit the fingerprint card and fee to the Utah Department of Public Safety for submission to the FBI for a national criminal history record check.

(2) Each client requesting approval of a covered child care provider must submit to CCL a form, which will include a certification, completed and signed by the child care provider as part of the DWS FFN approved provider process. Additional household members must give permission to run the background check. The provider shall pay all applicable background check fees. A fingerprint card and fee, prepared either by the local law enforcement agency or an agency approved by local law enforcement, shall also be submitted if required by Subsection (4) below. If the fingerprints are submitted electronically, they must be submitted in conformity with the CCL guidelines regarding electronic submissions. Fingerprints are not required to be submitted if:

(a) The covered individual has previously submitted fingerprints to CCL for a Next Generation national criminal history record check;

(b) The covered individual has resided in Utah continuously since the fingerprints were submitted; and

(c) The covered individual has not permitted his or her background check to lapse or expire since the fingerprints were submitted.

(3) The provider must state in writing, based upon the provider's best information and belief, that no covered person, including the provider's own children, has ever been convicted of a felony, misdemeanor or had a supported finding from DHS or a substantiated finding from a juvenile court of severe abuse or neglect of a child. If the provider is aware of any such conviction or supported or substantiated finding, but is not certain it will result in a disqualification, CCL will obtain information from the provider to assess the threat to children. If the provider knowingly makes false representations or material omissions to CCL regarding a covered individual's record, the provider will be responsible for repayment to the Department of the child care subsidy paid by the Department. If a provider signs an attestation, a disqualification based on a covered individual who no longer lives in the home can be cured under certain conditions.

(4) All providers, caregivers who are 16 years old and older, and covered individuals who are 18 years and older are

required to submit fingerprints under these rules as requested. In addition, the Department may conduct background checks annually.

(5) If CCL takes an action adverse to any covered individual based upon the background check, CCL will send a denial letter to the provider and the covered individual.

(6) A background check must be submitted for each covered individual:

(a) Prior to the date the person becomes a covered individual, unless:

(1) The person is turning 12 years old and resides in the facility where child care is being provided, in which case the background check form must be submitted and authorized within ten business days of the date the child turns 12 years old;

(2) The person is currently employed by another child care provider within the State and has a current background check; or

(3) The person has been separated from employment from another child care provider within the State for no more than 180 days and has a current background check; and

(b) On an annual basis for each covered individual.

(7) A person may not begin work as a covered individual until the person has completed a fingerprint-based check and the results have been received. After the fingerprint-based check has been completed but prior to full completion of the background check process, a covered individual must be supervised by a person who has fully completed and passed the background check process.

R986-700-754. Exclusion from Child Care Due to Criminal Convictions.

(1) As required by Utah Code Subsection 35A-3-310.5(4), if the criminal conviction was a felony, or is a misdemeanor that is not excluded under paragraphs (2) or (3) below, the covered individual may not provide child care or reside in a home where child care is provided.

(2) As allowed by Utah Code Subsection 35A-3-310.5(5), the Department hereby excludes the following misdemeanors and determines that a misdemeanor conviction listed below does not disqualify a covered individual from providing child care:

(a) any class B or C misdemeanor offense under Title 32A, Alcoholic Beverage Control Act, except for 32A-12-203, Unlawful sale or furnishing to minors;

(b) any class B or C misdemeanor offense under Title 41, Chapter 6a, Traffic Code except for 41-6a-502, Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration, when the individual had a child in the car at the time of the offense;

(c) any class B or C misdemeanor offense under Title 58, Chapter 37, Utah Controlled Substances Act;

(d) any Class B or C misdemeanor offense under Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(e) any class B or C misdemeanor offense under Title 58, Chapter 37b, Imitation Controlled Substances Act;

(f) any class B or C misdemeanor offense under Title 76, Chapter 4, Inchoate Offenses, except for 76-4-401, Enticing a Minor;

(g) any class B or C conviction under Chapter 6, Title 76, Offenses Against Property, Utah Criminal Code;

(h) any class B or C conviction under Chapter 6a, Title 76, Pyramid Schemes, Utah Criminal Code;

(i) any class B or C misdemeanor offense under Title 76, Chapter 7, Subsection 103, Adultery, and 104, Fornication;

(j) any class B or C conviction under Chapter 8, Title 76, Offenses Against the Administration of Government, Utah Criminal Code except 76-8-1201 through 1207, Public Assistance Fraud; and 76-8-1301 False statements regarding unemployment compensation;

(k) any class B or C conviction under Chapter 9, Title 76, Offenses Against Public Order and Decency, Utah Criminal Code, except for:

(i) 76-9-301, Cruelty to Animals;

(ii) 76-9-301.1, Dog Fighting;

(iii) 76-9-301.8, Bestiality;

(iv) 76-9-702, Lewdness;

(v) 76-9-702.5, Lewdness Involving Child; and

(vi) 76-9-702.7, Voyeurism; and

(l) any class B or C conviction under Chapter 10, Title 76, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for:

(i) 76-10-509.5, Providing Certain Weapons to a Minor;

(ii) 76-10-509.6, Parent or guardian providing firearm to violent minor;

(iii) 76-10-509.7, Parent or Guardian Knowing of a Minor's Possession of a Dangerous Weapon;

(iv) 76-10-1201 to 1229.5, Pornographic Material or Performance;

(v) 76-10-1301 to 1314, Prostitution; and

(vi) 76-10-2301, Contributing to the Delinquency of a Minor and

(m) any class A misdemeanor where the conviction occurred more than ten years ago and the offense would be an excludable offense listed in this section.

(3) The Department will rely on the criminal background screening as conclusive evidence of the conviction and the Department may revoke or deny approval for a provider based on that evidence.

(4) If a covered individual causes a provider to be disqualified as a provider based upon the criminal background screening and the covered individual disagrees with the information provided by BCI, the covered individual may challenge the information by contacting BCI directly. If the information causing the disqualification came from a Utah court, the covered individual must contact that court or seek an expungement as provided in Utah Code Ann. Sections 77-18-10 through 77-18-15.

(5) All child care providers must report all felony and misdemeanor arrests, charges or convictions of covered individuals to DOH within 48 hours of the arrest, notice of the charge, or conviction. All child care providers must also report a person aged 12 or older moving into the home where child care is provided within ten calendar days of that person moving in. A release for a background check must also be provided for that person within the time requested by the Department or DOH.

(6)(a) Pursuant to Utah Code Ann. Section 35A-3-310.5(5)(b), the Department's designee for considering and exempting individual cases is the Child Care Licensing Administrator within the Utah Department of Health.

(b) The Department's designee may exempt a covered individual from being excluded from providing child care due to a criminal conviction if the Department's designee determines that the nature of the background check finding or relevant mitigating circumstances indicate the covered individual does not pose a risk to children.

(c) Notwithstanding Subsection (b) above, the Department's designee shall not exempt a covered individual convicted of any of the following:

(i) Any offense specifically not excluded under Subsection (2) above;

(ii) Any "violent felony" as that term is used in Section 76-3-203.5(1)(c) of the Utah Code;

(iii) Any felony against a child, including child pornography;

(iv) Any felony involving abuse or neglect of a spouse, child, or vulnerable adult;

(v) Any felony involving rape or sexual assault;

(vi) Any felony involving kidnapping;

(vii) Any felony involving arson;

(viii) Any felony involving physical assault or battery;

(ix) Any drug-related felony, unless the offense was a non-violent offense and occurred at least ten years prior to the date of the background check; or

(x) Any violent misdemeanor committed as an adult against a child, including offenses involving child abuse, child endangerment, sexual assault, or child pornography.

R986-700-755. Covered Individuals with Arrests or Pending Criminal Charges.

If CCL determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would not be excluded under R986-700-754, the Department will act to protect the health and safety of children in child care that the covered individual may have contact with. The Department may revoke or suspend approval of the provider if necessary to protect the health and safety of children in care.

R986-700-756. Exclusion From Child Care Due to Finding of Abuse, Neglect, or Exploitation.

(1) Pursuant to Utah Code Subsection 62A-4a-1005(2)(a)(v) CCL will screen all covered individuals, including children residing in a home where child care is provided, for a history of a supported finding of severe abuse, neglect, or exploitation from the licensing information system maintained by the Utah Department of Human Services (DHS) and the juvenile court records. The juvenile court records need only be accessed as provided in 35A-3-310.5(2)(c).

(2) If a covered individual appears on the licensing information system, the threat to the safety and health of children will be assessed. The Department or CCL may revoke any existing approval and refuse to permit child care in the home until the Department or CCL is reasonably convinced that the covered individual no longer resides in the home.

(3) If the Department or CCL denies or revokes approval of a child care subsidy based upon the licensing information system, the Department will send a written decision to the client.

(4) If the DHS determines a covered individual has a supported finding of severe abuse, neglect or exploitation after the Department approves a child care subsidy, the covered individual has ten calendar days to notify CCL. Failure to notify CCL may result in the child care provider being liable for an overpayment for all subsidy amounts paid to the client between the finding and when it is reported or discovered.

R986-700-757. Consequences for Failure to Comply; Appeals.

(1) A child care provider that fails to comply with Sections R986-700-751 through -756 will be removed from approved provider status until the provider complies. The child care provider may also be held liable for additional penalties under Section R986-700-718 if the requirements for liability under that section are met.

(2) A child care provider or covered individual may appeal an adverse action related to the background check requirements by following the procedure for appeals set forth in Section R986-700-705(7).

R986-700-775. High Quality School Readiness Grant Program.

(1) The Office of Child Care (OCC) administers this program pursuant to the authority granted in Utah Code Section 53A-1b-106.

(2) The OCC will solicit proposals from eligible private providers and eligible home-based educational technology providers and make recommendations to the School Readiness Board (SRB) as provided in 53A-1b-106(3).

(3) Eligible private providers and eligible home-based educational technology providers must submit an application, together with a proposal to the OCC by the date provided in the application.

(4) The proposal must contain the components outlined in 53A-1b-105(1) or (2) and details as required in 53A-1b-106(7).

(5) A grant recipient must report annually to the OCC the information required in 53A-1b-106(12) in addition to other information as required by the OCC.

R986-700-776. Intergenerational Poverty School Readiness Scholarship Program.

(1) Scholarships are available, as funding permits, for a child who

(a) will be four years of age on or before September 2 of the school year in which the individual intends to participate in a school readiness program;

(b) has not entered kindergarten; and

(c) is experiencing intergenerational poverty, as determined by the Department.

(2) The Department will mail scholarship applications to individuals who the Department has identified as potentially eligible and who live in an area where one or more high quality preschool programs is available. Individuals who do not receive an application from the Department may still apply by contacting the OCC and requesting an application. The Department will notify potential applicants of the due date for filing a completed application.

(3) An applicant may be required to show that transportation to a high quality preschool program is available if the child does not live within a reasonable commuting distance from the high quality preschool.

(4) An applicant may be required to provide verification and supporting documentation if necessary to determine eligibility.

(5) The value of the scholarship will be determined by which program the parent chooses.

(6) Scholarships are transferable however funds cannot be prorated during a given month. So if a child attends one day or more during a given month at one program, and wishes to transfer to a second program at any time during that month, the full scholarship payment will be made to the first program.

(7) Payment will be made directly to the high quality preschool provider. The provider must send the OCC an invoice at the end of the month, or as soon thereafter as feasible, when services were provided.

R986-700-777. Prioritizing Criteria.

If the Department does not receive sufficient funding to award scholarships to all eligible individuals, the Department will award scholarships by ranking eligible children who are considered at the highest risk according to Department policy. A list of the criteria for determining highest risk is available from the Department.

R986-700-778. Training and Scholarships for Early Childhood Teachers.

The Department may contract without outside entities, as funding permits, to provide training, scholarships and consulting services to assist individuals who intend to receive a Child Development Associate Credential (CDA).

R986-700-779. Educational Improvement Opportunities Outside of the Regular School Day Grant Program.

(1) This rule is authorized by Section 53F-5-210, which creates a grant program for out-of-school time programs and instructs the Department to make rules to administer the grant program for private providers, nonprofit providers, and municipalities.

(2) The purpose of this rule is to outline procedures for the Educational Improvement Opportunities Outside of the Regular School Day Grant Program, including the acceptance of grant applications and the awarding of grants.

(3) Terms used in this rule have the definitions given to them in Section 53F-5-210. For purposes of this rule, "private matching funds" as used in Subsection 53F-5-210(7) means funds from a private source that have not been earmarked or pledged as a match for any other purpose. "Private matching funds" specifically excludes the following:

(a) any federal funds, and

(b) parent funds or any other funds, if the practical effect of earmarking or pledging the funds is to pass the cost of the match along to parents.

(4) For each year the Department is authorized to solicit grant applications, the Department shall publish a grant application timeline that includes the start and end dates for application acceptance and anticipated timeframes for grant evaluation, acceptance or rejection, and funding. The Department may disregard any application that does not comply with the grant application timeline.

(5) The Department shall create a grant application consistent with the requirements of Subsections 53F-5-210(4) and (7)(a). Applicants shall apply for grants using the application the Department creates. The Department may disregard incomplete or non-conforming applications.

(6) The Department shall evaluate and accept or reject grant applications in accordance with the criteria set forth in Subsection 53F-5-210(5).

(7) Grant recipients shall execute and comply with a standard grant terms and conditions agreement with the Department as a condition of receiving a grant under this rule.

(8) Grant recipients shall claim grant funds by submitting reimbursement requests in accordance with Department reimbursement procedures.

KEY: child care, grant programs

September 7, 2018	**35A-3-310**
Notice of Continuation September 3, 2015	**53A-1b-110**
	53F-5-210