

**R51. Agriculture and Food, Administration.****R51-6. Agricultural Advisory Board Electronic Meetings.****R51-6-1. Authority and Purpose.**

(1) Promulgated under Utah Code Section 52-4-207 which requires any public body that convenes or conducts an electronic meeting to establish written procedures for such meetings. This rule establishes procedures for conducting Agricultural Advisory Board (Board) meetings or meetings of the Board's subcommittees by electronic means.

(2) This rule is enacted under the authority of Sections 52-4-207, 4-2-108, and 4-2-103(1)(i).

(3) The following provisions govern any meeting at which a voting majority of Board members appear at the anchor location, by telephone, or electronically pursuant to Utah Code Section 52-4-207:

(a) If enough Board members which constitute a voting majority intend to participate electronically or by telephone, public notices of the meeting shall be posted. In addition, the notice shall specify the anchor location where the members of the Board not participating electronically or by telephone will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(b) Notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be posted on the Public Notice Website. These notices shall be provided at least 24 hours before the meetings.

(c) Notice of the possibility of an electronic meeting shall be given to the Board members at least 24 hours before the meeting. In addition, the notice shall describe how a Board member may participate in the meeting electronically or by telephone.

(d) When notice is given of the possibility of a member appearing electronically or by telephone, any Board member may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the Board. At the commencement of the meeting, or at such time as any Board member initially appears electronically or by telephone, the chair shall identify for the record all those who are appearing by telephone or electronically. Votes by members of the Board who are not at the physical location of the meeting shall be confirmed by the chair.

(e) The anchor location, unless otherwise designated in the notice, shall be at the offices of the Department of Agriculture and Food, 350 N Redwood Road, Salt Lake City, Utah. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

**KEY: electronic meetings  
March 23, 2018**

**4-2-108  
4-2-103(i)  
52-4-207**

**R68. Agriculture and Food, Plant Industry.****R68-14. Quarantine Pertaining to Gypsy Moth - Lymantria Dispar.****R68-14-1. Authority.**

Promulgated under authority of 4-2-2 and 4-35-9.

**R68-14-2. Purpose.**

For the following reasons this rule is enacted:

1. Gypsy Moth (*Lymantria dispar*) has recently been found in the state of Utah, and
2. it will survive and multiply rapidly in the state of Utah, and
3. it is a serious pest to forest, residence, park, and agricultural tree plantings, and
4. it is capable of destroying watershed areas, orchards, or ornamentals, and
5. it is also a nuisance to the general public.

**R68-14-3. Definitions.**

The definitions set forth in this section shall apply throughout this chapter.

A. "Commissioner" means the Commissioner of Agriculture and Food of this state, or a duly authorized representative.

B. "Department" means the Utah State Department of Agriculture and Food.

C. "Interior quarantine" means a quarantine within the state of Utah established against the movement of designated plant pests, life stages, their hosts, and possible carriers from areas identified as being infested by the Utah State Department of Agriculture and Food.

D. "Exterior quarantine" means a quarantine established against the movement into Utah State of designated plant pests, life stages, their hosts, and possible carriers from areas identified as being infested by the Utah State Department of Agriculture and Food.

E. "Gypsy Moth (*Lymantria dispar*)" means a lepidopterous insect of the family Lymantriidae which in the larval stage defoliates many species of trees and shrubs.

F. "Qualified certified applicator (QCA)" means any individual who is (1) certified pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (86 Stat. 983; 7 U.S.C. 136b) as a certified commercial applicator in a category allowing use of the Restricted Use Pesticides recommended for use in the treatment of outdoor household articles for gypsy moth and (2) who has attended and completed a workshop segment approved by USDA Animal and Plant Health Inspection Service on the identification and treatment of gypsy moth life stages on regulated articles.

G. Regulated Articles: are those articles and commodities listed in R68-14-5 A.-E.

**R68-14-4. Quarantine - Gypsy Moth - Area Under Order.**

A. Interior Quarantine. Real and personal properties within the State where the department identified multiple gypsy moth life stages and where occupants and/or owners of those properties have been notified by the department of the gypsy moth infestation and to the effect that the subject property is under quarantine pursuant to Title 4, Chapter 2, Section 2. The department shall post quarantined areas both at entrance points and exit points with signs no smaller than 22" x 34".

B. Exterior Quarantine. All areas of the United States and Canada that are declared high risk by the United States Department of Agriculture, Animal and Plant Health Inspection Service, plant protection and quarantine or Utah Commissioner of Agriculture and Food.

**R68-14-5. Quarantine/Gypsy Moth Hosts and Carriers.**

The following regulated articles and commodities are

placed under quarantine when located within or originating from an area as described in R68-14-4

A. Trees, shrubs with persistent woody stems, Christmas trees, and parts of such trees and shrubs (except seeds, fruits and cones).

B. Timber and building materials, including but not limited to such items as lumber, planks, poles, logs, firewood, pulpwood, fencing, and building blocks.

C. Mobile homes, recreational vehicles, trailers, boats, camping gear, and associated equipment.

D. Outdoor household articles including but not limited to such items as furniture, toys, garden tools, garden machinery, animal houses, storage sheds.

E. Any other items or means of conveyance not covered above when that item or conveyance is determined by the Commissioner to present a hazard of the spread of any life stage of gypsy moth.

**R68-14-6. Gypsy Moth Quarantine Restrictions - Interior.**

Items under quarantine are prohibited of movement from the area under quarantine except as follows:

A. Any item under quarantine may be inspected and certified for movement by a Department or Federal Inspector. In addition, OHA's can be certified if inspected and found free of all stages of gypsy moth by QCA or the homeowner.

B. Garden prunings from trees and shrubs may be removed from quarantine areas only when they are moved in tarped vehicles to the city or county dumps where such material is to be burned, incinerated, buried, composted, or otherwise treated or handled in a manner that is approved by the Commissioner and does not pose a hazard to the spread of gypsy moth life stages.

C. Such items cleaned or treated shall be certified by a Department or Federal Inspector, before movement from the quarantine area. In addition, OHA's can also be cleaned or treated by a QCA or homeowner before movement from the quarantine area.

D. Expense of cleaning or treatment of articles or commodities for gypsy moth shall be the responsibility of the person in possession of the articles or commodities, or the consignee in case of commercial shipment by common carriers of household goods.

**R68-14-7. Gypsy Moth Quarantine Restrictions - Exterior.**

Quarantined articles and commodities are prohibited entry into the state of Utah from areas described by R68-14-5 B. except under the following conditions:

A. All move-ins to the State of Utah from an area known to be infested with Gypsy Moth will be required to register their Utah residence with the State Department of Agriculture and Food within thirty days of entering the State of Utah. The Department of Agriculture and Food shall provide at points of entry, Driver License Offices, and County Courthouses self-addressed, postage paid notice forms, or

B. Submission to the Commissioner of a completed "Gypsy Moth Outdoor Household Articles Transit Inspection Follow-up Worksheet" or other official State or APHIS Inspection Form stating:

1. origin of regulated articles prior to movement to Utah;
2. Utah address stating where regulated articles are destined;
3. address of owner if different from (2) above.

C. The Department of Agriculture and Food may inspect all regulated articles of move-ins from quarantined areas. The Department will maintain a Gypsy Moth trap for two entire seasons at residences of all new move-ins from quarantined areas.

D. A person's failure to provide the Department of Agriculture and Food with the official Notice Form or form

described in R68-14-7(B) above within the prescribed time shall be in violation of this quarantine and may be liable for costs associated with any eradication program caused by failure to notify the Department.

**R68-14-8. Certification of QCA's.**

A. To facilitate the issuance of certification for property movement out of quarantined areas the Commissioner shall provide training certification workshops to certify licensed pesticide applicators to become QCA's as defined in the definitions. QCA may charge for inspections.

**R68-14-9. Forms.**

A. Inspection certificate: The following form shall be issued by the Commissioner or QCA after thorough inspection.

**R68-14-10. Violations and Penalties.**

A. Any fraudulent use of or use of incorrect information on any forms used in the enforcement of this quarantine is a violation of this quarantine.

B. Any intentional movement of Gypsy Moth life stages from any infested area is a violation. Failure to perform or have inspection will constitute intentional movement as well as willfully moving property after notification.

C. Failure to register with the Department of Agriculture and Food within 30 days of moving to Utah from an area defined in R68-14-4 B, is a violation of this quarantine.

D. Failure to comply with any provisions of this quarantine shall be a violation of this quarantine.

E. Violators of this quarantine shall be subject to civil penalties of not more than \$5,000 per violation as defined in 4-2-15.

**KEY: quarantine**

**1989**

**Notice of Continuation March 26, 2018**

**4-2-2**

**4-35-9**

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

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

**R156-24b-102. Definitions.**

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

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

(a) accredited by CAPTE; or  
 (b) a foreign education program which is equivalent to a CAPTE accredited program as determined by the FCCPT.

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

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

(4) "FCCPT" means the Foreign Credentialing Commission on Physical Therapy.

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

(6) "Joint mobilization", as used in Subsection 58-24b-102(15)(d), means a manual therapy technique comprising a continuum of skilled passive movements to the joints and/or related soft tissues that are applied at varying speeds and amplitudes, including a small-amplitude/high velocity therapeutic movement.

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

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

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

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

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

**R156-24b-103. Authority - Purpose.**

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

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

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

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

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

(2) In accordance with Subsection 58-24b-302(3), an applicant for licensure as a physical therapist who is educated outside the United States shall document that the applicant's education is equal to a CAPTE accredited degree and that the applicant is able to read, write, speak, understand, and be

understood in the English language by submitting to the Division a Type I review from the FCCPT. Only educational deficiencies in pre-professional subject areas may be corrected by completing college level credits in the deficient areas or by passing the College Level Examination Program (CLEP) demonstrating proficiency in the deficient areas. Pre-professional subject areas include the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

**R156-24b-303b. Continuing Education.**

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

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

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

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

- (i) patient/physical therapist relationships;
- (ii) confidentiality;
- (iii) documentation;
- (iv) charging and coding;
- (v) compliance with state and/or federal laws that impact the practice of physical therapy; and

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

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

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

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

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

- (i) lecturing or instructing a course;
- (ii) in a post-professional doctorate or transitional doctorate program; or
- (iii) in a post-professional clinical residency or fellowship approved by the American Physical Therapy Association.

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

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

- (A) department in-service;
- (B) seminar;
- (C) lecture;
- (D) conference;
- (E) training session;
- (F) webinar;
- (G) internet course;
- (H) distance learning course;
- (I) journal club;
- (J) authoring of an article or textbook publication;
- (K) poster platform presentation;
- (L) specialty certification through the American Board of Physical Therapy Specialties;
- (M) post-professional clinical residency or fellowship approved by the American Physical Therapy Association;
- (N) post-professional doctorate from a CAPTE accredited program;
- (O) lecturing or instructing a continuing education course;

or

- (P) study of a scholarly peer-reviewed journal article.
- (ii) The following limits apply to the number of contact

hours recognized in the following course types during a two year license renewal cycle:

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) a recognized accredited college or university;
- (ii) a state or federal agency;
- (iii) a professional association, organization, or facility involved in the practice of physical therapy; or
- (iv) a commercial continuing education provider providing a course related to the practice of physical therapy.

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

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

(f) Documentation. Each licensee shall maintain adequate documentation as proof of compliance with this Section, such as a certificate of completion, school transcript, course description, or other course materials. The licensee shall retain this proof for a period of three years after the end of the renewal cycle for which the continuing education is due.

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

- (A) the date of the course;
- (B) the name of the course provider;
- (C) the name of the instructor;
- (D) the course title;
- (E) the number of contact hours of continuing education credit; and
- (F) the course objectives.

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

- (A) the dates of study or research;
  - (B) the title of the article, textbook chapter, poster, or platform presentation;
  - (C) an abstract of the article, textbook chapter, poster, or platform presentation;
  - (D) the number of contact hours of continuing education credit; and
  - (E) the objectives of the self-study course.
- (6) Extra Hours of Continuing Education. If a licensee completes more than the required number of contact hours of continuing education during the two-year renewal cycle specified in Subsection (1), up to ten contact hours of the excess may be carried over to the next two year renewal cycle. No education received prior to a license being granted may be carried forward to apply towards the continuing education required after the license is granted.

#### **R156-24b-305. Temporary Licensure.**

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

(a) submits a "Request for Authorization to Test" as a physical therapist or physical therapist assistant, and is authorized to sit for the NPTE examination;

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

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

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

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

(a) six months from the date of issuance;

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

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

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

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

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

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

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

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

#### **R156-24b-502. Unprofessional Conduct.**

Unprofessional conduct includes:

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

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

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

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

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

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

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

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

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

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

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

(a) American Physical Therapy Association (APTA) or any of its sections or local chapters; or

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

(2) In accordance with Subsection 58-24b-505(1)(e) and (2)(b), the approved course and supervised patient treatment sessions shall be completed no later than three calendar years from the start of the course.

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

**December 11, 2017**

**Notice of Continuation October 6, 2016**

**58-24b-101**

**58-1-106(1)(a)**

**58-1-202(1)(a)**

**R251. Corrections, Administration.****R251-114. Offender Long-Term Health Care - Notice.****R251-114-1. Authority and Purpose.**

(1) This rule is authorized under Sections 63G-3-201, 64-13-10, and 64-13-39.5, of the Utah Code.

(2) The purpose of this rule is to define a consistent format and procedure to provide notification to facilities, and information to the public, when a chronically or terminally ill offender is placed in an assisted living or nursing care facility by the UDC, and provide a training program for facility residents and employees to help ensure safety.

**R251-114-2. Definitions.**

(1) "Chronically ill" has the same meaning as in Section 31A-36-102, of the Utah Code.

(2) "Facility" means an assisted living facility as defined in Subsection 26-21-2(5), of the Utah Code, and a nursing care facility as defined in Subsection 26-21-2(17), of the Utah Code, except that transitional care units and other long term care beds owned or operated on the premises of acute care hospitals or critical care hospitals are not facilities for the purpose of this section.

(3) "Offender" means an inmate given an early release, pardon, or parole due to a chronic or terminal illness.

(4) "Terminally ill" has the same meaning as in Subsection 31A-36-102(19), of the Utah Code.

(5) "UDC" and "Department" means Utah Department of Corrections.

**R251-114-3. Policy.**

It is the policy of the Department if an offender is admitted as a resident of a facility due to a chronic or terminal illness:

(1) UDC shall provide written notice to the administrator of any facility no later than 15 days prior to an offender's admission as a resident.

(2) Notice to a facility shall include the offense for which the offender was convicted, a description of the actual offense, the offender's status with the Department, that the information provided by the Department regarding the offender shall be provided to employees of the facility no later than ten days prior to the offender's admission to the facility, the contact information for the offender's parole officer if the offender is on parole, and a point of contact within the Department.

(3) UDC shall make available to the public on the UDC web page, and upon request, the name and address of the facility where the offender resides, and the date the offender was placed at the facility.

(4) UDC shall provide a training program for the employees who work at the facility where the offender(s) reside, to help ensure the safety of both employees and facility residents.

(5) When the offender is placed by a department or agency from another state, and that department or agency requests it, the UDC shall provide the facility training, if that training has not already been provided, and the UDC may negotiate with the other state for any necessary compensation for this service.

(6) Facility training shall include the duties the administrator of the facility has under Section 64-13-39.5, of the Utah Code, to provide residents of the facility, or their guardians, notice that a convicted felon is being admitted to the facility no later than ten days prior to the offender's admission, to advise potential residents/guardians of current offenders who are residents of the facility, and to assist the UDC training in the safe management of offenders for all employees.

**KEY: chronically ill, terminally ill, facility notice, long-term care**

**March 11, 2008**

**64-13-39.5**

**Notice of Continuation March 7, 2018**

**R277. Education, Administration.****R277-404. Requirements for Assessments of Student Achievement.****R277-404-1. Authority and Purpose.**

- (1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
  - (b) Section 53A-1-603, which directs the Board to adopt rules for the administration of statewide assessments;
  - (c) Subsection 53A-15-1403(9)(b), which requires the Board to adopt rules to establish a statewide procedure for exempting a student from taking certain assessments; and
  - (d) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
- (2) The purpose of this rule is to:
- (a) provide consistent definitions; and
  - (b) assign responsibilities and procedures for the administration of statewide assessments, as required by state and federal law.

**R277-404-2. Definitions.**

- (1) "Benchmark reading assessment" means the Board approved literacy assessment that is administered to a student in grade 1, grade 2, and grade 3 at the beginning, middle, and end of year.
- (2) "College readiness assessment" means the:
- (a) same as that term is defined in Section 53A-1-611; and
  - (b) American College Testing exam, or ACT.
- (3) "English Learner" or "EL student" means a student who is learning in English as a second language.
- (4) "English language proficiency assessment" means the World-class Instructional Design and Assessment (WIDA) Assessing Comprehension in English State-to-State (ACCESS), which is designed to measure the acquisition of the academic English language for an English Learner student.
- (5) "Family Educational Rights and Privacy Act of 1974" or "FERPA," 20 U.S.C. 1232g, means a federal law designed to protect the privacy of students' education records.
- (6) "High school assessment":
- (a) means the same as that term is defined in Section 53A-1-611.5;
  - (b) means the "Student Assessment of Growth and Excellence" or "SAGE"; and
  - (c) includes the SAGE assessment of proficiency in:
    - (i) English language arts grades 9 and 10;
    - (ii) Secondary Mathematics I, II, and III; and
    - (iii) science, including:
      - (A) earth science;
      - (B) biology;
      - (C) physics; and
      - (D) chemistry.
  - (7) "National Assessment of Education Progress" or "NAEP" means the national achievement assessment administered by the United States Department of Education to measure and track student academic progress.
  - (8) "State required assessment" means an assessment described in Subsection 53A-15-1403(9)(a).
  - (9) "Standards Assessment":
    - (a) means the same as that term is defined in Section 53A-1-604; and
    - (b) means the "Student Assessment of Growth and Excellence" or "SAGE";
    - (c) for the 2017-18 school year, includes one writing prompt from the writing portion of the SAGE English language arts assessment for each of grades 3 through 8.
  - (10) "Statewide assessment" means the:
    - (a) standards assessment;

- (b) high school assessment;
  - (c) college readiness assessment;
  - (d) Utah alternative assessment;
  - (e) benchmark reading assessment; and
  - (f) English language proficiency assessment.
- (11) "Section 504 accommodation plan" means a plan:
- (a) required by Section 504 of the Rehabilitation Act of 1973; and
  - (b) designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.
- (12)(a) "Utah alternate assessment" means an assessment instrument:
- (i) for a student in special education with a disability so severe the student is not able to participate in a statewide assessment even with an assessment accommodation or modification; and
  - (ii) that measures progress on the Utah core instructional goals and objectives in the student's IEP.
- (b) "Utah alternate assessment" means:
- (i) for science, the Utah Alternate Assessment (UAA); and
  - (ii) for English language arts and mathematics, the Dynamic Learning Maps (DLM).
- (13) "Utah eTranscript and Record Exchange" or "UTREx" means a system that allows:
- (a) an LEA and the Superintendent to electronically exchange an individual detailed student record; and
  - (b) electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service.

**R277-404-3. Incorporation of Standard Test Administration and Testing Ethics Policy by Reference.**

- (1) This rule incorporates by reference the Standard Test Administration and Testing Ethics Policy, November 2, 2017, which establishes:
- (a) the purpose of testing;
  - (b) the statewide assessments to which the policy applies;
  - (c) teaching practices before assessment occurs;
  - (d) required procedures for after an assessment is complete and for providing assessment results;
  - (e) unethical practices;
  - (f) accountability for ethical test administration;
  - (g) procedures related to testing ethics violations; and
  - (h) additional resources.
- (2) A copy of the Standard Test Administration and Testing Ethics Policy is located at:
- (a) <https://www.schools.utah.gov/assessment>; and
  - (b) the Utah State Board of Education - 250 East 500 South, Salt Lake City, Utah 84111.

**R277-404-4. Superintendent Responsibilities.**

- (1) The Superintendent shall facilitate:
- (a) administration of statewide assessments; and
  - (b) participation in NAEP, in accordance with Section 53A-1-603.
- (2) The Superintendent shall provide guidelines, timelines, procedures, and assessment ethics training and requirements for all statewide assessments.
- (3) The Superintendent shall designate a testing schedule for each statewide assessment and publish the testing window dates on the Board's website before the beginning of the school year.

**R277-404-5. LEA Responsibilities - Time Periods for Assessment Administration.**

- (1)(a) Except as provided in Section (1)(b), (1)(c), and R277-404-7 an LEA shall administer statewide assessments to



all students enrolled in the grade level or course to which the assessment applies.

(b) An LEA is not required to administer the high school assessment to students in grades 11 or 12.

(c) A student's IEP team, English Learner team, or Section 504 accommodation plan team shall determine an individual student's participation in statewide assessments consistent with the Utah Participation and Accommodations Policy.

(2) An LEA shall develop a plan to administer statewide assessments.

(3) The plan shall include:

(a) the dates that the LEA will administer each statewide assessment;

(b) an indication of whether the LEA elects to offer the LEA's grade 11 students the SAGE assessment;

(c) professional development for an educator to fully implement the assessment system;

(d) training for an educator and an appropriate paraprofessional in the requirements of assessment administration ethics; and

(e) training for an educator and an appropriate paraprofessional to use statewide assessment results effectively to inform instruction.

(4) An LEA shall submit the plan to the Superintendent by September 15 annually.

(5) At least once each school year, an LEA shall provide professional development for all educators, administrators, and assessment administrators concerning guidelines and procedures for statewide assessment administration, including educator responsibility for assessment security and proper professional practices.

(6) LEA assessment staff shall use the Standard Test Administration and Testing Ethics Policy in providing training for all assessment administrators and proctors.

(7) An LEA may not release state assessment data publicly until authorized to do so by the Superintendent.

(8) An LEA educator or trained employee shall administer statewide assessments consistent with the testing schedule published on the Board's website.

(9) An LEA educator or trained employee shall complete all required assessment procedures prior to the end of the assessment window defined by the Superintendent.

(10)(a) If an LEA requires an alternative schedule with assessment dates outside of the Superintendent's published schedule, the LEA shall submit the alternative testing plan to the Superintendent by September 15 annually.

(b) The alternative testing plan shall set dates for assessment administration for courses taught face-to-face or online.

#### **R277-404-6. School Responsibilities.**

(1)(a) An LEA, school, or educator may not use a student's score on a state required assessment to determine:

(i) the student's academic grade, or a portion of the student's academic grade, for the appropriate course; or

(ii) whether the student may advance to the next grade level.

(b)(i) An LEA may consider, as one of multiple lines of evidence, a student's score on a state required assessment to determine whether a student may enroll in an honors, advanced placement, or International Baccalaureate course.

(ii) An LEA may not prohibit a student from enrolling in an honors, advanced placement, or International Baccalaureate course:

(A) based on a student's score on a state required assessment; or

(B) because the student was exempted from taking a state required assessment.

(c) In accordance with Subsection 53A-15-1403(1), an

LEA shall reasonably accommodate a parent's or guardian's request to allow a student's demonstration of proficiency on a state required assessment to fulfill a requirement in a course.

(2) An LEA and school shall require an educator, assessment administrator, and proctor to individually sign a document provided by the Superintendent acknowledging or assuring that the educator administers statewide assessments consistent with ethics and protocol requirements.

(3) An educator and assessment administrator shall conduct assessment preparation, supervise assessment administration, and certify assessment results before providing results to the Superintendent.

(4) An educator, assessment administrator, and proctor shall securely handle and return all protected assessment materials, where instructed, in strict accordance with the procedures and directions specified in assessment administration manuals, LEA rules and policies, and the Standard Test Administration and Testing Ethics Policy.

#### **R277-404-7. Student and Parent Participation in Student Assessments in Public Schools; Parental Exclusion from Testing and Safe Harbor Provisions.**

(1) As used in this section, "penalize" means to put in an unfavorable position or at an unfair disadvantage.

(2)(a) Parents are primarily responsible for their children's education and have the constitutional right to determine which aspects of public education, including assessment systems, in which their children participate.

(b) Parents may further exercise their inherent rights to exempt their children from a state required assessment without further consequence by an LEA.

(3)(a) A parent may exercise the right to exempt their child from a state required assessment.

(b) Except as provided in Subsection (3)(c), an LEA may not penalize a student who is exempted from a state required assessment under this section.

(c) If a parent exempts the parent's child from the basic civics test required in Sections 53A-13-109.5 and R277-700-8, the parent's child is not exempt from the graduation requirement in Subsection 53A-13-109.5(2), and may not graduate without successfully completing the requirements of Sections 53A-13-109.5 and R277-700-8.

(4)(a) To exercise the right to exempt a child from a state required assessment under this provision and ensure the protections of this provision, a parent shall:

(i) fill out:

(A) the Parental Exclusion from State Assessment Form provided on the Board's website; or

(B) an LEA specific form as described in Subsection (4)(b); and

(ii) submit the form:

(A) to the principal or LEA either by email, mail, or in person; and

(B) on an annual basis; and

(C) except as provided in Subsection (4)(b), at least one day prior to the beginning of the assessment.

(b) An LEA may allow a parent to exempt a student from taking a state required assessment less than one day prior to the beginning of the assessment upon parental request.

(c) An LEA may create an LEA specific form for a parent to fill out as described in Subsection (4)(a)(i)(B) if:

(i) the LEA includes a list of local LEA assessments that a parent may exempt the parent's student from as part of the LEA specific form; and

(ii) the LEA specific form includes all of the information described in the Parental Exclusion from State Assessment Form provided on the Board's website as described in Subsection (4)(a)(i)(A).

(5)(a) A teacher, principal, or other LEA administrator

may contact a parent to verify that the parent submitted a parental exclusion form described in Subsection (4)(a)(i).

(b) An LEA may request, but may not require, a parent to meet with a teacher, principal, or other LEA administrator regarding the parent's request to exclude the parent's student from taking a state required assessment.

(6) The administration of any assessment that is not a state required assessment, including consequences associated with taking or failing to take the assessment, is governed by policy adopted by each LEA.

(7) An LEA shall provide a student's individual test results and scores to the student's parent or guardian upon request and consistent with the protection of student privacy.

(8) An LEA may not reward a student for a student's participation in or performance on a state required assessment.

(9) An LEA shall ensure that a student who has been exempted from participating in a state required assessment under this section is provided with an alternative learning experience if the student is in attendance during test administration.

(10) An LEA may allow a student who has been exempted from participating in a state required assessment under this section to be physically present in the room during test administration.

**R277-404-8. Public Education Employee Compliance with Assessment Requirements, Protocols, and Security.**

(1) An educator, test administrator or proctor, administrator, or school employee may not:

(a) provide a student directly or indirectly with a specific question, answer, or the content of any specific item in a statewide assessment prior to assessment administration;

(b) download, copy, print, take a picture of, or make any facsimile of protected assessment material prior to, during, or after assessment administration without express permission of the Superintendent and an LEA administrator;

(c) change, alter, or amend any student online or paper response answer or any other statewide material at any time in a way that alters the student's intended response;

(d) use any prior form of any statewide assessment, including pilot assessment materials, that the Superintendent has not released in assessment preparation without express permission of the Superintendent and an LEA administrator;

(e) violate any specific assessment administrative procedure specified in the assessment administration manual, violate any state or LEA statewide assessment policy or procedure, or violate any procedure specified in the Standard Test Administration and Testing Ethics Policy;

(f) fail to administer a statewide assessment;

(g) fail to administer a statewide assessment within the designated assessment window;

(h) submit falsified data;

(i) allow a student to copy, reproduce, or photograph an assessment item or component; or

(j) knowingly do anything that would affect the security, validity, or reliability of statewide assessment scores of any individual student, class, or school.

(2) A school employee shall promptly report an assessment violation or irregularity to a building administrator, an LEA superintendent or director, or the Superintendent.

(3) An educator who violates this rule or an assessment protocol is subject to Utah Professional Practices Advisory Commission or Board disciplinary action consistent with R277-515.

(4) All assessment material, questions, and student responses for required assessments is designated protected, consistent with Section 63G-2-305, until released by the Superintendent.

(5)(a) Each LEA shall ensure that all assessment content is secured so that only authorized personnel have access and that

assessment materials are returned to Superintendent following testing, as required by the Superintendent.

(b) An individual educator or school employee may not retain or distribute test materials, in either paper or electronic form, for purposes inconsistent with ethical test administration or beyond the time period allowed for test administration.

**R277-404-9. Data Exchanges.**

(1) The Board's IT Section shall communicate regularly with an LEA regarding the required format for electronic submission of required data.

(2) An LEA shall update UTREx data using the processes and according to schedules determined by the Superintendent.

(3) An LEA shall ensure that any computer software for maintaining or submitting LEA data is compatible with data reporting requirements established in Rule R277-484.

(4) The Superintendent shall provide direction to an LEA detailing the data exchange requirements for each statewide assessment.

(5) An LEA shall ensure that all statewide assessment data have been collected and certify that the data are ready for accountability purposes no later than July 12.

(6) An LEA shall verify that it has satisfied all the requirements of the Superintendent's directions described in this section.

(7) Consistent with Utah law, the Superintendent shall return assessment results from all statewide assessments to the school before the end of the school year.

**KEY: assessments, student achievements**

**March 14, 2018**

**Notice of Continuation November 20, 2016 through 53A-1-611 53A-1-401**

**Art X Sec 3**

**R277. Education, Administration.****R277-415. School Nurses Matching Funds.****R277-415-1. Authority and Purpose.**

- (1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
- (b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
- (c) Section 53A-17a-154, which requires the Board to distribute grant money to LEAs for school nurses.
- (2) The purpose of this rule is to provide rules for awarding of matching funds under Section 53A-17a-154.

**R277-415-2. Definitions.**

- (1) "Advanced Practice Registered Nurse" or "APRN" is a nurse practitioner who may practice as a school nurse, or in a supervisory role.
- (2) "Health aid or clerk" means an unlicensed assistive person who must work under the supervision of an RN.
- (3) "Licensed Practical Nurse" or "LPN" means a nurse who may only assist or work under the supervision of a registered nurse or a medical doctor.
- (4) "Physician" means a licensed doctor with a doctorate in medicine or osteopathic medicine from an accredited college or university.
- (5) "Registered nurse" or "RN" is a licensed practicing nurse with a degree in nursing from an accredited college or university.
- (6) "Typical school nurse" means a licensed RN specializing in school nursing that serves as a health care expert in a school.

**R277-415-3. Appropriation for School Nurses.**

- (1) The Superintendent shall award an appropriation for school nurses to LEAs subject to the requirements of this Rule R277-415 and Section 53A-17a-154.
- (2) An LEA that seeks an appropriation for school nurses under this Rule shall submit an application for school nurse funds annually.
- (3) The Superintendent shall determine the amount of an LEA's allocation taking into account:
- (a) an LEA's student enrollment;
- (b) an LEA's ability to match funds as provided in this Section R277-415-3;
- (c) the percentage of change to an LEA's school nursing staff since state fiscal year 2007; and
- (d) the annual allocation of funds towards the school nursing program by the Legislature.
- (4) An LEA shall provide a dollar for dollar match for an appropriation for school nurses awarded in accordance with this rule.
- (5) An LEA shall provide a physician or APRN consultant to provide oversight to the LEA's school nursing program.
- (6) Beginning with the 2018-19 school year, an LEA may use matching funds for paid personnel costs of:
- (a) a typical school nurse;
- (b) a registered professional nurse; or
- (c) a licensed medical physician.
- (7) Beginning with the 2018-19 school year, an LEA may not use matching funds for:
- (a) an LPN;
- (b) a special education school nurse;
- (c) a pre-school school nurse;
- (d) a health aid or clerk;
- (e) a certified nurse assistant;
- (f) office space; or
- (g) medical supplies.

(8) An LEA may not count a school nurse as a full FTE at one school and a partial FTE at another school.

(9) An LEA shall provide documentation to the Superintendent to ensure that an appropriation for school nurses received does not supplant previous school nursing costs, including the LEA's:

- (a) funding amounts and sources of funding for school nurses employed prior to state fiscal year 2008;
- (b) funding amounts and sources of funding for current school nurses;
- (c) current personnel cost information; and
- (d) names and license numbers of employed school nurses.

(10) An LEA shall provide names and license numbers of the LEA's school nurses, including new hires, and overseeing consultants to the Superintendent by November 30 annually.

(11)(a) An LEA may provide an in-kind service match to qualify for state funds under this rule.

(b) An in-kind match under Subsection (11)(a) may include:

- (i) a collaborative agreement with a local health department supported by an executed memorandum of understanding or contract, which shall include an hourly rate attributable to the services provided;
- (ii) volunteer hours by a registered professional nurse valued at any hourly market rate approved by the Superintendent;
- (iii) volunteer hours by a licensed medical physician valued at an hourly market rate approved by the Superintendent;
- (iv) funds paid by a local health department towards school nurse personnel costs; and
- (v) funds paid by any other outside source towards school nurse personnel costs.

(12) The Superintendent may require an LEA receiving an appropriation for school nurses to:

(a) submit reports to the Superintendent and Utah Department of Health regarding the LEA's school nursing activities; and

(b) participate in standardized data collection as established by the Utah Department of Health, including the annual school health workload census.

(13) An LEA that fails to meet its matching obligations shall reimburse any state funds awarded in accordance with this rule.

(14) Nothing in this rule gives any medical provider authorization to prescribe medications to a student without the written consent of the student's parent or guardian.

**KEY: school nurses, awarding, funds  
March 14, 2018**

**Art X Sec 3  
53A-1-401**

**R277. Education, Administration.****R277-490. Beverley Taylor Sorenson Elementary Arts Learning Program (BTSALP).****R277-490-1. Authority and Purpose.**

- (1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
- (b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
- (c) Section 53A-17a-162, which directs the Board to establish a grant program for LEAs to hire qualified arts professionals to encourage student participation in the arts in Utah public schools and embrace student learning in Core subject areas.
- (2) The purpose of this rule is:
- (a) to implement the BTSALP model in public schools through LEAs and consortia that submit grant applications to hire arts specialists who are paid on the licensed teacher salary schedule;
- (b) to distribute funds to LEAs to purchase supplies and equipment as provided for in Subsections 53A-17a-162(4) and (6);
- (c) to fund activities at endowed universities to provide pre-service training, professional development, research, and leadership for arts educators and arts education in Utah public schools; and
- (d) to appropriately monitor, evaluate, and report programs and program results.

**R277-490-2. Definitions.**

- (1) "Arts equipment and supplies" includes musical instruments, recording and play-back devices, cameras, projectors, computers to be used in the program, CDs, DVDs, teacher reference books, and art-making supplies.
- (2) "Arts Program coordinator" or "coordinator" means an individual, employed full-time, who is responsible to:
- (a) coordinate arts programs for an LEA or consortium;
- (b) inform arts teachers;
- (c) organize arts professional development including organizing arts local learning communities;
- (d) oversee, guide, and organize the gathering of assessment data;
- (e) represent the LEA or consortium arts program; and
- (f) provide general leadership for arts education throughout the LEA or consortium.
- (3) "Beverley Taylor Sorenson Elementary Arts Learning Program model," "BTSALP model," or "Program" means a program in grades K-6 with the following components:
- (a) a qualified arts specialist to work collaboratively with the regular classroom teacher to deliver quality, sequential, and developmental arts instruction in alignment with the state fine arts core standards;
- (b) regular collaboration between the classroom teacher and arts specialist in planning arts integrated instruction; and
- (c) other activities that may be proposed by an LEA on a grant application and approved by the Board.
- (4) "Endowed university" means an institution of higher education in the state as defined in Subsection 53A-17a-162(1)(b).
- (5) "Highly qualified school arts program specialist" or "arts specialist" means:
- (a) an educator with:
- (i) a current educator license; and
- (ii) a Level 2 or K-12 specialist endorsement in the art form;
- (b) an elementary classroom teacher with a current educator license who is currently enrolled in a Level 2 specialist

endorsement program in the art form;

(c) a professional artist employed by a public school and accepted into the Board Alternative Routes to License (ARL) program under Rule R277-503 to complete a K-12 endorsement in the art form, which includes the Praxis exam in the case of art, music, or theatre; or

(d) an individual who qualifies for an educator license under Board rule that qualifies the individual for the position provided that:

(i) an LEA provides an affidavit verifying that a reasonable search was conducted for an individual who would qualify for an educator license through other means; and

(ii) the LEA reopens the position and conducts a new search every two years.

(e) In addition to required licensure and endorsements, prospective teachers should provide evidence of facilitating elementary Core learning in at least one art form.

(6) "Matching funds" means funds that equal at least 20% of the total costs for salary plus benefits incurred by an LEA or consortium to fund the LEA or consortium's arts specialist.

**R277-490-3. Arts Specialist Grant Program - LEA Consortium.**

- (1) LEAs may form a consortium to employ arts specialists appropriate for the number of students served.
- (2) An LEA or a consortium of LEAs may submit a grant request consistent with time lines provided in this rule.
- (3) An LEA or a consortium shall develop its proposal consistent with the BTSALP model outlined under R277-490-2(3).
- (4) A consortium grant request shall explain the necessity or greater efficiency and benefit of an arts specialist serving several elementary schools within a consortium of LEAs.
- (5) A consortium grant shall explain a schedule for each specialist to serve the group of schools within several of the LEAs similarly to an arts specialist in a single school.
- (6) A consortium grant request shall provide information for a consortium arts specialist's schedule that minimizes the arts specialist's travel and allows the arts specialist to be well integrated into several schools.
- (7) An LEA's grant application shall include the collaborative development of the application with the LEA's partner endowed university and School Community Councils if matching funds come from School LAND Trust Funds.

**R277-490-4. Arts Specialist Grant Program Timelines.**

- (1) An LEA or a consortium shall complete a program grant application annually.
- (2) The Board shall grant funding priority to renewal applications.
- (3) An LEA or consortium shall submit a completed application requesting funding to the Superintendent by May 1 annually.
- (4) The Board shall designate an LEA or a consortium for funding no later than June 1 annually.

**R277-490-5. Distribution of Funds for Arts Specialist.**

- (1) A program LEA or consortium shall submit a projection of salaries, including benefits, of all program specialists the LEA or consortium expects to employ in the coming school year by May 1 annually.
- (2) A program LEA or consortium shall submit complete information of salaries, including benefits, of all program specialists employed by the LEA or consortium no later than September 30 annually.
- (3)(a) If a program LEA or consortium provides matching funds, the Superintendent shall distribute funds to program grant recipients annually up to 80% of the salaries plus benefits for approved hires in the program, and not to exceed the amount

projected in accordance with Subsection (1), consistent with Subsections 53A-17a-162(5) and (6).

(b) The Superintendent shall determine the exact percentage awarded following review of available program funding and exact costs for continuing programs.

(c) The Superintendent may not award funds to an LEA for a new program specialist unless program funding provides 80% funding for all continuing grants.

(4) The Superintendent shall annually set the upper limit on a grant amount, which may not exceed the increase in the WPU.

(5) A grant recipient shall provide matching funds for each specialist funded through the program.

**R277-490-6. Distribution of Funds for Arts Specialist Supplies.**

(1) The Board shall distribute funds for arts specialist supplies to an LEA or consortium as available.

(2) A grant recipient shall distribute funds to participating schools as provided in the approved LEA or consortium grant and consistent with LEA procurement policies.

(3) A grant recipient shall require arts specialists to provide adequate documentation of arts supplies purchased consistent with the grant recipient's plan, this rule, and the law.

(4) Summary information about effective supplies and equipment shall be provided in the school or consortium evaluation of the program.

**R277-490-7. LEA or Consortium Employment of Arts Coordinators.**

(1)(a) An LEA or consortium may apply for funds to employ arts coordinators in the LEA or consortium.

(b) These are intended as small stipends for educators who are already employed in rural districts to help support arts education and the implementation of BTSALP.

(2) An applicant shall explain:

(a) how an arts coordinator will be used, consistent with the BTSALP model;

(b) what requirements an arts coordinator must meet; and

(c) what training will be provided, and by whom.

(3) The Superintendent shall notify an LEA that receives a grant award no later than June 1 annually.

**R277-490-8. Endowed University Participation in the BTSALP.**

(1) The Superintendent may consult with endowed chairs and integrated arts advocates regarding program development and guidelines.

(2) An endowed university may apply for grant funds to fulfill the purposes of this program, which include:

(a) delivery of high quality professional development to participating LEAs;

(b) the design and completion of research related to the program;

(c) providing the public with elementary arts education resources; and

(d) other program related activities as may be included in a grant application and approved by the Board.

(3) An endowed university grant application shall include documentation of collaborative development of a plan for delivery of high quality professional development to participating LEAs.

(4) The Superintendent shall determine the LEAs assigned to each endowed university.

(5) The Board may award no more than 10% of the total legislative appropriation for grants to endowed universities.

(6) The Superintendent shall monitor the activities of the grantees to ensure compliance with grant rules, fulfillment of grant application commitments, and appropriate fiscal

procedures.

(7) An endowed university shall cooperate with the Superintendent in the monitoring of its grant.

(8) An endowed university that receives grant funds shall consult, as requested by the Superintendent, in the development and presentation of an annual written program report as required in statute.

**R277-490-9. LEAs Cooperation with the Superintendent for BTSALP.**

(1) A BTSALP staff member may visit a school receiving a grant to observe implementation of the grant.

(2) A BTSALP school shall cooperate with the Superintendent to allow visits of members of the Board, legislators, and other invested partners to promote elementary arts integration.

(3) An LEA shall accurately report the number of students impacted by the program grant and report on the delivery systems to those students as requested by the Superintendent.

(4)(a) An LEA found to be out of compliance with the terms of the grant will be notified within 30 days of the discovery of non-compliance.

(b) An LEA found to be in non-compliance will be given 30 days to correct the issues.

(c) If non-compliance is not resolved within that time frame, an LEA is subject to losing the grant funds for the school or schools found to be non-compliant.

**KEY: arts programs, endowed universities, grants, public schools**

**March 14, 2018**

**Notice of Continuation January 12, 2018**

**Art X Sec 3**

**53A-1-401**

**53A-17a-162**

**R277. Education, Administration.****R277-700. The Elementary and Secondary School General Core.****R277-700-1. Authority and Purpose.**

- (1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
  - (b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;
  - (c) Section 53A-1-402, which directs the Board to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements;
  - (d) Section 53A-1-402.6, which directs:
    - (i) the Board to establish Core Standards in consultation with LEA boards and superintendents; and
    - (ii) LEA boards to adopt local curriculum and to design programs to help students master the General Core;
  - (e) Title 53A, Chapter 1, Part 12, Career and College Readiness Mathematics Competency, which directs the Board to establish college and career mathematics competency standards; and
  - (f) Section 53A-13-109.5, which requires the Board to provide rules related to a basic civics test.
- (2) The purpose of this rule is to specify the minimum Core Standards and General Core requirements for the public schools, and to establish responsibility for mastery of Core Standard requirements.

**R277-700-2. Definitions.**

For purposes of this rule:

- (1)(a) "Applied course" means a public school course or class that applies the concepts of a Core subject.
- (b) "Applied course" includes a course offered through Career and Technical Education or through other areas of the curriculum.
- (2) "Arts" means the visual arts, music, dance, theatre, and media arts.
- (3) "Assessment" means a summative computer adaptive assessment for:
  - (a) English language arts grades 3 through 11;
  - (b) mathematics grades 3 through 8, and Secondary I, II, and III; or
  - (c) science grades 4 through 8, earth science, biology, physics and chemistry.
- (4) "Career and Technical Education (CTE)" means an organized educational program or course which directly or indirectly prepares students for employment, or for additional preparation leading to employment, in an occupation, where entry requirements generally do not require a baccalaureate or advanced degree.
- (5) "Core Standard" means a statement of what a student enrolled in a public school is expected to know and be able to do at a specific grade level or following completion of an identified course.
- (6) "Core subject" means a course for which there is a declared set of Core Standards as approved by the Board.
- (7) "Elementary school" for purposes of this rule means a school that serves grades K-6 in whatever kind of school the grade levels exist.
- (8) "General Core" means the courses, content, instructional elements, materials, resources and pedagogy that are used to teach the Core Standards, including the ideas, knowledge, practice and skills that support the Core Standards.
- (9) "High school" for purposes of this rule means a school that serves grades 9-12 in whatever kind of school the grade levels exist.
- (10) "LEA" or "local education agency" includes the Utah

Schools for the Deaf and the Blind.

- (11) "Life Skills document" means a companion document to the Core Standards that describes the knowledge, skills, and dispositions essential for all students; the life skills training helps students transfer academic learning into a comprehensive education.
- (12) "Middle school" for purposes of this rule means a school that serves grades 7-8 in whatever kind of school the grade levels exist.
- (13) "Summative adaptive assessment" means an assessment that:
  - (a) is administered upon completion of instruction to assess a student's achievement;
  - (b) is administered online under the direct supervision of a licensed educator;
  - (c) is designed to identify student achievement on the Core Standards for the respective grade and course; and
  - (d) measures the full range of student ability by adapting to each student's responses, selecting more difficult questions when a student answers correctly and less difficult questions when a student answers incorrectly.

**R277-700-3. General Core and Core Standards.**

- (1) The Board establishes minimum course description standards for each course in the required General Core.
- (2)(a) The Superintendent shall develop, in cooperation with LEAs, course descriptions for required and elective courses.
  - (b) The Superintendent shall provide parents and the general public an opportunity to participate in the development process of the course descriptions described in Subsection (2)(a).
- (3)(a) The Superintendent shall ensure that the courses described in Subsection (2):
  - (i) contain mastery criteria for the courses; and
  - (ii) stress mastery of the course material, Core Standards, and life skills consistent with the General Core and Life Skills document.
- (b) The Superintendent shall place a greater emphasis on a student's mastery of course material rather than completion of predetermined time allotments for courses.
- (4) An LEA board shall administer the General Core and comply with student assessment procedures consistent with state law.

**R277-700-4. Elementary Education Requirements.**

- (1) The Core Standards and a General Core for elementary school students in grades K-6 are described in this section.
- (2) The following are the Elementary School Education Core Subject Requirements:
  - (a) English Language Arts;
  - (b) Mathematics;
  - (c) Science;
  - (d) Social Studies;
  - (e) Arts:
    - (i) Visual Arts;
    - (ii) Music;
    - (iii) Dance; or
    - (iv) Theatre;
  - (f) Health Education;
  - (g) Physical Education;
  - (h) Educational Technology; and
  - (i) Library Media.
- (3) An LEA board shall provide access to the General Core to all students within the LEA.
- (4) An LEA board is responsible for student mastery of the Core Standards.
- (5) An LEA shall conduct informal assessments on a regular basis to ensure continual student progress.

(6) An LEA shall use Board-approved summative adaptive assessments to assess student mastery of the following:

- (a) reading;
- (b) language arts;
- (c) mathematics;
- (d) science; and
- (e) effectiveness of written expression in grades five and eight.

(7) An LEA shall provide remediation to elementary students who do not achieve mastery of the subjects described in this section.

#### **R277-700-5. Middle School Education Requirements.**

(1) The Core Standards and a General Core for middle school students are described in this section.

(2) A student in grades 7-8 is required to complete the courses described in Subsection (3) to be properly prepared for instruction in grades 9-12.

(3) The following are the Grades 7-8 General Core Requirements:

- (a) Grade 7 Language Arts;
- (b) Grade 8 Language Arts;
- (c) Grade 7 Mathematics;
- (d) Grade 8 Mathematics;
- (e) Grade 7 Integrated Science;
- (f) Grade 8 Integrated Science;
- (g) United States History;
- (h) Utah History; and
- (i) at least one course in each of the following in grades 7 or 8:

- (A) Health Education;
- (B) College and Career Awareness;
- (C) Digital Literacy;
- (D) the Arts; and
- (E) Physical Education.

(4) An LEA shall use evidence-based best practices, technology, and other instructional media in middle school curricula to increase the relevance and quality of instruction.

(5) An LEA shall use Board-approved summative adaptive assessments to assess student mastery of the following:

- (a) reading;
- (b) language arts;
- (c) mathematics; and
- (d) science.

(6) At the discretion of the LEA board, an LEA board may:

- (a) offer additional elective courses;
- (b) require a student to complete additional courses; or
- (c) set minimum credit requirements.

(7) Upon parental or student request, an LEA may, with parental consent, substitute a course requirement described in Subsection (3) with a course, extracurricular activity, or experience that is:

- (a) similar to the course requirement; or
- (b) consistent with the student's plan for college and career readiness.

(8)(a) An LEA shall establish a policy governing the substitution of a course requirement as described in Subsection (7).

(b) An LEA's policy described in Subsection (8)(a) shall include a process for a parent to appeal an LEA's denial of a request for a substitution described in Subsection (7) to the LEA board or the LEA board designee.

#### **R277-700-6. High School Requirements.**

(1) The General Core and Core Standards for students in grades 9-12 are described in this section.

(2) A student in grades 9-12 is required to earn a minimum of 24 units of credit through course completion or through

competency assessment consistent with R277-705 to graduate.

(3) The General Core credit requirements from courses approved by the Board are described in Subsections (4) through (18).

(4) Language Arts (4.0 units of credit from the following):

- (a) Grade 9 level (1.0 unit of credit);
- (b) Grade 10 level (1.0 unit of credit);
- (c) Grade 11 level (1.0 unit of credit); and
- (d) Grade 12 level (1.0 Unit of credit) consisting of

applied or advanced language arts credit from the list of Board-approved courses using the following criteria and consistent with the student's Plan for College and Career Readiness:

(i) courses are within the field/discipline of language arts with a significant portion of instruction aligned to language arts content, principles, knowledge, and skills;

(ii) courses provide instruction that leads to student understanding of the nature and disposition of language arts;

(iii) courses apply the fundamental concepts and skills of language arts;

(iv) courses provide developmentally appropriate content; and

(v) courses develop skills in reading, writing, listening, speaking, and presentation.

(5) Mathematics (3.0 units of credit) shall be met minimally through successful completion of a combination of the foundation or foundation honors courses, Secondary Mathematics I, Secondary Mathematics II, and Secondary Mathematics III.

(6)(a) A student may opt out of Secondary Mathematics III if the student's parent submits a written request to the school.

(b) If a student's parent requests an opt out described in Subsection (6)(a), the student is required to complete a third math credit from the Board-approved mathematics list.

(7) A 7th or 8th grade student may earn credit for a mathematics foundation course before 9th grade, consistent with the student's Plan for College and Career Readiness if:

(a) the student is identified as gifted in mathematics on at least two different Board-approved assessments;

(b) the student is dual enrolled at the middle school/junior high school and the high school;

(c) the student qualifies for promotion one or two grade levels above the student's age group and is placed in 9th grade; or

(d) the student takes the Board competency test in the summer prior to 9th grade and earns high school graduation credit for the course.

(8) A student who successfully completes a mathematics foundation course before 9th grade is required to earn 3.0 units of additional mathematics credit by:

(a) taking the other mathematics foundation courses described in Subsection (5); and

(b) an additional course from the Board-approved mathematics list consistent with:

(i) the student's Plan for College and Career Readiness; and

(ii) the following criteria:

(A) courses are within the field/discipline of mathematics with a significant portion of instruction aligned to mathematics content, principles, knowledge, and skills;

(B) courses provide instruction that lead to student understanding of the nature and disposition of mathematics;

(C) courses apply the fundamental concepts and skills of mathematics;

(D) courses provide developmentally appropriate content; and

(E) courses include the five process skills of mathematics: problem solving, reasoning, communication, connections, and representation.

(9) A student who successfully completes a Calculus

course with a "C" grade or higher has completed mathematics graduation requirements, regardless of the number of mathematics credits earned.

(10) Science (3.0 units of credit);

(a) shall be met minimally through successful completion of 2.0 units of credit from two of the following five science foundation areas:

(i) Earth Science (1.0 units of credit);

(A) Earth Science;

(B) Advanced Placement Environmental Science; or

(C) International Baccalaureate Environmental Systems;

(ii) Biological Science (1.0 units of credit);

(A) Biology;

(B) Human Biology;

(C) Biology: Agricultural Science and Technology;

(D) Advanced Placement Biology;

(E) International Baccalaureate Biology; or

(F) Biology with Lab Concurrent Enrollment;

(iii) Chemistry (1.0 units of credit);

(A) Chemistry;

(B) Advanced Placement Chemistry;

(C) International Baccalaureate Chemistry; or

(D) Chemistry with Lab Concurrent Enrollment;

(iv) Physics (1.0 units of credit);

(A) Physics;

(B) Physics with Technology;

(C) Advanced Placement Physics (1, 2, C: Electricity and Magnetism, or C: Mechanics);

(D) International Baccalaureate Physics; or

(E) Physics with Lab Concurrent Enrollment; or

(v) Computer Science (1.0 units of credit):

(A) Advanced Placement Computer Science;

(B) Computer Science Principles; or

(C) Computer Programming II; and

(b) one additional unit of credit from:

(i) the foundation courses described in Subsection(10)(a);

or

(ii) the applied or advanced science list:

(A) determined by the LEA board; and

(B) approved by the Board using the following criteria and consistent with the student's Plan for College and Career Readiness:

(i) courses are within the field/discipline of science with a significant portion of instruction aligned to science content, principles, knowledge, and skills;

(ii) courses provide instruction that leads to student understanding of the nature and disposition of science;

(iii) courses apply the fundamental concepts and skills of science;

(iv) courses provide developmentally appropriate content;

(v) courses include the areas of physical, natural, or applied sciences; and

(vi) courses develop students' skills in scientific inquiry.

(11) Social Studies (3.0 units of credit) shall be met minimally through successful completion of:

(a) 2.5 units of credit from the following courses:

(i) Geography for Life (0.5 units of credit);

(ii) World Civilizations (0.5 units of credit);

(iii) U.S. History (1.0 units of credit); and

(iv) U.S. Government and Citizenship (0.5 units of credit);

(b) Social Studies (0.5 units of credit per LEA discretion);

and

(c) a basic civics test or alternate assessment described in R277-700-8.

(12) The Arts (1.5 units of credit from any of the following performance areas):

(a) Visual Arts;

(b) Music;

(c) Dance; or

(d) Theatre.

(13) Physical and Health Education (2.0 units of credit from any of the following):

(a) Health (0.5 units of credit);

(b) Participation Skills (0.5 units of credit);

(c) Fitness for Life (0.5 units of credit);

(d) Individualized Lifetime Activities (0.5 units of credit);

or

(e) team sport/athletic participation (maximum of 1.0 units of credit with school approval).

(14) Career and Technical Education (1.0 units of credit from any of the following):

(a) Agriculture;

(b) Business;

(c) Family and Consumer Sciences;

(d) Health Science and Technology;

(e) Information Technology;

(f) Marketing;

(g) Technology and Engineering Education; or

(h) Trade and Technical Education.

(15) Digital Studies (0.5 units of credit).

(16) Library Media Skills (integrated into the subject areas).

(17) General Financial Literacy (0.5 units of credit).

(18) Electives (5.5 units of credit).

(19) An LEA shall use Board-approved summative adaptive assessments to assess student mastery of the following subjects:

(a) reading;

(b) language arts through grade 11;

(c) mathematics as defined in Subsection (5); and

(d) science as defined in Subsection (10).

(20) An LEA board may require a student to earn credits for graduation that exceed the minimum Board requirements described in this rule.

(21) An LEA board may establish and offer additional elective course offerings at the discretion of the LEA board.

(22)(a) An LEA may modify a student's graduation requirements to meet the unique educational needs of a student if:

(i) the student has a disability; and

(ii) the modifications to the student's graduation requirements are made through the student's individual IEP.

(b) An LEA shall document the nature and extent of a modification, substitution, or exemption made to a student's graduation requirements described in Subsection (22)(a) in the student's IEP.

(23) The Board and Superintendent may review an LEA board's list of approved courses for compliance with this rule.

(24) An LEA may modify graduation requirements for an individual student to achieve an appropriate route to student success if the modification:

(a) is consistent with:

(i) the student's IEP; or

(ii) SEOP/Plan for College and Career Readiness;

(b) is maintained in the student's file;

(c) includes the parent's signature; and

(d) maintains the integrity and rigor expected for high school graduation, as determined by the Board.

#### **R277-700-7. Student Mastery and Assessment of Core Standards.**

(1) An LEA shall ensure students master the Core Standards at all levels.

(2) An LEA shall provide remediation for secondary students who do not achieve mastery in accordance with Section 53A-13-104.

(3) An LEA shall provide remedial assistance to students who are found to be deficient in basic skills through a statewide



assessment in accordance with Subsection 53A-1-606(1).

(4) If a parent objects to a portion of a course or to a course in its entirety under Section 53A-13-101.2 and R277-105, the parent shall be responsible for the student's mastery of Core Standards to the satisfaction of the school prior to the student's promotion to the next course or grade level.

(5)(a) A student with a disability served by a special education program is required to demonstrate mastery of the Core Standards.

(b) If a student's disability precludes the student from successfully mastering the Core Standards, the student's IEP team, on a case-by-case basis, may provide the student an accommodation for, or modify the mastery demonstration to accommodate, the student's disability.

(6) A student may demonstrate competency to satisfy course requirements consistent with R277-705-3.

(7) LEAs are ultimately responsible for and shall comply with all assessment procedures, policies and ethics as described in R277-404.

#### **R277-700-8. Civics Education Initiative.**

(1) For purposes of this section:

(a) "Student" means:

(i) a public school student who graduates on or after January 1, 2016; or

(ii) a student enrolled in an adult education program who receives an adult education secondary diploma on or after January 1, 2016.

(b) "Basic civics test" means the same as that term is defined in Section 53A-13-109.5.

(2) Except as provided in Subsection (3), an LEA shall:

(a) administer a basic civics test in accordance with the requirements of Section 53A-13-109.5; and

(b) require a student to pass the basic civics test as a condition of receiving:

(i) a high school diploma; or

(ii) an adult education secondary diploma.

(3) An LEA may require a student to pass an alternate assessment if:

(a)(i) the student has a disability; and

(ii) the alternate assessment is consistent with the student's IEP; or

(b) the student is within six months of intended graduation.

(4) Except as provided in Subsection (5), the alternate assessment shall be given:

(a) in the same manner as an exam given to an unnaturalized citizen; and

(b) in accordance with 8 C.F.R. Sec. 312.2.

(5) An LEA may modify the manner of the administration of an alternate assessment for a student with a disability in accordance with the student's IEP.

(6) If a student passes a basic civics test or an alternate assessment described in this section, an LEA shall report to the Superintendent that the student passed the basic civics test or alternate assessment.

(7) If a student who passes a basic civics test or an alternate assessment transfers to another LEA, the LEA may not require the student to re-take the basic civics test or alternate assessment.

#### **R277-700-9. College and Career Readiness Mathematics Competency.**

(1) For purposes of this section, "senior student with a special circumstance" means a student who:

(a) is pursuing a college degree after graduation; and

(b) has not met one of criteria described in Subsection

(2)(a) before the beginning of the student's senior year of high school.

(2) Except as provided in Subsection (4), in addition to the graduation requirements described in R277-700-6, beginning with the 2016-17 school year, a student pursuing a college degree after graduation shall:

(a) receive one of the following:

(i) a score of 3 or higher on an Advanced Placement (AP) calculus AB or BC exam;

(ii) a score of 3 or higher on an Advanced Placement (AP) statistics exam;

(iii) a score of 5 or higher on an International Baccalaureate (IB) higher level math exam;

(iv) a score of 50 or higher on a College Level Exam Program (CLEP) pre-calculus or calculus exam;

(v) a score of 26 or higher on the mathematics portion of the American College Test (ACT) exam;

(vi) a score of 640 or higher on the mathematics portion of the Scholastic Aptitude Test (SAT) exam; or

(vii) a "C" grade in a concurrent enrollment mathematics course that satisfies a state system of higher education quantitative literacy requirement; or

(b) if the student is a senior student with a special circumstance, take a full year mathematics course during the student's senior year of high school.

(3) Except as provided in Subsection (4), in addition to the graduation requirements described in R277-700-6, beginning with the 2016-17 school year, a non-college and degree-seeking student shall complete appropriate math competencies for the student's career goals as described in the student's Plan for College and Career Readiness.

(4) An LEA may modify a student's college or career readiness mathematics competency requirement under this section if:

(a) the student has a disability; and

(b) the modification to the student's college or career readiness mathematics competency requirement is made through the student's IEP.

(5)(a) An LEA shall report annually to the LEA's board the number of students within the LEA who:

(i) meet the criteria described in Subsection (2)(a);

(ii) take a full year of mathematics as described in Subsection (2)(b);

(iii) meet appropriate math competencies as established in the students' career goals as described in Subsection (3); and

(iv) meet the college or career readiness mathematics competency requirement established in the students' IEP as described in Subsection (4).

(b) An LEA shall provide the information described in Subsection (5)(a) to the Superintendent by October 1 of each year.

#### **KEY: graduation requirements, standards**

**March 14, 2018**

**Notice of Continuation August 14, 2017**

**Art X Sec 3**

**53A-1-402(1)(b)**

**53A-1-402.6**

**53A-1-401**

**R277. Education, Administration.****R277-708. Enhancement for At-Risk Students.****R277-708-1. Authority and Purpose.**

(1) This rule is authorized by:

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

(b) Section 53A-17a-166, which directs the Board to manage the Enhancement for At-Risk Students interventions by:

- (i) developing a funding formula;
- (ii) developing performance criteria;
- (iii) administering the intervention;
- (iv) distributing the appropriation; and
- (v) monitoring and reporting the effectiveness of the interventions; and

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2)(a) The purpose of this rule is to establish criteria and procedures for distributing Enhancement for At-Risk Students funds to LEAs.

(b) The intent of the rule and the legislative appropriation is to improve academic achievement of students who are at risk of academic failure.

**R277-708-2. Definitions.**

(1) "At-risk of academic failure" means a k-12 public school student who:

(a) scores below proficient on a Board or LEA approved assessment; or

(b) meets an LEA governing board's approved definition of at-risk of academic failure.

(2) "Available funds" means the total funds appropriated for the Enhancement for At-Risk Students interventions, less funding designated for gang prevention under Subsection 53A-17a-166(1)(b)(i).

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

(4) "LEA governing board" means:

(a) a charter school governing board; or

(b) a district's local school board.

(5) "LEA share" means the percentage of k-12 students from an LEA who are at risk of academic failure compared to the total count for the state of Utah from the previous school year.

(6) "Limited English Proficiency" or "LEP" means the total number of English learner or "EL" students in an LEA from the October 1 count from the previous school year, including:

(a) the number of EL students receiving a score of 1-4 on the English language proficiency assessment; and

(b) the number of students previously classified as English Proficient based on a score of 5 or 6 on the English language proficiency assessment.

(7) "Low performance on a statewide assessment" means the unduplicated count of k-12 students from an LEA scoring below proficient in Reading/Language, Math, and Science on one of the following exams from the previous school year:

(a) the Student Assessment of Growth and Excellence (SAGE);

(b) the Special Education adaptive testing Dynamic Learning Maps or "DLM"; or

(c) other Board approved assessment.

(8) "Mobility" means the number of k-12 students enrolled less than 160 days or its equivalent in one school within a school year, as determined by the prior year's year-end average

daily membership submission.

(9) "Poverty" means the total number of k-12 students in an LEA reported as economically disadvantaged using federal child nutrition income eligibility guidelines for free or reduced-priced under the federal school lunch program from the official October 1 enrollment count from the previous school year.

**R277-708-3. Allocation of Enhancement for At-Risk Student Funds.**

(1) The Superintendent shall award available funds to an LEA based on an equal weighting of:

(a) low performance on a Board approved assessment;

(b) poverty;

(c) mobility; and

(d) limited English proficiency.

(2) The Superintendent shall base an LEA's allocation on the certified data from the Data Clearinghouse using the most recent school year for which data is complete and available.

(3) The Superintendent shall use the following funding formula to determine an LEA base to distribute to LEAs:

(a) the Superintendent shall annually calculate 4% of the state appropriation of the Enhancement for At-Risk Students funding available for LEA grants to provide a base amount to LEAs.

(b) The Superintendent shall divide the base amount described in Subsection (3)(a) equally among all eligible LEAs.

(4) The Superintendent shall annually calculate 20% of the state appropriation of the Enhancement for At-Risk Students on a per school basis to provide a targeted amount to LEAs with traditional elementary schools, secondary schools, and alternative high schools with at least 75% poverty.

(5) Of the funds remaining after the distributions described in Subsections (3) and (4), the Superintendent shall determine an LEA's share based on the LEA's percentage of students with at-risk factors for the state.

(6) The Superintendent shall use data from the Board's Data Warehouse for each LEA from the previous school year to determine the students who qualify under the following definitions:

(a) low performance on a Board approved assessment;

(b) poverty;

(c) mobility; and

(d) limited English Proficiency.

(7) The Superintendent shall allocate funds appropriated for at-risk factors to each LEA based on the LEA's proportion of at-risk factors in comparison to the statewide total.

(8) The Superintendent shall notify an LEA that qualifies for funding of the LEA's level of funding annually by May 1.

**R277-708-4. Fiscal Procedures.**

(1) An LEA shall submit its application to the Superintendent annually by November 1 through the Board's grant management system.

(2) The Superintendent shall distribute available funds to LEAs with an approved application monthly based on a one-twelfth distribution beginning on July 1.

(3) An LEA shall spend all allocated funds annually by June 30.

(4) An LEA that accepts funds for Enhancement for At-Risk Students intervention services shall be subject to Board accounting, auditing, and budgeting rules and policies.

(5)(a) With written approval from the Superintendent, an LEA may carry over and spend ten percent or \$50,000, whichever is less, of state Enhancement for At-Risk Student funds in the next fiscal year.

(b) An LEA shall submit a request to carry over funds under Subsection (5)(a) to the Superintendent annually.

(c) An LEA shall detail approved carry over amounts in a revised budget submitted through the Board's grant management

system.

(d) The Superintendent shall review and approve a revised budget submitted under Subsection (5)(c) no later than October 1 in the year submitted.

**R277-708-5. Application Process.**

(1) An LEA may use funds for activities that support academic achievement of students who are at risk of academic failure.

(2) An LEA shall establish the following to include in the LEA's application for Enhancement for At-Risk Student money:

(a) specific measurable goals, including a baseline measurement, related to increased academic achievement of students at-risk of academic failure;

(b) proposed activities that are directly tied to the LEA's plan to increase student achievement;

(c) a copy of the LEA's comprehensive plan for student and classroom management, and school discipline required in Section R277-609-4; and

(d) if the LEA establishes an LEA specific definition of a student at-risk of academic failure as described in Subsection R277-708-2(1)(b), the LEA governing board's approved definition of a student at-risk of academic failure.

(3) Annually, an LEA shall provide the following information to the Superintendent:

(a) a report of the LEA's use of funds through the annual financial reporting process;

(b) the LEA's outcome data related to the specific measurable goals included in the LEA's application; and

(c) a report of intervention effectiveness based on performance criteria defined by the Superintendent.

**R277-708-6. Oversight: Monitoring, Evaluation and Reports.**

(1) The Superintendent may recommend that the Board designate no more than one percent of the total appropriation from the Enhancement for At-Risk Students to be used specifically by the Superintendent for oversight, monitoring and evaluation of:

(a) LEA implementation of the intervention; and

(b) compliance with state law and this rule.

(2)(a) The Superintendent shall conduct tri-annual intervention reviews of each LEA receiving Enhancement for At-Risk Students funding to ensure intervention compliance.

(b) In the Superintendent's discretion or for good cause, the Superintendent may conduct additional formal or informal:

(i) monitoring;

(ii) reviews; or

(iii) site visits.

(3) If the Superintendent identifies violations as a result of a review described in Subsection (2)(a), an LEA shall prepare and submit to the Superintendent a written corrective action plan for each finding made by the Superintendent.

(4) If an LEA fails to resolve findings identified by the Superintendent under Subsection (3), the Superintendent may withhold funds as provided in R277-114.

**R277-708-7. Gang Prevention and Intervention Funds.**

(1) Consistent with Subsection 53A-17a-166(1)(b), the Superintendent shall distribute funding to LEAs for gang prevention and intervention.

(2) An LEA desiring to receive gang prevention and intervention funds shall submit a proposal consistent with Rule R277-436.

**KEY: students at risk**

**March 14, 2018**

**Notice of Continuation September 15, 2016**

**Art X Sec 3**

**53A-17a-166**

**53A-1-401**

**R277. Education, Administration.****R277-717. High School Course Grading Requirements.****R277-717-1. Authority and Purpose.**

- (1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and
- (b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
- (2) The purpose of this rule is to establish requirements for awarding credit when a student repeats a course or takes a comparable course and earns a higher grade.

course for which the student did not receive the highest grade on the student's record.

**KEY: students, grades, credits  
March 14, 2018**

**Art X Sec 3  
53A-1-401**

**R277-717-2. Definitions.**

- (1) "Comparable course" means a course that fulfills the same graduation credit requirements as a course for which a student seeks to improve a grade.
- (2) "Course" means a course that a student:
- (a) is enrolled in; and
- (b)(i) completes; or
- (ii) withdraws from but still receives a grade.
- (3) "Highest grade" means a grade that reflects the higher grade of:
- (a) a course and a repeat of the course; or
- (b) a course and a comparable course.
- (4) "LEA" includes the Utah Schools for the Deaf and the Blind for purposes of this rule.
- (5) "Recurring course" means a course that a student takes more than once to:
- (a) further the student's understanding and skills in the course subject, such as journalism or band; or
- (b) satisfy a different credit requirement that the course may fulfill, such as an art class that fulfills an elective requirement and an art requirement.
- (6) "Student" means an individual enrolled in an LEA in grade 9, 10, 11, or 12.

**R277-717-3. Course Grade Forgiveness.**

- (1)(a) A student may, to improve a course grade received by the student:
- (i) repeat the course one or more times; or
- (ii) enroll in and complete a comparable course.
- (b) A grade for an additional unit of a recurring course does not change a student's original course grade for purposes of this section.
- (2) If a student repeats a course, the student's LEA:
- (a) shall adjust, if necessary, the student's course grade and grade point average to reflect the student's highest grade and exclude a lower grade;
- (b) shall exclude from the student's permanent record the course grade that is not the highest grade; and
- (c) may not otherwise indicate on the student's current record that the student repeated the course.
- (3)(a) If a student enrolls in a comparable course, the student shall, at the time of enrolling in the comparable course, inform the student's LEA of the student's intent to enroll in the course for the purpose of improving a course grade.
- (b) If a student enrolls in a comparable course, the student's LEA:
- (i) shall confirm, at the time the student enrolls in the comparable course, that the comparable course fulfills the same credit requirements as the course that the student intends to replace with the comparable course grade;
- (ii) shall update the student's current record and grade point average to reflect the highest grade between the course and the comparable course and exclude the lower grade and corresponding course; and
- (iii) may not otherwise indicate the course or comparable

**R307. Environmental Quality, Air Quality.****R307-102. General Requirements: Broadly Applicable Requirements.****R307-102-1. Air Pollution Prohibited; Periodic Reports Required.**

(1) Emission of air pollutants in sufficient quantities to cause air pollution as defined in R307-101-2 is prohibited. The State statute provides for penalties up to \$50,000/day for violation of State statutes, regulations, rules or standards (See Section 19-2-115 for further details).

(2) Periodic Reports and Availability of Information. The owner or operator of any stationary air pollutant source in Utah shall furnish to the director the periodic reports required under Section 19-2-104(1)(c) and any other information as the director may deem necessary to determine whether the source is in compliance with Utah and Federal regulations and standards. The information thus obtained will be correlated with applicable emission standards or limitations and will be available to the public during normal business hours at the Division of Air Quality.

**R307-102-2. Confidentiality of Information.**

Any person submitting information pursuant to these regulations may request that such information be treated as a trade secret or on a confidential basis, in which case the director shall so treat such information. If no claim is made at the time of submission, the director may make the information available to the public without further notice. Information required to be disclosed to the public under State or Federal law may not be requested to be kept confidential. Justification supporting claims of confidentiality shall be provided at the time of submission on the information. Each page claimed "confidential" shall be marked "confidential business information" by the applicant and the confidential information on each page shall be clearly specified. Claims of confidentiality for the name and address of applicants for an approval order will be denied. Confidential information or any other information or report received by the director shall be available to EPA upon request and the person who submitted the information shall be notified simultaneously of its release to EPA.

**R307-102-3. Reserved.**

Reserved.

**R307-102-4. Variances Authorized.**

(1) Variance from these regulations may be granted by the Board as provided by law (See Section 19-2-113) unless prohibited by the Clean Air Act:

(a) to permit operation of an air pollution source for the time period involved in installing or constructing air pollution control equipment in accordance with a compliance schedule negotiated by the director and approved by the Board.

(b) to permit operation of an air pollution source where there is no practicable means known or available for adequate prevention, abatement or control of the air pollutants involved. Such a variance shall be only until the necessary means for prevention, abatement or control becomes known and available, subject to the use of substitute or alternate measures the Board may prescribe.

(c) to permit operation of an air pollution source where the control measures, because of their extent or cost, must be spread over a considerable period of time.

(2) Variance requests, as set forth in Section 19-2-113, may be submitted by the owner or operator who is in control of any plant, building, structure, establishment, process or equipment.

**R307-102-5. No Reduction in Pay.**

In accordance with paragraph 110(a)(6), Clean Air Act as amended August 1977, owners or operators may not temporarily reduce the pay of any employee by reason of the use of a supplemental or intermittent or other dispersion dependent control system for the purposes of meeting any air pollution requirement adopted pursuant to the Clean Air Act as amended August 1977.

**R307-102-6. Emissions Standards.**

Other provisions of R307 may require more stringent controls than listed herein, in which case those requirements must be met.

**KEY: air pollution, confidentiality of information, variances**  
**December 15, 2015**

**19-2-104**

**Notice of Continuation March 8, 2018**

**19-2-113**

**R307. Environmental Quality, Air Quality.****R307-107. General Requirements: Breakdowns.****R307-107-1. Applicability and Timing.**

(1) The owner or operator of a source shall report breakdowns to the director within 24 hours of the incident via telephone, electronic mail, fax, or other similar method.

(2) A detailed written description of the circumstance of the incident as described in R307-107-2, including a corrective program directed at preventing future such incidents, shall be submitted within 14 days of the onset of the incident.

(3) For those breakdowns involving only emissions that are monitored in accordance with R307-170, the reporting requirements of R307-170 shall satisfy the reporting deadlines of R307-107-1(1) and (2). In all other respects, the requirements in R307-107-1(2) and R307-107-2 shall be considered to apply in addition to the requirements of R307-170.

**R307-107-2. Reporting.**

(1) The breakdown incident report shall include the cause and nature of the event, estimated quantity of emissions (total and excess), time of emissions and any relevant evidence, including, but not limited to, evidence that:

(a) There was an equipment malfunction beyond the reasonable control of the owner or operator;

(b) The excess emissions could not have been avoided by better operation, maintenance or improved design of the malfunctioning component;

(c) To the maximum extent practicable, the source maintained and operated the air pollution control equipment and process equipment in a manner consistent with good practice for minimizing emissions, including minimizing any bypass emissions;

(d) Any necessary repairs were made as quickly as practicable, using off-shift labor and overtime as needed and as possible;

(e) All practicable steps were taken to minimize the potential impact of the excess emissions on ambient air quality; and

(f) The excess emissions are not part of a recurring pattern that may have been caused by inadequate operation or maintenance, or inadequate design of the malfunctioning component.

(2) The burden of proof is on the owner or operator of the source to provide sufficient information to demonstrate the elements listed in R307-107-2(1).

**R307-107-3. Enforcement Discretion.**

The director will evaluate, on a case-by-case basis, the information submitted in R307-107-1 and 2 to determine whether to pursue enforcement action.

**KEY: air pollution, unavoidable breakdown, excess emissions**

**July 31, 2012**

**19-2-104**

**Notice of Continuation March 8, 2018**

**R307. Environmental Quality, Air Quality.**

**R307-115. General Conformity.**

**R307-115-1. Determining Conformity.**

The provisions of 40 CFR Part 93, Subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans, effective as of the date referenced in R307-101-3, are hereby incorporated by reference into these rules.

**KEY: environmental protection, air pollution, general conformity**

**February 8, 2008**

**19-2-104**

**Notice of Continuation March 8, 2018**

**R307. Environmental Quality, Air Quality.****R307-123. General Requirements: Clean Fuels and Vehicle Technology Grant and Loan Program.****R307-123-1. Authorization and Purpose.**

(1) This rule is authorized by Section 19-1-405, which establishes criteria and definitions used to determine eligibility for use of the Clean Fuels and Vehicle Technology Fund created in Section 19-1-403.

(2) R307-123 establishes procedures to provide proof of purchase to the Board for an OEM vehicle, or the conversion or retrofit of a vehicle for which a grant or loan made with the monies available in the Fund is allowed under Subsection 19-1-403(2)(a).

(3) Eligible technologies are required to meet the criteria and follow the procedures established in R305-4.

**R307-123-2. Definitions.**

Definitions. The following additional definitions apply to R307-123.

"Certified by the director" means that:

(1) A motor vehicle on which conversion equipment has been installed meets the criteria in Subsection 19-1-405(1)(a) and demonstrates a reduction in emissions as defined in Subsection 19-1-405(2); or

(2) A motor vehicle on which a retrofit has been installed meets the following criteria:

(a) the motor vehicle's emissions of regulated pollutants, when operating with the retrofit equipment, is less than the emissions were before the installation of the retrofit equipment; and

(b) a reduction in emissions under Subsection R307-123-2(2)(a) is demonstrated by:

(i) certification of the retrofit by the federal EPA or by a state whose certification standards are recognized by the Board; or

(ii) any other test or standard recognized by the Board.

"Clean fuel" means clean fuel as defined in Subsection 19-1-402(1).

"Clean fuel vehicle" means clean fuel vehicle as defined in Subsection 19-1-402(2).

"Conversion equipment" means a package which may include fuel, ignition, emissions control, and engine components that are modified, removed, or added to a motor vehicle or special mobile equipment to make that vehicle or equipment eligible.

"Manufacturer's Statement of Origin" means a certificate showing the original transfer of a new motor vehicle from the manufacturer to the original purchaser.

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

"Retrofit" means retrofit as defined in Subsection 19-1-402(11).

"Retrofit equipment" means a diesel oxidation catalyst, a diesel particulate filter, or a closed crankcase filtration system, that has been approved for use in engine retrofit programs by the federal EPA or by a state whose testing protocols are recognized by the Board.

**R307-123-3. Demonstration of Eligibility for OEM Vehicles.**

To demonstrate that a vehicle is eligible, proof of purchase shall be made by submitting the following documentation to the director:

(1)(a) A copy of the Manufacturer's Statement of Origin or equivalent manufacturer's documentation showing that the vehicle is an OEM vehicle; or

(b) a signed statement by an Automotive Service Excellence (ASE) certified technician that includes the vehicle identification number (VIN) and states that the vehicle is an OEM vehicle;

(2) An original or copy of the purchase order, customer invoice, or receipt including the VIN; and

(3) A copy of the current Utah vehicle registration.

**R307-123-4. Demonstration of Eligibility for Vehicles Converted to Natural Gas or Propane.**

To demonstrate that a conversion of a motor vehicle fueled by natural gas or propane is eligible, proof of purchase shall be made by submitting the following documentation to the director:

(1) the VIN;

(2) the fuel type before conversion;

(3) the fuel type after conversion;

(4)(a) a copy of the vehicle inspection report from an approved county inspection and maintenance station showing that the converted motor vehicle meets all county emissions requirements for all installed fuel systems if the motor vehicle is registered within a county with an inspection and maintenance (I/M) program; or

(b) in all other areas of the state, a signed statement by an ASE certified technician that includes the VIN and states that the conversion is functional;

(5) each of the following:

(a) the conversion equipment manufacturer,

(b) the conversion equipment model number,

(c) the date of the conversion, and

(d) the name, address, and phone number of the person that converted the vehicle;

(6) the EPA Certificate of Conformity, or equivalent documentation that is consistent with requirements outlined in 40 CFR Part 85 and 40 CFR Part 86, as published in Federal Register Volume 76 Page 19830 on April 8, 2011, or an executive order from the California Air Resources Board;

(7) an original or copy of the purchase order, customer invoice, or receipt; and

(8) a copy of the current Utah vehicle registration, which shows that the vehicle is registered in the applicant's name.

**R307-123-5. Demonstration of Eligibility for Vehicles Converted to Electricity.**

To demonstrate that a conversion of a motor vehicle to be powered by electricity is eligible, proof of purchase shall be made by submitting the following documentation to the director:

(1) the VIN;

(2) the fuel type before conversion;

(3) the fuel type after conversion;

(4) each of the following:

(a) the conversion equipment manufacturer;

(b) the conversion equipment model number;

(c) the date of the conversion; and

(d) the name, address, and phone number of the person that converted the motor vehicle;

(5) an original or copy of the purchase order, customer invoice, or receipt;

(6) a copy of the current Utah vehicle registration; and

(7) a signed statement by an ASE-certified technician that includes the VIN, the technician's ASE certification number, and states that the conversion is functional and that the converted motor vehicle does not have any auxiliary source of combustion emissions.

**R307-123-6. Demonstration of Eligibility for Retrofitted Vehicles.**

To demonstrate that a retrofit of a motor vehicle is eligible, proof of purchase shall be made by submitting the following documentation to the director:

(1) the VIN;

(2) each of the following:

(a) the retrofit type;

(b) the retrofit equipment manufacturer;



- (c) the retrofit equipment model number;
- (d) the date of the retrofit; and
- (e) the name, address, and phone number of the person that retrofitted the vehicle;
- (3) proof that the retrofit is certified by the director;
- (4) proof that the vehicle condition prior to retrofit is compliant with the retrofit's certification criteria;
- (5) an original or copy of the purchase order, customer invoice, or receipt; and
- (6) a copy of the current Utah vehicle registration.

**R307-123-7. Applicability.**

Provisions found in sections R307-121-5(6) and R307-121-6(3)(c) shall apply to all conversions as of April 8, 2011.

**KEY: air pollution, alternative fuels, grants and loans, motor vehicles**

**December 5, 2013**

**19-2-104**

**Notice of Continuation March 8, 2018**

**19-1-401**

**59-7-605**

**59-10-1009**

**R307. Environmental Quality, Air Quality.****R307-150. Emission Inventories.****R307-150-1. Purpose and General Requirements.**

(1) The purpose of R307-150 is:

(a) to establish by rule the time frame, pollutants, and information that sources must include in inventory submittals; and

(b) to establish consistent reporting requirements for stationary sources in Utah to determine whether sulfur dioxide emissions remain below the sulfur dioxide milestones established in the State Implementation Plan for Regional Haze, section XX.E.1.a, incorporated by reference in R307-110-28.

(2) The requirements of R307-150 replace any annual inventory reporting requirements in approval orders or operating permits issued prior to December 4, 2003.

(3) Emission inventories shall be submitted on or before ninety days following the effective date of this rule and thereafter on or before April 15 of each year following the calendar year for which an inventory is required. The inventory shall be submitted in a format specified by the Division of Air Quality following consultation with each source.

(4) The executive secretary may require at any time a full or partial year inventory upon reasonable notice to affected sources when it is determined that the inventory is necessary to develop a state implementation plan, to assess whether there is a threat to public health or safety or the environment, or to determine whether the source is in compliance with R307.

(5) Recordkeeping Requirements.

(a) Each owner or operator of a stationary source subject to this rule shall maintain a copy of the emission inventory submitted to the Division of Air Quality and records indicating how the information submitted in the inventory was determined, including any calculations, data, measurements, and estimates used. The records under R307-150-4 shall be kept for ten years. Other records shall be kept for a period of at least five years from the due date of each inventory.

(b) The owner or operator of the stationary source shall make these records available for inspection by any representative of the Division of Air Quality during normal business hours.

**R307-150-2. Definitions.**

The following additional definitions apply to R307-150.

"Acute pollutant" means any noncarcinogenic air pollutant for which a threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices," 2003 edition.

"Carcinogenic pollutant" means any air pollutant that is classified as a known human carcinogen (A1) or suspected human carcinogen (A2) by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices," 2003 edition.

"Chronic Pollutant" means any noncarcinogenic air pollutant for which a threshold limit value - time weighted average (TLV-TWA) having no threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices," 2003 edition.

"Dioxins" and "Furans" mean total tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.

"Emissions unit" means emissions unit as defined in R307-415-3.

"Large Major Source" means a major source that emits or has the potential to emit 2500 tons or more per year of oxides of sulfur, oxides of nitrogen, or carbon monoxide, or that emits or

has the potential to emit 250 tons or more per year of PM<sub>10</sub>, PM<sub>2.5</sub>, volatile organic compounds, or ammonia.

"Lead" means elemental lead and the portion of its compounds measured as elemental lead.

"Major Source" means major source as defined in R307-415-3.

**R307-150-3. Applicability.**

(1) R307-150-4 applies to all stationary sources with actual emissions of 100 tons or more per year of sulfur dioxide in calendar year 2000 or any subsequent year unless exempted in (a) below. Sources subject to R307-150-4 may be subject to other sections of R307-150.

(a) A stationary source that meets the requirements of R307-150-3(1) that has permanently ceased operation is exempt from the requirements of R307-150-4 for all years during which the source did not operate at any time during the year.

(b) Except as provided in R307-150-3(1)(a), any source that meets the criteria of R307-150-3(1) and that emits less than 100 tons per year of sulfur dioxide in any subsequent year shall remain subject to the requirements of R307-150-4 until 2018 or until the first control period under the Western Backstop Sulfur Dioxide Trading Program as established in R307-250-12(1)(a), whichever is earlier.

(2) R307-150-5 applies to large major sources.

(3) R307-150-6 applies to:

(a) each major source that is not a large major source;

(b) each source with the potential to emit 5 tons or more per year of lead; and

(c) each source not included in R307-150-3(2), R307-150-3(3)(a), or R307-150-3(3)(b) that is located in Davis, Salt Lake, Utah, or Weber Counties and that has the potential to emit 25 tons or more per year of any combination of oxides of nitrogen, oxides of sulfur and PM<sub>10</sub>, or the potential to emit 10 tons or more per year of volatile organic compounds.

(4) R307-150-7 applies to Part 70 sources not included in R307-150-3(2) or R307-150-3(3).

(5) R307-150-9 applies to sources with Standard Industrial Classification codes in the major group 13 that have uncontrolled actual emissions greater than one ton per year for a single pollutant of PM<sub>10</sub>, PM<sub>2.5</sub>, oxides of nitrogen, oxides of sulfur, carbon monoxide or volatile organic compounds. These sources include, but are not limited to, industries involved in oil and natural gas exploration, production, and transmission operations; well production facilities; natural gas compressor stations; and natural gas processing plants and commercial oil and gas disposal wells, and ponds.

(a) Sources that require inventory submittals under R307-150-3(1) through R307-150-3(4) are excluded from the requirements of R307-150-9.

**R307-150-4. Sulfur Dioxide Milestone Inventory Requirements.**

(1) Annual Sulfur Dioxide Emission Report.

(a) Sources identified in R307-150-3(1) shall submit an annual inventory of sulfur dioxide emissions beginning with calendar year 2003 for all emissions units including fugitive emissions.

(b) The inventory shall include the rate and period of emissions, excess or breakdown emissions, startup and shut down emissions, the specific emissions unit that is the source of the air pollution, type and efficiency of the air pollution control equipment, percent of sulfur content in fuel and how the percent is calculated, and other information necessary to quantify operation and emissions and to evaluate pollution control efficiency. The emissions of a pollutant shall be calculated using the source's actual operating hours, production rates, and types of materials processed, stored, or combusted during the inventoried time period.

(2) Each source subject to R307-150-4 that is also subject to 40 CFR Part 75 reporting requirements shall submit a summary report of annual sulfur dioxide emissions that were reported to the Environmental Protection Agency under 40 CFR Part 75 in lieu of the reporting requirements in (1) above.

(3) Changes in Emission Measurement Techniques. Each source subject to R307-150-4 that uses a different emission monitoring or calculation method than was used to report their sulfur dioxide emissions in 2006 under R307-150 or 40 CFR Part 75 shall adjust their reported emissions to be comparable to the emission monitoring or calculation method that was used in 2006. The calculations that are used to make this adjustment shall be included with the annual emission report.

#### **R307-150-5. Sources Identified in R307-150-3(2), Large Major Source Inventory Requirements.**

(1) Each large major source shall submit an emission inventory annually beginning with calendar year 2002. The inventory shall include PM<sub>10</sub>, PM<sub>2.5</sub>, oxides of sulfur, oxides of nitrogen, carbon monoxide, volatile organic compounds, and ammonia for all emissions units including fugitive emissions.

(2) For every third year beginning with 2005, the inventory shall also include all other chargeable pollutants and hazardous air pollutants not exempted in R307-150-8.

(3) For each pollutant specified in (1) or (2) above, the inventory shall include the rate and period of emissions, excess or breakdown emissions, startup and shut down emissions, the specific emissions unit that is the source of the air pollution, composition of air pollutant, type and efficiency of the air pollution control equipment, and other information necessary to quantify operation and emissions and to evaluate pollution control efficiency. The emissions of a pollutant shall be calculated using the source's actual operating hours, production rates, and types of materials processed, stored, or combusted during the inventoried time period.

#### **R307-150-6. Sources Identified in R307-150-3(3).**

(1) Each source identified in R307-150-3(3) shall submit an inventory every third year beginning with calendar year 2002 for all emissions units including fugitive emissions.

(a) The inventory shall include PM<sub>10</sub>, PM<sub>2.5</sub>, oxides of sulfur, oxides of nitrogen, carbon monoxide, volatile organic compounds, ammonia, other chargeable pollutants, and hazardous air pollutants not exempted in R307-150-8.

(b) For each pollutant, the inventory shall include the rate and period of emissions, excess or breakdown emissions, startup and shut down emissions, the specific emissions unit which is the source of the air pollution, composition of air pollutant, type and efficiency of the air pollution control equipment, and other information necessary to quantify operation and emissions and to evaluate pollution control efficiency. The emissions of a pollutant shall be calculated using the source's actual operating hours, production rates, and types of materials processed, stored, or combusted during the inventoried time period.

(2) Sources identified in R307-150-3(3) shall submit an inventory for each year after 2002 in which the total amount of PM<sub>10</sub>, oxides of sulfur, oxides of nitrogen, carbon monoxide, or volatile organic compounds increases or decreases by 40 tons or more per year from the most recently submitted inventory. For each pollutant, the inventory shall meet the requirements of R307-150-6(1)(a) and (b).

#### **R307-150-7. Sources Identified in R307-150-3(4), Other Part 70 Sources.**

(1) Sources identified in R307-150-3(4) shall submit the following emissions inventory every third year beginning with calendar year 2002 for all emission units including fugitive emissions.

(2) Sources identified in R307-150-3(4) shall submit an

inventory for each year after 2002 in which the total amount of PM<sub>10</sub>, oxides of sulfur, oxides of nitrogen, carbon monoxide, or volatile organic compounds increases or decreases by 40 tons or more per year from the most recently submitted inventory.

(3) The emission inventory shall include individual pollutant totals of all chargeable pollutants not exempted in R307-150-8.

#### **R307-150-8. Exempted Hazardous Air Pollutants.**

(1) The following air pollutants are exempt from this rule if they are emitted in an amount less than that listed in Table 1.

TABLE 1

POLLUTANT	Pounds/year
Arsenic	0.21
Benzene	33.90
Beryllium	0.04
Ethylene oxide	38.23
Formaldehyde	5.83

(2) Hazardous air pollutants, except for dioxins or furans, are exempt from being reported if they are emitted in an amount less than the smaller of the following:

(a) 500 pounds per year; or

(b) for acute pollutants, the applicable TLV-C expressed in milligrams per cubic meter and multiplied by 15.81 to obtain the pounds-per-year threshold; or

(c) for chronic pollutants, the applicable TLV-TWA expressed in milligrams per cubic meter and multiplied by 21.22 to obtain the pounds-per-year threshold; or

(d) for carcinogenic pollutants, the applicable TLV-C or TLV-TWA expressed in milligrams per cubic meter and multiplied by 7.07 to obtain the pounds-per-year threshold.

#### **R307-150-9. Crude Oil and Natural Gas Source Category.**

(1) Sources identified in R307-150-3(5) shall submit an inventory every third year beginning with the 2017 calendar year for all emission units.

(a) The inventory shall include the total emissions for PM<sub>10</sub>, PM<sub>2.5</sub>, oxides of sulfur, oxides of nitrogen, carbon monoxide and volatile organic compounds for each emission unit at the source. The emissions of a pollutant shall be calculated using the emission unit's actual operating hours, product rates, and types of materials processed, stored, or combusted during the inventoried time period.

(b) The inventory shall include the type and efficiency of air pollution control equipment.

(c) The inventory shall be submitted in an electronic format determined by the Director specific to this source category.

#### **KEY: air pollution, reports, inventories**

**March 5, 2018**

**Notice of Continuation January 28, 2014**

**19-2-104(1)(c)**

**R307. Environmental Quality, Air Quality.****R307-170. Continuous Emission Monitoring Program.****R307-170-1. Purpose.**

The purpose of this rule is to establish consistent requirements for all sources required to install a continuous monitoring system (CMS) and for sources who opt into the continuous emissions monitoring program.

**R307-170-2. Authority.**

Authority to require continuous emission monitoring devices is found in 19-2-104(1)(c), and authorization for a penalty for rendering inaccurate any monitoring device or method is found in 19-2-115(4). Authority to enforce 40 CFR Part 60 is obtained by its incorporation by reference under R307-210.

**R307-170-3. Applicability.**

Except as noted in (1) and (2) below, any source required to install a continuous monitoring system to determine emissions to the atmosphere or to measure control equipment efficiency is subject to R307-170.

(1) Any source subject to 40 CFR Part 60 as incorporated by R307-210, Standards of Performance for New Sources, is not subject to R307-170-6, Minimum Monitoring Requirements for Specific Sources.

(2) Any source required by an approval order issued under R307-401 to operate a continuous monitoring system to satisfy the requirements of R307-150, Periodic Reports of Emissions and Availability of Information, is not subject to R307-170-9(7), Excess Emission Report.

**R307-170-4. Definitions.**

The following additional definitions apply to R307-170.

"Accuracy" means the difference between a continuous monitoring system response and the results of an applicable EPA reference method obtained over the same sampling time.

"Averaging Period" means that period of time over which a pollutant or opacity is averaged to demonstrate compliance to an emission limitation or standard.

"Block Averages" means the total time expressed in fractions of hours over which emission data is collected and averaged.

"Calibration Drift" (zero drift and span drift) means the value obtained by subtracting the known standard or reference value from the raw response of the continuous monitoring system.

"Channel" means the pollutant, diluent, or opacity to be monitored.

"CMS Information" means the identifying information for each continuous monitoring system a source is required to install.

"Computer Enhancement" means computerized correction of a monitor's zero drift and span drift to reflect actual emission concentrations and opacity.

"Continuous Emission Monitoring System" (CEMS) means all equipment required to determine gaseous emission rates and to record the resulting data.

"Continuous Monitoring System" (CMS) means all equipment required to determine gaseous emission rates or opacity and to record the data.

"Continuous Opacity Monitoring System" means all equipment required to determine opacity and data recording.

"Cylinder Gas Audit" means an alternative relative accuracy test of a continuous emission monitoring system to determine its precision using gases certified by or traceable to National Institute of Standards and Technology (NIST) in the ranges specified in 40 CFR 60, Appendix F.

"Description Report" means a short but accurate description of events that caused continuous monitoring system

irregularities or excess emissions that occurred during the reporting period submitted in the state electronic data report.

"Excess Emission Report" means a report within the state electronic data report that documents the date, time, and magnitude of each excess emission episode occurring during the reporting period.

"Excess Emissions" means the amount by which recorded emissions exceed those allowed by approval orders, operating permits, the state implementation plan, or any other provision of R307.

"Monitor" means the equipment in a continuous monitoring system that analyzes concentration or opacity and generates an electronic signal that is sent to a recording device.

"Monitor Availability" means any period in which both the source of emissions and the continuous monitoring system are operating and the minimum frequency of data capture occurred as required in 40 CFR 60.13.

"Monitor Unavailability" means any period in which the source of emissions is operating and the continuous monitoring system is:

- a. not operating or minimum data capture did not occur,
- b. not generating data, not recording data, or data is lost,

or

- c. out-of-control in the case of a continuous emissions monitor used for continuous compliance purposes.

"New Source Performance Standards" (NSPS) means 40 CFR 60, Standards of Performance for New Stationary Sources, incorporated by reference at R307-210.

"Operations Report" means the report of all information required under 40 CFR 60 for utilities and fossil fuel fired boilers.

"Performance Specification" means the operational tolerances for a continuous monitoring system as outlined in 40 CFR 60, Appendix B.

"Precision" means the difference between a continuous monitoring system response and the known concentration of a calibration gas or neutral density filter.

"Quality Assurance Calibrations" means calibrations, drift adjustments, and preventive maintenance activities on a continuous monitoring system.

"Raw Continuous Monitoring System Response" means a continuous monitoring system's uncorrected response used to determine calibration drift.

"Relative Accuracy Audit" means an alternative relative accuracy test procedure outlined in 40 CFR 60, Appendix F, which is used to correlate continuous emission monitoring system data to simultaneously collected reference method test data, as outlined in 40 CFR Part 60, Appendix A, using no fewer than three reference method test runs.

"Relative Accuracy Test Audit" means the primary method of determining the correlation of continuous emissions monitoring system data to simultaneously collected reference method test data, using no fewer than nine reference method test runs conducted as outlined in 40 CFR 60, Appendix A.

"State Electronic Data Report" (SEDR) means the sum total of a source's monitoring activities that occurred during a reporting period.

"Summary Report" means the summary of all monitor and excess emission information that occurred during a reporting period.

"Tamper" means knowingly:

- a. to make a false statement, representation, or certification in any application, report, record, plan, or other document filed or required to be maintained under R307-170, or
- b. to render inaccurate any continuous monitoring system or device or any method required to maintain the accuracy of the continuous monitoring system or device.

"Valid Monitoring Data" means data collected by an accurately functioning continuous monitoring system while any

installation monitored by the continuous monitoring system is in operation.

#### **R307-170-5. General Requirements.**

(1) Each source required to operate a continuous monitoring system is subject to the requirements of 40 CFR 60.13 (d) through (j), except as follows:

(a) When minimum emission data points are collected by the continuous monitoring system as required in 40 CFR 60.13 or applicable subparts, quality assurance calibration and maintenance activities shall not count against monitor availability.

(b) A monitor's unavailability due to calibration checks, zero and span checks, or adjustments required in 40 CFR 60.13 or R307-170 will not be considered a violation of R307-170.

(c) Monitor unavailability due to continuous monitoring system breakdowns will not be considered a monitor unavailability violation provided that the owner or operator demonstrates that the malfunction was unavoidable and was repaired expeditiously.

(d) To supplement continuous monitor data, a source with minimum continuous monitoring system data collection requirements may conduct applicable reference method tests outlined in 40 CFR 60, Appendix A, or as directed in the source's applicable Subpart of the New Source Performance Standards.

(2) Each source shall monitor and record all emissions data during all phases of source operations, including start-ups, shutdowns, and process malfunctions.

(3) Each source operating a continuous emissions monitoring system for compliance determination shall document each out-of-control period in the state electronic data report.

(4) Each continuous monitoring system subject to R307-170 shall be installed, operated, maintained, and calibrated in accordance with applicable performance specifications found in 40 CFR 60 Appendix B and Appendix F.

(5) Each continuous emissions monitoring system shall be configured so that calibration gas can be introduced at or as near to the probe inlet as possible. Each source shall conduct daily calibration zero drift and span drift checks and cylinder gas audits by flowing calibration gases at the probe inlet, or as near to the probe inlet as possible. Daily calibration drift checks and quarterly cylinder gas audit data shall be recorded by the continuous emissions monitoring system electronically to a strip chart recorder, data logger, or data recording devices.

(6) No person shall tamper with a continuous monitoring system.

(7) Any source that constructs two or more emission point sources that may interfere with visible emissions observations shall install a continuous opacity monitor to show compliance with visible emission limitations on each obstructed stack, duct or vent that has a visible emission limitation.

#### **R307-170-6. Minimum Monitoring Requirements for Specific Sources.**

(1) Fossil Fuel Fired Steam Generators.

(a) A continuous monitoring system for the measurement of opacity shall be installed, calibrated, maintained, and operated on any fossil fuel fired steam generator of greater than 250 million BTU per hour for each boiler except where:

(i) natural gas or oil or a mixture of natural gas and oil is the only fuel burned,

(ii) the source is able to comply with the applicable particulate matter and opacity regulations without using particulate matter collection equipment, and

(iii) the source has never been found through any administrative or judicial proceeding to be in violation of any visible emission standard or requirements.

(b) A continuous monitoring system for the measurement

of sulfur dioxide shall be installed, calibrated, maintained, and operated on any fossil fuel fired steam generator of greater than 250 million BTU per hour heat input which has installed sulfur dioxide pollution control equipment.

(c) A continuous monitoring system for the measurement of nitrogen oxides shall be installed, calibrated, maintained, and operated on fossil fuel fired steam generators of greater than 1000 million BTU per hour heat input when such facility is located in an Air Quality Control Region where the director has specifically determined that a control strategy for nitrogen dioxide is necessary to attain the national standards, unless the source owner or operator demonstrates during source compliance tests as required by the director that such a source emits nitrogen oxides at levels 30 percent or more below the emission standard.

(d) A continuous monitoring system for the measurement of percent oxygen or carbon dioxide shall be installed, calibrated, maintained, and operated on any fossil fuel fired steam generators where measurements of oxygen or carbon dioxide in the flue gas are required to convert either sulfur dioxide or nitrogen oxides continuous emission monitoring data, or both, to units of the emission standard.

(2) Nitric Acid Plants.

Each nitric acid plant of greater than 300 tons per day production capacity, the production capacity being expressed as 100 percent acid, and located in an Air Quality Control Region where the director has specifically determined that a control strategy for nitrogen dioxide is necessary to attain the national standard, shall install, calibrate, maintain, and operate a continuous monitoring system for the measurement of nitrogen oxides for each nitric acid producing installation.

(3) Sulfuric Acid Plants - Burning and Production.

Each sulfuric acid plant of greater than 300 tons per day production capacity, the production being expressed as 100 percent acid, shall install, calibrate, maintain and operate a continuous monitoring system for the measurement of sulfur dioxide for each sulfuric acid producing installation within such plant.

(4) Petroleum Refineries - Fluid Bed Catalytic Cracking Unit Catalyst Regenerator.

Each catalyst regenerator for fluid bed catalytic cracking units of greater than 20,000 barrels per day fresh feed capacity shall install, calibrate, maintain and operate a continuous monitoring system for the measurement of opacity.

#### **R307-170-7. Performance Specification Audits.**

(1) Quarterly Audits.

Unless otherwise stipulated for sources subject to the Acid Rain Provisions of the Clean Air Act in 40 CFR Part 75 CEM, Appendix A, Section 6.2, effective as of the date referenced in R307-101-3, each continuous emissions monitoring system shall be audited at least once each calendar quarter. Successive quarterly audits shall be conducted at least two months apart. A relative accuracy test audit shall be conducted at least once every four calendar quarters as described in the applicable performance specification of 40 CFR 60, Appendix B.

(a) Relative accuracy shall be determined in units of the applicable emission limit.

(b) An alternative relative accuracy test (cylinder gas audit or relative accuracy audit) may be conducted in three of the four calendar quarters in place of conducting a relative accuracy test audit, but in no more than three quarters in succession.

(c) Each range of a dual range monitor shall be audited using an alternative relative accuracy audit procedure.

(d) Minor deviations from the reference method test must be submitted to the director for approval.

(e) Performance specification tests and audits shall be conducted so that the entire continuous monitoring system is concurrently tested.

## (2) Notification.

The source shall notify the director of its intention to conduct a relative accuracy test audit by submitting a pretest protocol or by scheduling a pretest conference if directed to do so by the director. Each source shall notify the director no less than 45 days prior to testing.

## (3) Audit Procedure.

A source may stop a relative accuracy test audit before the commencement of the fourth run to perform repairs or adjustments on the continuous emissions monitoring system. If the audit is stopped to make repairs or adjustments, the audit must be started again from the beginning. If the fourth test run is started, testing shall be conducted until the completion of the ninth acceptable test run or the source may declare the monitor out-of-control and stop the test. If the system does not meet its applicable relative accuracy performance specification outlined in 40 CFR 60, Appendix B, its data may not be used in determining emissions rates until the system is successfully recertified.

## (4) Performance Specification Tests.

(a) Except as listed in (b) below, all reference method testing equipment shall be totally independent of the continuous emissions monitoring system equipment undergoing a performance specification test.

(b) Reference method tests conducted on fuel gas lines, vapor recovery units, or other equipment as approved by the director may use a common probe, when the reference method sample line ties into the continuous emission monitor's probe or sample line as close to the probe inlet as possible.

## (5) Submittal of Audit Results.

The source shall submit all relative accuracy performance specification test reports to the director no later than 60 days after completion of the test.

(a) Test reports shall include all raw reference method calibration data, raw reference method emission data with date and time stamps, and raw source continuous monitoring data with date and time stamps. All data shall be reported in concentration and units of the applicable emission limit.

(b) Relative accuracy performance specification test or audit reports shall include the company name, plant manager's name, mailing address, phone number, environmental contact's name, the monitor manufacturer, the model and serial number, the monitor range, and its location.

## (6) Daily Drift Test.

Each source operating a continuous monitoring system shall conduct a daily zero and span calibration drift test as required in 40 CFR 60.13(d). The zero and span drifts shall be determined by using raw continuous monitoring system responses to a known value of the reference standard. Computer enhancements may be used to correct continuous monitoring system emission data that has been altered by monitor drift, but may not be used to determine daily zero and span drift.

(a) A monitor used for compliance that fails the daily calibration drift test as outlined in 40 CFR 60 Appendix F, Subpart 4, shall be declared out-of-control, and the out-of-control period shall be documented in the state electronic data report. The source shall make corrective adjustments to the system promptly. Continuous emission monitoring system data collected during the out-of-control period may not be used for monitor availability.

(b) Each source operating a continuous monitoring system that exceeds the calibration drift limit as outlined in 40 CFR 60 and the applicable performance specification shall make corrective adjustments promptly.

**R307-170-8. Recordkeeping.**

Each source subject to this rule shall maintain a file of all:

(1) parameters for each continuous monitoring system and monitoring device,

(2) performance test measurements,

(3) continuous monitoring system performance evaluations,

(4) continuous monitoring system or monitoring device calibration checks,

(5) adjustments and maintenance conducted on these systems or devices, and

(6) all other information required by this rule. Information shall be recorded in a permanent form suitable for inspection. The file shall be retained for at least two years following the date of such measurements, maintenance, reports, and records, and shall be available to the director at any time.

**R307-170-9. State Electronic Data Report.**

## (1) General Reporting Requirements.

(a) Each source required to install a continuous monitoring system shall submit the state electronic data report including all information specified in (2) through (10) below. Each source shall submit a complete, unmodified report in an electronic ASCII format specified by the director.

## (b) Partial Reports.

(i) If the total duration of excess emissions during the reporting period is less than one percent of the total operating time and the continuous monitoring system downtime is less than five percent of the total operating time, only the summary portion of the state electronic data report need be submitted.

(ii) If the total excess emission during the reporting period is equal to or greater than one percent of the total operating time, or the total monitored downtime is equal to or greater than five percent of the total operating time, the total state electronic data report shall be submitted.

(iii) Each source required to install a continuous monitoring system for the sole purpose of generating emissions inventory data is not required to submit the excess emission report required by (7) below or the excess emission summary required by (6)(b) below, unless otherwise directed by the director.

(c) Frequency of Reporting. Each source subject to this rule shall submit a report to the director with the following frequency:

(i) Each source shall submit a report quarterly, if required by the director or by 40 CFR Part 60, or if the continuous monitoring system data is used for compliance determination. Each source submitting quarterly reports shall submit them by January 30, April 30, July 30, and October 30 for the quarter ending 30 days earlier.

(ii) Any source subject to this rule and not required to submit a quarterly report shall submit its report semiannually by January 30 and July 30 for the six month period ending 30 days earlier.

(iii) The director may require any source to submit all emission data generated on a quarterly basis.

## (2) Source Information.

The report shall contain source information including the company name, name of manager or responsible official, mailing address, AIRS number, phone number, environmental contact name, each source required to install a monitoring system, quarter or quarters covered by the report, year, and the operating time for each source.

## (3) Continuous Monitoring System Information.

The report shall identify each channel, manufacturer, model number, serial number, monitor span, installation dates, and whether the monitor is located in the stack or duct.

## (4) Monitor Availability Reporting.

(a) The report shall include all periods that the pollutant concentration exceeded the span of the continuous monitoring system by source, channel, start date and time, and end date and time.

(b) Each continuous monitoring system outage or

malfunction which occurs during source operation shall be reported by source, channel, start date and time, and end date and time.

(c) When it becomes necessary to supplement continuous monitoring data to meet the minimum data requirements, the source shall use applicable reference methods and procedures as outlined in 40 CFR 60, or as stipulated in the source's applicable Subpart of the New Source Performance Standards. Supplemental data shall be reported by source, channel, start date and time, and end date and time, and may be used to offset monitor unavailability.

(d) Monitor modifications shall be reported by source, channel, date of modification, whether a support document was submitted, and the reason for the modification.

(5) Continuous Monitoring System Performance Specification Audits.

(a) Each source shall submit the results of each relative accuracy test audit, relative accuracy audit and cylinder gas audit. Each source that reports linearity tests may omit reporting cylinder gas audits.

(b) Each relative accuracy test audit shall be reported by source, channel, date of the most current relative accuracy test audit, date of the preceding relative accuracy test audit, number of months between relative accuracy test audits, units of applicable standard, average continuous emissions monitor response during testing, average reference method value, relative accuracy, and whether the continuous emissions monitor passed or failed the test or audit.

(c) A relative accuracy audit shall be reported by source, channel, date of audit, continuous emissions monitor response, relative accuracy audit response, percent precision, pass or fail results, and whether the monitor range is high or low.

(d) Cylinder gas audit and linearity tests shall be reported by source, channel, date, audit point number, cylinder identification, cylinder expiration date, type of certification, units of measurement, continuous emissions monitor response, cylinder concentration, percent precision, pass or fail results, and whether the monitor range is high or low.

(6) Summary reports.

(a) Each source shall summarize and report each continuous monitoring system outage that occurred during the reporting period in the continuous monitoring system performance summary report. The summary must include the source, channels, monitor downtime as a percent of the total source operating hours, total monitor downtime, hours of monitor malfunction, hours of non-monitor malfunction, hours of quality assurance calibrations, and hours of other known and unknown causes of monitor downtime. A source operating a backup continuous monitoring system must account for monitor unavailability only when accurate emission data are not being collected by either continuous monitoring system.

(b) The summary report shall contain a summary of excess emissions that occurred during the reporting period unless the continuous monitoring system was installed to document compliance with an emission cap or to generate data for annual emissions inventories.

(i) Each source with multiple emission limitations per channel being monitored shall summarize excess emissions for each emission limitation.

(ii) The emission summary must include the source, channels, total hours of excess emissions as a percent of the total source operating hours, hours of start-up and shutdown, hours of control equipments problems, hours of process problems, hours of other known and unknown causes, emission limitation, units of measurement, and emission limitation averaging period.

(c) When no continuous monitoring unavailability or excess emissions have occurred, this shall be documented by placing a zero under each appropriate heading.

(7) Excess Emissions Report.

(a) The magnitude and duration of all excess emissions shall be reported on an hourly basis in the excess emissions report.

(i) The duration of excess emissions based on block averages shall be reported in terms of hours over which the emissions were averaged. Each source that averages opacity shall average it over a six-minute block and shall report the duration of excess opacity in tenths of an hour. Sources using a rolling average shall report the duration of excess emissions in terms of the number of hours being rolled into the averaging period.

(ii) Sources with multiple emission limitations per channel being monitored shall report the magnitude of excess emissions for each emission limitation.

(b) Each period of excess emissions that occurs shall be reported. Each episode of excess emission shall be accompanied with a reason code and action code that links the excess emission to a specific description, which describes the events of the episode.

(8) Operations Report.

Each source operating fossil fuel fired steam generators subject to 40 CFR 60, Standards of Performance for New Stationary Sources, shall submit an operations report.

(9) Signed Statement.

(a) Each source shall submit a signed statement acknowledging under penalties of law that all information contained in the report is truthful and accurate, and is a complete record of all monitoring related events that occurred during the reporting period. In addition, each source with an operating permit issued under R307-415 shall submit the signed statement required in R307-415-5d.

(10) Descriptions.

Each source shall submit a narrative description explaining each event of monitor unavailability or excess emissions. Each description also shall be accompanied with reason codes and action codes that will link descriptions to events reported in the monitoring information and excess emission report.

**KEY: air pollution, monitoring, continuous monitoring**  
**February 8, 2008** **19-2-101**  
**Notice of Continuation March 8, 2018** **19-2-104(1)(c)**  
**19-2-115(3)(b)**  
**40 CFR 60**

**R307. Environmental Quality, Air Quality.****R307-208. Outdoor Wood Boilers.****R307-208-1. Definitions.**

The following additional definitions apply to R307-208:

"Clean wood" means wood that has not been painted, stained, or treated with any coatings, glues or preservatives, including, but not limited to, chromated copper arsenate, creosote, alkaline copper quaternary, copper azole or pentachlorophenol.

"Commercial new outdoor wood boiler" means a new outdoor wood boiler with a thermal output rating greater than 350,000 BTU per hour.

"Outdoor wood boiler" means a fuel burning device also known as a wood-fired hydronic heater:

- (1) Designed to burn wood or other approved solid fuels;
- (2) Specified by the manufacturer for outdoor installation or installation in structures not normally occupied by humans; and
- (3) Designated to heat building space or water via the distribution, typically through pipes, of a fluid heated in the device, typically water or a mixture of water and antifreeze.

"New outdoor wood boiler" means an outdoor wood boiler that commences operation on or after March 1, 2013.

"Sole source of heat" means the solid fuel burning device is the only available source of heat for the entire residence or business, except for small portable heaters.

"Residential new outdoor wood boiler" means a new outdoor wood boiler that has a thermal output rating of 250,000 BTU per hour or less.

"Unseasoned wood" means wood that has not been allowed to dry for at least six months.

"Wood pellet outdoor boiler" means an outdoor wood boiler with an automatic pellet feed mechanism.

**R307-208-2. Prohibition.**

(1) Prohibited fuels. No person shall burn any of the following items in an outdoor wood boiler:

- (a) Wood that does not meet the definition of clean wood;
- (b) Unseasoned wood;
- (c) Garbage;
- (d) Tires;
- (e) Yard waste, including lawn clippings;
- (f) Materials containing plastic;
- (g) Materials containing rubber;
- (h) Waste petroleum products;
- (i) Paints or paint thinners;
- (j) Household or laboratory chemicals;
- (k) Coal;
- (l) Glossy or colored paper;
- (m) Construction and demolition debris;
- (n) Plywood;
- (o) Particleboard;
- (p) Fiberboard;
- (q) Oriented strand board;
- (r) Manure;
- (s) Animal carcasses;
- (t) Asphalt products;

(2) No person shall operate an outdoor wood boiler within 1000 feet of a private or public school, hospital or day care facility.

(3) Setback. A new residential outdoor wood boiler shall not be located less than 100 feet from the nearest property boundary line. A new commercial outdoor wood boiler shall not be located less than 200 feet from the nearest property boundary nor 300 feet from a property boundary of a residentially zoned property.

(4) Stack height. A new outdoor wood boiler shall have a permanent stack extending five feet higher than the peak of any roof structure within 150 feet of the outdoor wood boiler.

(5) In areas other than those described in R307-208-5(1), no person shall sell, offer for sale, supply, install, purchase, or transfer an outdoor wood boiler after May 1, 2013, unless it is EPA Phase 2 qualified wood boiler or EPA Phase 2 qualified wood pellet outdoor boiler.

**R307-208-3. Visible Emission Standard.**

(1) Visible emissions for all outdoor wood boilers shall be limited to a shade or density no darker than 20% opacity as measured by EPA Method 9, except for the following:

- (a) An initial fifteen minute start-up period; and
- (b) A period of fifteen minutes in any three-hour period in which emissions may exceed the 20% opacity limitation for refueling.

**R307-208-4. New Boiler Labeling.**

(1) A permanent label shall be affixed to all new outdoor wood boilers by the manufacturer.

(a) The label material shall be durable to last the lifetime of the new unit.

- (b) The label shall be affixed so that it cannot be removed.
- (c) The label shall be affixed so that it is readily visible.

(d) The following information shall be displayed on the label:

- (i) Date of manufacture;
- (ii) Model name or number;
- (iii) Serial number;
- (iv) Thermal output rating in BTU per hour; and
- (v) Particulate emission rate in pounds per million BTU heat output.

**R307-208-5. Particulate Matter Nonattainment and Maintenance Plan Areas.**

(1) R307-208-5 applies in all regions of Salt Lake and Davis counties; all portions of the Cache Valley; all regions in Weber and Utah counties west of the Wasatch mountain range; in Box Elder County, from the Wasatch mountain range west to the Promontory mountain range and south of Portage; and in Tooele County, from the northernmost part of the Oquirrh mountain range to the northern most part of the Stansbury mountain range and north of Route 199.

(2) No person shall sell, install or resell an outdoor wood boiler commencing May 1, 2013, with the exception of persons who register an outdoor wood boiler under R307-208-5(3).

(3) Owners of an existing outdoor wood boiler wishing to replace it after May 1, 2013, shall:

(a) Register the existing outdoor wood boiler with the director by May 1, 2013;

(b) Replace the existing outdoor wood boiler with an EPA Phase 2 qualified wood pellet outdoor wood boiler; and

(c) Comply with the provisions of R307-208-2 and 3.

(4) Persons unable to meet setback requirements in R307-208-2(3) because of existing land use limitations must request a waiver from the director before installing an outdoor wood boiler. Such waiver must include written approval from surrounding neighbors within the setback areas described in R307-208-2(3).

**R307-208-6. Air Quality Action and Alert Days.**

(1) By August 1, 2013, sole sources of residential or commercial heating using an outdoor wood boiler must be registered with the director in order to be exempt from R307-208-6(2).

(2) No person shall operate an outdoor wood boiler on an air quality action or alert day as described in R307-302, except those that are registered with the director as sole source of heat.

**KEY: air pollution, outdoor wood boilers, prohibition**

**April 10, 2013**

**19-2-101**



Notice of Continuation March 8, 2018

19-2-104

**R307. Environmental Quality, Air Quality.****R307-220. Emission Standards: Plan for Designated Facilities.****R307-220-1. Incorporation by Reference.**

Pursuant to 42 U.S.C. 7411(d), the Federal Clean Air Act Section 111(d), the following sections hereby incorporate by reference the Utah plan for designated facilities. Copies of the plan are available at the Division of Air Quality and the Division of Administrative Rules.

**R307-220-2. Section I, Municipal Solid Waste Landfills.**

Section I, Municipal Solid Waste Landfills, as most recently adopted by the Air Quality Board on September 3, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-220-3. Section II, Hospital, Medical, Infectious Waste Incinerators.**

Section II, Hospital, Medical, Infectious Waste Incinerators, as most recently adopted by the Air Quality Board on March 7, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-220-4. Section III, Small Municipal Waste Combustion Units.**

Section III, Small Municipal Waste Combustion Units, as most recently adopted by the Air Quality Board on October 2, 2002, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-220-5. Section IV, Coal-Fired Electric Generating Units.**

Section IV, Coal-Fired Electric Generating Units, as most recently adopted by the Air Quality Board on March 14, 2007, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**KEY: air pollution, landfills, incinerators, electric generating units**

**March 7, 2012**

**19-2-104(3)(q)**

**Notice of Continuation March 8, 2018**

**R307. Environmental Quality, Air Quality.****R307-221. Emission Standards: Emission Controls for Existing Municipal Solid Waste Landfills.****R307-221-1. Purpose and Applicability.**

(1) To meet the requirements of 42 U.S.C. 7411(d) and 40 CFR 60.30c through 60.36c, and to meet the requirements of the plan for Municipal Solid Waste Landfills, incorporated by reference at R307-220-2, R307-221 regulates emissions from existing municipal solid waste landfills.

(2) R307-221 applies to each existing municipal solid waste landfill for which construction, reconstruction or modification was commenced before May 30, 1991. Municipal solid waste landfills which closed prior to November 8, 1987, are not subject to R307-221. Physical or operational changes made solely to comply with the plan for Municipal Solid Waste Landfills are not considered a modification or reconstruction and do not subject the landfill to the requirements of 40 CFR 60 Subpart WWW.

(3) Municipal solid waste landfills with a design capacity greater than or equal to 2.5 million megagrams (2,755,750 tons) and 2.5 million cubic meters (3,270,000 cubic yards) are subject to the emission inventory requirements of R307-150.

**R307-221-2. Definitions and References.**

Definitions found in 40 CFR Part 60.751, effective as of the date referenced in R307-101-3, are adopted and incorporated by reference, with the exclusion of the definitions of closed landfill, design capacity, and NMOC. The following additional definitions apply to R307-221:

"Closed Landfill" means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed. A landfill is considered closed after meeting the criteria specified in Subsection R315-301-2(13).

"Design Capacity" means the maximum amount of solid waste a landfill can accept, as specified in an operating permit issued under R307-415 or a solid waste permit issued under Rule R315-310.

"Modification" means an increase in the landfill design capacity through a physical or operational change, as reported in the initial Design Capacity Report.

"NMOC" means nonmethane organic compounds.

**R307-221-3. Emission Restrictions.**

(1) The requirements found in 40 CFR 60.752 through 60.759, including Appendix A, effective as of date referenced in R307-101-3, are adopted and incorporated by reference, with the following exceptions and the substitutions listed in R307-221-3(2) through (5):

(a) Substitute "director" for all federal regulation references to "Administrator."

(b) Substitute "State of Utah" for all federal regulation references to "State, local or Tribal agency."

(c) Substitute "R307-221" for all references to "This subpart" or "this part."

(d) Substitute "40 CFR" for all references to "This title."

(e) Substitute "Title 19, Chapter 6" for all references to "RCRA" or the "Resource Conservation and Recovery Act," 42 U.S.C. 6921, et seq.

(f) Substitute "Rules R315-301 through 320" for all references to 40 CFR 258.

(2) Instead of 40 CFR 60.757(a)(1), substitute the following: The initial design capacity report must be submitted within 90 days after the date on which EPA approves the state plan incorporated by reference under R307-220-2.

(3) Instead of 40 CFR 60.757(a)(3), substitute the following: An amended design capacity report shall be submitted to the director providing notification of any increase in the design capacity of the landfill, whether the increase results from an increase in the permitted area or depth of the landfill, a

change in the operating procedures, or any other means which results in an increase in the maximum design capacity of the landfill. The amended design capacity report shall be submitted within 90 days of the earliest of the following events:

(a) the issuance of an amended operating permit;

(b) submittal of application for a solid waste permit under R315-310; or

(c) the change in operating procedures which will result in an increase in design capacity.

(4) Instead of 40 CFR 60.757(b)(1)(i), substitute the following: The initial emission rate report for nonmethane organic compounds must be submitted within 90 days after EPA approval of the state plan incorporated by reference under R307-220-2.

(5) Instead of 40 CFR 60.752(b)(2)(ii)(B)(2), substitute the following: The liner shall be installed with liners on the bottom and all sides in all areas in which gas is to be collected, or as approved by the director. The liner shall meet the requirements of Subsection R315-303-3(3).

**R307-221-4. Control Device Specifications.**

Control devices meeting the following requirements, shall be used to control collected municipal solid waste landfill emissions:

(1) an open flare designed and operated in accordance with the parameters established in Section 40 CFR Part 60.18, effective as of date referenced in R307-101-3, which is adopted and incorporated by reference into this rule; or

(2) a control system designed and operated to reduce nonmethane organic compounds by 98 weight percent; or

(3) an enclosed combustor designed and operated to reduce the outlet nonmethane organic compounds concentration to 20 parts per million as hexane by volume, dry basis at 3 percent oxygen, or less.

**R307-221-5. Compliance Schedule.**

(1) Except as provided in (2) below, planning, awarding of contracts, and installation of municipal solid waste landfill air emission collection and control equipment capable of meeting the emission standards established under R307-221-3(1) shall be accomplished within 30 months after the date on which EPA approves the state plan incorporated by reference under R307-220-2.

(2) For each existing municipal solid waste landfill meeting the conditions in R307-221-1(2) whose emission rate for nonmethane organic compounds is less than 50 megagrams (55 tons) per year on the date EPA approves the state plan incorporated by reference under R307-220-2, installation of collection and control systems capable of meeting emissions standards in R307-221-1(2) shall be accomplished within 30 months of the date when the landfill has an emission rate of nonmethane organic compounds of 50 megagrams (55 tons) per year or more.

(3) The owner or operator of each landfill with a design capacity greater than or equal to 2.5 million megagrams (2,755,750 tons) and 2.5 million cubic meters (3,270,000 cubic yards) shall submit by April 1, 1997, an inventory of nonmethane organic compounds. The calculations for this inventory shall use emission factors which obtain the most accurate representation of emissions from the landfill.

(4) The owner or operator of a landfill requiring controls shall notify the director of the awarding of contracts for the construction of the collection and control system or the order to purchase components for the system. This notification shall be submitted within 18 months after reporting a nonmethane organic compound emission equal to or greater than 50 megagrams (55 tons) per year.

(5) The owner or operator shall notify the director of the initiation of construction or installation of the collection and

control system. This notification shall be submitted to the director within 22 months after reporting a nonmethane organic compound emission rate equal to or greater than 50 megagrams (55 tons) per year. Landfills with commingled asbestos and municipal solid waste may include the submittals required under R307-214-1 with this notice.

**KEY: air pollution, municipal landfills**  
**February 8, 2008**  
**Notice of Continuation March 8, 2018**

**19-2-104**

**R307. Environmental Quality, Air Quality.****R307-222. Emission Standards: Existing Incinerators for Hospital, Medical, Infectious Waste.****R307-222-1. Purpose and Applicability.**

(1) R307-222 regulates emissions from existing incinerators for hospital, medical, or infectious waste or any combination of them. The purpose of R307-222 is to reduce the emissions of particulate matter, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans from incinerators burning hospital, medical or infectious waste. Reductions are required by 42 U.S.C. 7411(d) and 7429 and 40 CFR Part 60, Subpart Ce, published at 62 FR 48348, September 15, 1997, 40 CFR Part 60, Subpart Ce as amended on October 6, 2009, and by the Plan for Incinerators for Hospital, Medical, and Infectious Waste which is incorporated by reference at R307-220-3.

(2) Except as set forth in R307-222-1(2)(a) through R307-222-1(2)(g), R307-222 applies to each incinerator for hospital, medical, or infectious waste or any combination of them for which construction commenced on or before June 20, 1996; for which modification was commenced on or before March 16, 1998; for which construction was commenced after June 20, 1996 but no later than December 1, 2008; or for which modification is commenced after March 16, 1998 but no later than April 6, 2010.

(a) A combustor is not subject to R307-222 during periods when only pathological waste, low-level radioactive waste, chemotherapeutic waste or any combination of them as defined in 40 CFR 60.51c is burned, provided the owner or operator of the combustor:

(i) Notifies the director of an exemption claim; and

(ii) Keeps records on a calendar quarter basis of the periods of time when only pathological waste, low-level radioactive waste, chemotherapeutic waste or any combination of them is burned.

(b) Any co-fired combustor as defined in 40 CFR 60.51c is not subject to this subpart if the owner or operator of the co-fired combustor:

(i) Notifies the director of an exemption claim;

(ii) Provides an estimate of the relative weight of wastes to be combusted, including hospital, medical or infectious waste or any combination of them, and other fuels and wastes; and

(iii) Keeps records on a calendar quarter basis of the weight of hospital, medical, or infectious waste or any combination of them which was combusted, and the weight of all other fuels and wastes combusted at the co-fired combustor.

(c) Any combustor required to have a permit under R315-306 is not subject to R307-222.

(d) Any combustor which meets the applicability requirements under Subpart Cb, Ea, or Eb of 40 CFR Part 60 is not subject to R307-222.

(e) Any pyrolysis unit as defined in 40 CFR 60.51c is not subject to R307-222.

(f) Any cement kiln firing hospital, medical, or infectious waste or any combination of them is not subject to R307-223.

(g) Physical or operational changes made to an existing hospital, medical or infectious waste incinerator unit solely for the purpose of complying with emission guidelines under R307-222 are not considered a modification and do not result in an existing hospital, medical or infectious or any combination waste incinerator unit becoming subject to the provisions of R307-210.

(3) Beginning September 15, 2000, any facility subject to R307-222 is also required to obtain an operating permit under R307-415.

**R307-222-2. Definitions and References.**

(1) The following definitions apply only to R307-222.

Definitions found in 40 CFR 60.31e, effective as of the date referenced in R307-101-3, and 40 CFR 60.51c, effective as of the date referenced in R307-101-3, are adopted and incorporated by reference, with the following substitutions.

(a) Substitute "director" for all federal regulation references to "Administrator."

(b) Substitute "State of Utah" for all federal regulation references to "State agency" or "State regulatory agency."

(c) Substitute "Rule R307-222" for all references to "this subpart."

(d) Substitute "40 CFR Part 60" for all references to "this part."

(e) Substitute "40 CFR" for all references to "This title."

**R307-222-3. All Incinerators.**

Each incinerator subject to R307-222 must comply with the requirements of 40 CFR 60.52c(b) for emission limits, 40 CFR 60.53c for operator training and qualification, 40 CFR 60.54c for siting requirements, 40 CFR 60.55c for a waste management plan, 40 CFR 56c for compliance and performance testing, 40 CFR 60.57c for monitoring requirements, and 40 CFR 60.58c(b) excluding (b)(2)(ii) and (b)(7) for recordkeeping, and 40 CFR 60.58c(c) through (f) for reporting. These provisions, effective as of the date referenced in R307-101-3, are adopted and incorporated by reference.

**R307-222-4. Large, Medium and Small Incinerators.**

Except as provided in Section R307-222-5, each incinerator must comply with the emissions limitations of Table 1A and Table 1B in 40 CFR Part 60, Subpart Ce; 40 CFR 60.57c; and 40 CFR 60.56c, excluding 56c(b)(12) and 56c(c)(3), effective as of the date referenced in R307-101-3, which are adopted and incorporated by reference.

**R307-222-5. Small Rural Incinerators.**

(1) A small rural incinerator is a small incinerator as defined in Section R307-222-2 that:

(a) is located more than 50 miles from the boundary of the nearest Standard Metropolitan Statistical Area listed in OMB bulletin No. 93-17 entitled "Revised Statistical definitions for Metropolitan Areas," June 30, 1993; and

(b) burns less than 2000 pounds per week of hospital, medical or infectious waste or any combination of them. The 2000 pounds per week limitation does not apply during performance tests.

(2) Each small rural incinerator must comply with the emission limits of Table 2A and Table 2B in 40 CFR Part 60, Subpart Ce, effective as of the date referenced in R307-101-3, which are adopted and incorporated by reference.

(3) Each small rural incinerator must comply with the inspection requirements of 40 CFR 60.36e(a)(1) and (a)(2), effective as of the date referenced in R307-101-3, which are adopted and incorporated by reference. An inspection meeting these requirements must be conducted within one year after federal approval of the Plan incorporated by reference in R307-220-3, and annually no more than 12 months following the previous annual inspection.

(4) Each small rural incinerator must comply with the compliance and performance testing requirements of 40 CFR 60.37e(b)(1) through (b)(5), effective as of the date referenced in R307-101-3, which are adopted and incorporated by reference.

(5) Each small rural incinerator must comply with the monitoring requirements of 40 CFR 60.37e(d)(1) through (d)(3), effective as of the date referenced in R307-101-3, which are adopted and incorporated by reference.

(6) Each small rural incinerator must comply with the recordkeeping and reporting requirements of 40 CFR 60.38e(b)(1) and (b)(2), effective as of the date referenced in

R307-101-3, which are adopted and incorporated by reference.

**KEY: air pollution, hospitals, medical incinerator, infectious waste**

**March 7, 2012**

**19-2-104**

**Notice of Continuation March 8, 2018**

**R307. Environmental Quality, Air Quality.****R307-223. Emission Standards: Existing Small Municipal Waste Combustion Units.****R307-223-1. Purpose and Applicability.**

(1) R307-223 regulates emissions from existing small municipal waste combustion units. The purpose of R307-223 is to reduce the emissions of particulate matter, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and furans from small municipal waste combustion units. Reductions are required by 42 U.S.C. 7411(d) and 7429 and 40 CFR Part 60, subpart BBBB, and by the Plan for Existing Small Municipal Waste Combustion Units that is incorporated by reference at R307-220-4.

(2) R307-223 applies to each existing small municipal waste combustion unit that has the capacity to combust at least 35 tons per day but no more than 250 tons per day of municipal solid waste or refuse-derived fuel and commenced construction on or before August 30, 1999. A list of facilities not subject to R307-223 is found in 40 CFR 60.1555(a) through (k), effective as of the date referenced in R307-101-3, which is hereby adopted and incorporated by reference.

(3) If an owner or operator of a municipal waste combustion unit makes physical or operational changes to an existing municipal waste combustion unit primarily to comply with the Plan for Existing Small Municipal Waste Combustion Units that is incorporated by reference at R307-220-4, then R307-210 does not apply to that unit. Such changes do not constitute modifications or reconstructions under R307-210.

(4) The owner or operator of any source subject to R307-223 also is required to submit an application for an operating permit under R307-415.

**R307-223-2. Definitions and Equations.**

(1) The following definitions apply only to R307-223. Definitions found in 40 CFR 60.1940, effective as of the date referenced in R307-101-3, are adopted and incorporated by reference, with the following substitutions.

(a) Substitute "director" for all federal regulation references to "Administrator" or "EPA Administrator."

(b) Substitute "State of Utah" for all federal regulation references to "State," "State agency" or "State regulatory agency."

(c) "State plan" means the Plan for Existing Small Municipal Waste Combustion Units that is incorporated by reference at R307-220-4.

(d) "You" means the owner or operator of a small municipal waste combustion unit.

(e) Substitute "Rule R307-223" for all references to "this subpart."

(f) Substitute "40 CFR Part 60" for all references to "this part."

(g) Substitute "40 CFR" for all references to "This title."

(2) Equations found in 40 CFR 60.1935, effective as of the date referenced in R307-101-3, are adopted and incorporated by reference.

**R307-223-3. Requirements.**

(1) Each incinerator owner or operator subject to R307-223 must comply with the requirements of 40 CFR 60.1540 and 60.1585 through 60.1905, and with the requirements and schedules set forth in Tables 2 through 8 that are found following 40 CFR 60.1940 for operator training and certification, operating requirements, emission limits, continuous emission monitoring, stack testing, other monitoring requirements, record keeping, and reporting. These provisions and table, effective as of the date referenced in R307-101-3, are adopted and incorporated by reference with the exceptions listed below.

(a) In 40 CFR 60.1650(a), delete "or state."

(b) In 40 CFR 60.1675(a), delete "or a current provisional operator certification from your State certification program."

(c) In 40 CFR 1675 (c), change "three" to "two," and delete 40 CFR 1675(c)(3).

(2) Compliance dates. Each incinerator must be in compliance with the dates in Section III of the Plan.

**KEY: air pollution, municipal waste incinerator, waste to energy plant**

**February 8, 2008**

**19-2-104**

**Notice of Continuation March 8, 2018**

**R307. Environmental Quality, Air Quality.****R307-224. Mercury Emission Standards: Coal-Fired Electric Generating Units.****R307-224-1. Purpose and Applicability.**

(1) Nationwide reductions of mercury (Hg) emissions from certain coal-fired electric generating units are required by 40 CFR Part 60, subparts B and HHHH, in effect on June 9, 2006, and by the Designated Facilities Plan for coal-fired electric generating units, incorporated by reference at R307-220-5.

(2) R307-224 regulates mercury emissions from any coal-fired electric generating unit as defined in 40 CFR 60.24.

**R307-224-2. Emission Guidelines and Compliance Times for Coal-Fired Electric Generating Units.**

(1) The following sections of 40 CFR Part 60, subpart HHHH, effective as of the date referenced in R307-101-3, are adopted and incorporated by reference into these rules:

- (a) Sections 60.4101 through 60.4124;
- (b) Sections 60.4142 paragraph (c)(2) through paragraph (c)(4);
- (c) Sections 60.4150 through 60.4176.

**KEY: air pollution, electric generating unit, mercury**  
**February 8, 2008** **19-2-104(3)(q)**  
**Notice of Continuation of Rule Part 60.2818 subparts Da and HHHH**



**R307. Environmental Quality, Air Quality.****R307-250. Western Backstop Sulfur Dioxide Trading Program.****R307-250-1. Purpose.**

This rule implements the Western Backstop (WEB) Sulfur Dioxide Trading Program provisions in accordance with the federal Regional Haze Rule, 40 CFR 51.309, and Section XX.E of the State Implementation Plan for Regional Haze, titled "Sulfur Dioxide Milestones and Backstop Trading Program," incorporated under R307-110-28.

**R307-250-2. Definitions.**

The following additional definitions apply to R307-250:

"Account Certificate of Representation" or "Certificate" means the completed and signed submission required to designate an Account Representative for a WEB source or an Account Representative for a general account. "Account Representative" means the individual who is authorized through an Account Certificate of Representation to represent owners and operators of the WEB source with regard to matters under the WEB Trading Program or, for a general account, who is authorized through an Account Certificate of Representation to represent the persons having an ownership interest in allowances in the general account with regard to matters concerning the general account.

"Actual Emissions" means total annual sulfur dioxide emissions determined in accordance with R307-250-9 or determined in accordance with the Sulfur Dioxide Milestone Inventory requirements of R307-150 for sources that are not subject to R307-250-9.

"Allocate" means to assign allowances to a WEB source in accordance with SIP Section XX.E.3.a through c.

"Allowance" means the limited authorization under the WEB Trading Program to emit one ton of sulfur dioxide during a specified control period or any control period thereafter subject to the terms and conditions for use of unused allowances as established by R307-250.

"Allowance Limitation" means the tonnage of sulfur dioxide emissions authorized by the allowances available for compliance deduction for a WEB source under R307-250-12 on the allowance transfer deadline for each control period.

"Allowance Transfer Deadline" means the deadline established in R307-250-10(2) when allowance transfers must be submitted for recording in a WEB source's compliance account in order to demonstrate compliance for that control period.

"Compliance Account" means an account established in the WEB EATS under R307-250-8(1) for the purpose of recording allowances that a WEB source might hold to demonstrate compliance with its allowance limitation.

"Compliance Certification" means a submission to the director by the Account Representative as required under R307-250-12(2) to report a WEB source's compliance or noncompliance with R307-250.

"Control Period" means the period beginning January 1 of each year and ending on December 31 of the same year, inclusive.

"Existing Source" means a stationary source that commenced operation before the Program Trigger Date.

"General Account" means an account established in the WEB EATS under R307-250-8 for the purpose of recording allowances held by a person that are not to be used to show compliance with an allowance limitation.

"Milestone" means the maximum level of stationary source regional sulfur dioxide emissions for each year from 2003 to 2018, established according to the procedures in SIP Section XX.E.1.

"New WEB Source" means a WEB source that commenced operation on or after the program trigger date.

"New Source Set-aside" means a pool of allowances that are available for allocation to new sources in accordance with the provisions of SIP Section XX.E.3.c.

"Program trigger date" means the date that the director determines that the WEB Trading Program has been triggered in accordance with the provisions of SIP Section XX.E.1.c.

"Program trigger years" means the years shown in SIP Section XX.E.1.a, Table 3, column 3 for the applicable milestone if the WEB Trading Program is triggered as described in SIP Section XX.E.1.

"Retired source" means a WEB source that has received a retired source exemption as provided in R307-250-4(4).

"Serial number" means, when referring to allowances, the unique identification number assigned to each allowance by the Tracking Systems Administrator, in accordance with R307-250-7(2).

"SIP Section XX.E" means Section XX, Part E of the State Implementation Plan, titled "Sulfur Dioxide Milestones and Backstop Trading Program." SIP Section XX, Regional Haze, is incorporated by reference under R307-110-28.

"Special Reserve Compliance Account" means an account established in the WEB EATS under R307-250-8(1) for the purpose of recording allowances that a WEB source might hold to demonstrate compliance with its allowance limitation for emission units that are monitored for sulfur dioxide in accordance with R307-250-9(1)(b).

"Sulfur Dioxide emitting unit" means any equipment that is located at a WEB source and that emits sulfur dioxide.

"Submit" means sent to the director or the Tracking system Administrator under the signature of the Account Representative. For purposes of determining when something is submitted, an official U.S. Postal Service postmark, or equivalent electronic time stamp, shall establish the date of submittal.

"Ton" means 2000 pounds and any fraction of a ton equaling 1000 pounds or more shall be treated as one ton and any fraction of a ton equaling less than 1000 pounds shall be treated as zero tons.

"Tracking System Administrator" or "TSA" means the person designated by the director as the administrator of the WEB EATS.

"WEB Source" means a stationary source that meets the applicability requirements of R307-250-4.

"WEB Trading Program" means R307-250, the Western Backstop Trading Program, triggered as a backstop in accordance with the provisions in SIP Section XX.E, if necessary, to ensure that regional sulfur dioxide emissions are reduced.

"WEB Emissions and Allowance Tracking System (WEB EATS)" means the central database where sulfur dioxide emissions for WEB sources as recorded and reported in accordance with R307-250 are tracked to determine compliance with allowance limitations, and the system where allowances under the WEB Trading Program are recorded, held, transferred and deducted.

"WEB EATS account" means an account in the WEB EATS established for purposes of recording, holding, transferring, and deducting allowances.

**R307-250-3. WEB Trading Program Trigger.**

(1) Except as provided in (2) below, R307-250 shall apply on the program trigger date that is established in accordance with the procedures in SIP Section XX.E.1.c.

(2) Special Penalty Provisions for the 2018 Milestone, R307-250-13, shall apply on January 1, 2018, and shall remain effective until the requirements of R307-250-13 have been met.

**R307-250-4. WEB Trading Program Applicability.**

(1) General Applicability. R307-250 applies to any

stationary source or group of stationary sources that are located on one or more contiguous or adjacent properties and that are under the control of the same person or persons under common control, belonging to the same industrial grouping, and that are described in paragraphs (a) and (b) of this subsection. A stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

(a) All BART-eligible sources as defined in 40 CFR 51.301 that are BART-eligible due to sulfur dioxide emissions.

(b) All stationary sources that have actual sulfur dioxide emissions of 100 tons or more per year in the program trigger years or any subsequent year. The fugitive emissions of a stationary source shall not be considered in determining whether it is subject to R307-250 unless the source belongs to one of the following categories of stationary source:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
- (xxvii) Any other stationary source category, which as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act.

(b) A new source that begins operation after the program trigger date and has the potential to emit 100 tons or more of sulfur dioxide per year.

(2) The director may determine on a case-by-case basis, with concurrence from the EPA Administrator, that a stationary source defined in (1)(b) above that has not previously met the applicability requirements of (1) is not subject to R307-250 if the stationary source had actual sulfur dioxide emissions of 100 tons or more in a single year and in each of the previous five years had actual sulfur dioxide emissions of less than 100 tons per year, and:

(a)(i) the emissions increase was due to a temporary emission increase that was caused by a sudden, infrequent failure of air pollution control equipment, or process equipment, or a failure to operate in a normal or usual manner, and

(ii) the stationary source has corrected the failure of air pollution equipment, process equipment, or process by the time

of the director's determination; or

(b) the stationary source had to switch fuels or feedstocks on a temporary basis and as a result of an emergency situation or unique and unusual circumstances besides the cost of such fuels or feedstocks.

(3) Duration of Applicability. Except as provided for in (4) below, once a stationary source is subject to R307-250, it will remain subject to the rule every year thereafter.

(4) Retired Source Exemption.

(a) Application. Any WEB source that is permanently retired shall apply for a retired source exemption. The WEB source may be considered permanently retired only if all sulfur dioxide emitting units at the source are permanently retired. The application shall contain the following information:

(i) identification of the WEB source, including the plant name and an appropriate identification code in a format specified by the director;

(ii) name of account representative;

(iii) description of the status of the WEB source, including the date that the WEB source was permanently retired;

(iv) signed certification that the WEB source is permanently retired and will comply with the requirements of R307-250-4(4); and

(v) verification that the WEB source has a general account where any unused allowances or future allocations will be recorded.

(b) Notice. The retired source exemption becomes effective when the director notifies the WEB source that the retired source exemption has been granted.

(c) Responsibilities of Retired Sources.

(i) A retired source shall be exempt from R307-250-9 and R307-250-12, except as provided below.

(ii) A retired source shall not emit any sulfur dioxide after the date the retired source exemption is issued.

(iii) A WEB source shall submit sulfur dioxide emissions reports, as required by R307-250-9, for any time period the source was operating prior to the effective date of the retired source exemption. The retired source shall be subject to the compliance provisions of R307-250-12, including the requirement to hold allowances in the source's compliance account to cover all sulfur dioxide emissions prior to the date the source was permanently retired.

(iv) A retired source that is still in existence but no longer emitting sulfur dioxide shall, for a period of five years from the date the records are created, retain records demonstrating that the source is permanently retired for purposes of this rule.

(d) Resumption of Operations.

(i) Before resuming operation, the retired source must submit registration materials as follows:

(A) If the source is required to obtain an approval order under R307-401 or an operating permit under R307-415 prior to resuming operation, then registration information as described in R307-250-6(1) and a copy of the retired source exemption must be submitted with the notice of intent under R307-401 or the operating permit application required under R307-415;

(B) If the source does not meet the criteria of (A), then registration information as described in R307-250-6(1) and a copy of the retired source exemption must be submitted to the director at least ninety days prior to resumption of operation.

(ii) The retired source exemption shall automatically expire on the day the retired source resumes operation.

(e) Loss of Future Allowances. A WEB source that is permanently retired and that does not apply to the director for a retired source exemption within ninety days of the date that the source is permanently retired shall forfeit any unused and future allowances. The abandoned allowances shall be retired by the TSA.

**R307-250-5. Account Representative for WEB Sources.**

(1) Each WEB source must identify one account representative and may also identify an alternate account representative who may act on behalf of the account representative. Any representation, action, inaction or submission by the alternate account representative will be deemed to be a representation, action, inaction or submission by the account representative.

(2) Identification and Certification of an account representative.

(a) The account representative and any alternate account representative shall be appointed by an agreement that makes the representations, actions, inactions or submissions of the account representative and any alternate binding on the owners and operators of the WEB source.

(b) The account representative shall submit to the director and the TSA a signed and dated certificate that contains the following elements:

(i) identification of the WEB source by plant name and an appropriate identification code in a format specified by the director;

(ii) the name, address, e-mail (if available), telephone and facsimile number of the account representative and any alternate;

(iii) a list of owners and operators of the WEB source;

(iv) information to be part of the emission tracking system database that is established in accordance with SIP Section XX.E.3.i. The specific data elements shall be as specified by the the director to be consistent with the data system structure, and may include basic facility information that may appear in other reports and notices submitted by the WEB source, such as county location, industrial classification codes, and similar general facility information.

(v) The following certification statement: "I certify that I was selected as the account representative or alternate account representative, as applicable, by an agreement binding on the owners and operators of the WEB source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the WEB Trading Program on behalf of the owners and operators of the WEB source and that the owner and operator each shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the director regarding the WEB Trading Program."

(c) Upon receipt by the director of the complete certificate, the account representative and any alternate account representative represents and, by his or her representations, actions, inactions, or submissions, legally binds each owner and operator of the WEB source in all matters pertaining to the WEB Trading Program. Each owner and operator shall be bound by any decision or order issued by the director regarding the WEB Trading Program.

(d) No WEB EATS account shall be established for the WEB source until the TSA has received a complete Certificate. Once the account is established, all submissions concerning the account, including the deduction or transfer of allowances, shall be made by the account representative.

(3) Responsibilities.

(a) The responsibilities of the account representative include, but are not limited to, the transferring of allowances and the submission of monitoring plans, registrations, certification applications, sulfur dioxide emissions data and compliance reports as required by R307-250, and representing the source in all matters pertaining to the WEB Trading Program.

(b) Each submission under this program shall be signed and certified by the account representative for the WEB source. Each submission shall include the following truth and accuracy certification statement by the account representative: "I am authorized to make this submission on behalf of the owners and

operators of the WEB source for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(4) Changing the Account Representative or Owners and Operators.

(a) Changing the Account Representative or the alternate Account Representative. The account representative or alternate account representative may be changed at any time by sending a complete superseding certificate to the director and the TSA under R307-250-5(2). The change will be effective upon receipt of such certificate by the TSA. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous account representative or alternate prior to the time and date when the TSA receives the superseding certificate shall be binding on the new account representative and the owners and operators of the WEB source.

(b) Changes in Owner and Operator.

(i) Within thirty days of any change in the owners and operators of the WEB source, including the addition of a new owner or operator, the account representative shall submit a revised certificate amending the list of owners and operators to include such change.

(ii) In the event a new owner or operator of a WEB source is not included in the list of owners and operators submitted in the certificate, such new owner or operator shall be deemed to be subject to and bound by the certificate, the representations, actions, inactions, and submissions of the account representative of the WEB source, and the decisions, orders, actions, and inactions of the director as if the new owner or operator were included in the list.

**R307-250-6. Registration.**

(1) Deadlines.

(a) Each source that is a WEB source on or before the program trigger date shall register by submitting the initial certificate required in R307-250-5(2) to the director no later than 180 days after the program trigger date.

(b) Any existing source that becomes a WEB source after the program trigger date shall register by submitting the initial certificate required in R307-250-5(2) to the director no later than September 30 of the year following the inventory year in which the source exceeded the 100 tons sulfur dioxide emission threshold in R307-250-4(1)(b).

(c) Any new WEB source shall register by submitting the initial certificate required in R307-250-5(2) to the director prior to commencing operation.

(2) Any allocation, transfer or deduction of allowances to or from the source's compliance account shall not require a revision of the WEB source's operating permit under R307-415.

**R307-250-7. Allowance Allocations.**

(1) The TSA will record the allowances for each WEB source in the source's compliance account once the allowances are allocated by the director under SIP Section XX.E.3.a through c. If applicable, the TSA will record a portion of the sulfur dioxide allowances for a WEB source in a special reserve compliance account to account for any allowances to be held by the source that conducts monitoring in accordance with R307-250-9(1)(b).

(2) The TSA will assign a serial number to each allowance in accordance with SIP Section XX.E.3.f.

(3) All allowances shall be allocated, recorded, transferred, or used as whole allowances. To determine the number of whole allowances, the number of allowances shall be rounded down for decimals less than 0.50 and rounded up for decimals of 0.50 or greater.

(4) An allowance is not a property right, and is a limited authorization to emit one ton of sulfur dioxide valid only for the purpose of meeting the requirements of R307-250. No provision of the WEB Trading Program or other law should be construed to limit the authority of the director to terminate or limit such authorization.

(5) Early Reduction Bonus Allocation. Any non-utility WEB source that installs new control technology and that reduces its permitted annual sulfur dioxide emissions to a level that is below the floor level allocation established for that source in SIP Section XX.E.3.a(1)(b)(i) or any utility that reduces its permitted annual sulfur dioxide emissions to a level that is below best available control technology may apply to the director for an early reduction bonus allocation. The bonus allocation shall be available for reductions that occur between 2003 and the program trigger year. The application must be submitted no later than 90 days after the program trigger date. Any WEB source that applies and receives early reduction bonus allocations must retain the records referenced in this section for a minimum of five years after the early reduction bonus allowance is certified in accordance with SIP Section XX.E.3.a(1)(c). The application for an early reduction bonus allocation must contain the following information:

(a) copies of all approval orders, operating permits or other enforceable documents that include annual sulfur dioxide emissions limits for the WEB source during the period the WEB source qualifies for an early reduction credit. Approval orders, permits, or enforceable documents must contain monitoring requirements for sulfur dioxide emissions that meet the specifications in R307-250-9(1)(a).

(b) demonstration that the floor level established for the source in SIP Section XX.E.3.a(1)(b)(i) for non-utilities or best available control technology for utilities was calculated using data that are consistent with monitoring methods specified in R307-250-9(1)(a). If needed, the demonstration shall include a new floor level calculation that is consistent with the monitoring methodology in R307-250-9.

(6) Request for Allowances for New WEB Sources or Modified WEB Sources.

(a) A new WEB source may apply to the director for an allocation from the new source set-aside, as outlined in SIP Section XX.E.3.c. A new WEB source is eligible for an annual floor allocation equal to the lower of the permitted annual sulfur dioxide emission limit for that source, or sulfur dioxide annual emissions calculated based on a level of control equivalent to best available control technology (BACT) and assuming 100 percent utilization of the WEB source, beginning with the first full calendar year of operation.

(b) An existing WEB source that has increased production capacity through a new approval order issued under R307-401 may apply to the director for an allocation from the new source set-aside, as outlined in SIP Section XX.E.3.c. An existing WEB source is eligible for an annual allocation equal to:

(i) the permitted annual sulfur dioxide emission limit for a new unit; or

(ii) the permitted annual sulfur dioxide emission increase for the WEB source due to the replacement of an existing unit with a new unit or the modification of an existing unit that increased production capacity of the WEB source.

(c) A source that has received a retired source exemption under R307-250-4(4) is not eligible for an allocation from the new source set-aside.

(d) The application for an allocation from the new source set-aside must contain the following:

(i) for a new WEB source or a new unit under R307-250-7(6)(b)(i), documentation of the actual date of the commencement of operation and a copy of the approval order issued under R307-401;

(ii) for an existing WEB source under R307-250-7(6)(b)(ii), documentation of the production capacity of the source before and after the new permit.

#### **R307-250-8. Establishment of Accounts.**

(1) WEB EATS. All WEB sources are required to open a compliance account. Any person may open a general account for the purpose of holding and transferring allowances. In addition, if a WEB source conducts monitoring under R307-250-9(1)(b), the WEB source shall open a special reserve compliance account for allowances associated with units monitored under those provisions. To open any type of account, an application that contains the following information must be submitted to the TSA:

(a) the name, mailing address, e-mail address, telephone number, and facsimile number of the account representative. For a compliance account, the application shall include a copy of the certificate for the account representative and any alternate as required in R307-250-5(2)(b). For a general account, the application shall include the certificate for the account representative and any alternate as required in (3)(b) below.

(b) the WEB source or organization name;

(c) the type of account to be opened;

(d) identification of the specific units that are being monitored under R307-250-9(1)(b) and that must demonstrate compliance with the allowance limitation in the special reserve compliance account; and

(e) a signed certification of truth and accuracy by the account representative according to R307-250-5(3)(b) for compliance accounts and for general accounts, certification of truth and accuracy by the account representative according to (4) below.

(2) Account Representative for General Accounts. For a general account, one account representative must be identified and an alternate account representative may be identified and may act on behalf of the account representative. Any representation, action, inaction or submission by the alternate account representative will be deemed to be a representation, action, inaction or submission by the account representative.

(3) Identification and Certification of an Account Representative for General Accounts.

(a) The account representative shall be appointed by an agreement that makes the representations, actions, inactions or submissions of the account representative binding on all persons who have an ownership interest with respect to allowances held in the general account.

(b) The account representative shall submit to the TSA a signed and dated certificate that contains the following elements:

(i) the name, address, e-mail (if available), telephone and facsimile number of the account representative and any alternate;

(ii) the organization name, if applicable;

(iii) the following certification statement: "I certify that I was selected as the account representative or alternate account representative, as applicable, by an agreement binding on all persons who have an ownership interest in allowances in the general account with regard to matters concerning the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the WEB Trading Program on behalf of said persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions."

(c) Upon receipt by the TSA of the complete certificate, the account representative represents and, by his or her

representations, actions, inactions, or submissions, legally binds each person who has an ownership interest in allowances held in the general account with regard to all matters concerning the general account. Such persons shall be bound by any decision or order issued by the director.

(d) A WEB EATS general account shall not be established until the TSA has received a complete certificate. Once the account is established, the account representative shall make all submissions concerning the account, including the deduction or transfer of allowances.

(4) Requirements and Responsibilities for General Accounts. Each submission for the general account shall be signed and certified by the account representative for the general account. Each submission shall include the following truth and accuracy certification statement by the account representative: "I am authorized to make this submission on behalf of all person who have an ownership interest in allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(5) Changing the Account Representative for General Accounts. The account representative or alternate account representative may be changed at any time by sending a complete superseding certificate to the director and the TSA under (3)(b) above. The change will take effect upon the receipt of the certificate by the TSA. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous account representative or alternate prior to the time and date when the TSA receives the superseding certificate shall be binding on the new account representative and all persons having ownership interest with respect to allowances held in the general account.

(6) Changes to the Account. Any change to the information required in the application for an existing account under (1) above shall require a revision of the application.

### **R307-250-9. Monitoring, Recordkeeping and Reporting.**

(1) General Requirements on Monitoring Methods.

(a) For each sulfur dioxide emitting unit at a WEB source the WEB source shall comply with the following, as applicable, to monitor and record sulfur dioxide mass emissions.

(i) If a unit is subject to 40 CFR Part 75 under a requirement separate from the WEB Trading Program, the unit shall meet the requirements contained in Part 75 with respect to monitoring, recording and reporting sulfur dioxide mass emissions.

(ii) If a unit is not subject to 40 CFR Part 75 under a requirement separate from the WEB Trading Program, a unit shall use one of the following monitoring methods, as applicable:

(A) a continuous emission monitoring system (CEMS) for sulfur dioxide and flow that complies with all applicable monitoring provisions in 40 CFR Part 75;

(B) if the unit is a gas- or oil-fired combustion device, the excepted monitoring methodology in Appendix D to 40 CFR Part 75, or, if applicable, the low mass emissions (LME) provisions (with respect to sulfur dioxide mass emissions only) of 40 CFR 75.19;

(C) one of the optional WEB protocols, if applicable, in Appendix B of State Implementation Plan Section XX, Regional Haze; or

(D) a petition for site-specific monitoring that the source

submits for approval by the director and approval by the U.S. Environmental Protection Agency in accordance with R307-250-9(9).

(iii) A permanently retired unit shall not be required to monitor under this section if such unit was permanently retired and had no emissions for the entire control period and the account representative certifies in accordance with R307-250-12(2) that these conditions were met.

(b) Notwithstanding (a) above, a WEB source with a unit that meets one of the conditions of (i) below may submit a request to the director to have the provisions of this subsection (b) apply to that unit.

(i) Any of the following units may implement this subsection (b):

(A) any smelting operation where all of the emissions from the operation are not ducted to a stack; or

(B) any flare, except to the extent such flares are used as a fuel gas combustion device at a petroleum refinery; or

(C) any other type of unit without add-on sulfur dioxide control equipment, if the unit belongs to one of the following source categories: cement kilns, pulp and paper recovery furnaces, lime kilns, or glass manufacturing.

(ii) For each unit covered by this subsection (b), the account representative shall submit a notice to request that this subsection (b) apply to one or more sulfur dioxide emitting units at a WEB source. The notice shall be submitted in accordance with the deadlines specified in R307-250-9(6)(a), and shall include the following information (in a format specified by the director with such additional, related information as may be requested):

(A) a list of all units at the WEB source that identifies the units that are to be covered by this subsection (b);

(B) an identification of any such units that are permanently retired.

(iii) For each new unit at an existing WEB source for which the WEB source seeks to comply with this subsection (b) and for which the account representative applies for an allocation under the new source set-aside provisions of R307-250-7(6), the account representative shall submit a modified notice under (ii) above that includes such new sulfur dioxide emitting units. The modified request shall be submitted in accordance with the deadlines in R307-250-9(6)(a), but no later than the date on which a request is submitted under R307-250-7(6) for allocations from the set-aside.

(iv) The account representative for a WEB source shall submit an annual emissions statement for each unit under this subsection (b) pursuant to R307-250-9(8). The WEB source shall maintain operating records sufficient to estimate annual sulfur dioxide emissions in a manner consistent with the emission inventory submitted by the source for calendar year 2006. In addition, if the estimated emissions from all such units at the WEB source are greater than the allowances for the current control year held in the special reserve compliance account for the WEB source, the account representative shall report the extra amount as part of the annual report for the WEB source under R307-250-12 and shall obtain and transfer allowances into the special reserve compliance account to account for such emissions.

(v) R307-250-9(2) - (10) shall not apply to units covered by this paragraph except where otherwise noted.

(vi) A WEB source may opt to modify the monitoring for a sulfur dioxide emitting unit to use monitoring under (a) above, but any such monitoring change must take effect on January 1 of the next compliance year. In addition, the account representative must submit an initial monitoring plan at least 180 days prior to the date on which the new monitoring will take effect and a detailed monitoring plan in accordance with (2) below. The account representative shall also submit a revised notice under R307-250-9(1)(b)(ii) at the same time that the

initial monitoring plan is submitted.

(c) For any monitoring method that the WEB source uses under R307-250-9 including (b) above, the WEB source shall install, certify, and operate the equipment in accordance with this section, and record and report the data from the method as required in this section. In addition, the WEB source may not:

(i) except for an alternative approved by the EPA Administrator for a WEB source that implements monitoring under (a) above, use an alternative monitoring system, alternative reference method or another alternative for the required monitoring method without having obtained prior written approval in accordance with (9) below;

(ii) operate a sulfur dioxide emitting unit so as to discharge, or allow to be discharged, sulfur dioxide emissions to the atmosphere without accounting for these emissions in accordance with the applicable provisions of this section;

(iii) disrupt the approved monitoring method or any portion thereof, and thereby avoid monitoring and recording sulfur dioxide mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing or maintenance is performed in accordance with the applicable provisions of this section; or

(iv) retire or permanently discontinue use of an approved monitoring method, except under one of the following circumstances:

(A) during a period when the unit is exempt from the requirements of this Section, including retirement of a unit as addressed in (a)(iii) above;

(B) the WEB source is monitoring emissions from the unit with another certified monitoring method approved under this Section for use at the unit that provides data for the same parameter as the retired or discontinued monitoring method; or

(C) the account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with this Section, and the WEB source recertifies thereafter a replacement monitoring system in accordance with the applicable provisions of this Section.

(2) Monitoring Plan.

(a) General Provisions. A WEB source with a sulfur dioxide emitting unit that uses a monitoring method under (1)(a)(ii) above shall meet the following requirements.

(i) Prepare and submit to the director an initial monitoring plan for each monitoring method that the WEB source uses to comply with this Section. In accordance with (c) below, the plan shall contain sufficient information on the units involved, the applicable method, and the use of data derived from that method to demonstrate that all unit sulfur dioxide emissions are monitored and reported. The plan shall be submitted in accordance with the deadlines specified in (6) below.

(ii) Prepare, maintain and submit to the director a detailed monitoring plan in accordance with the deadlines specified in (6) below. The plan will contain the applicable information required by (d) below. The director may require that the monitoring plan or portions of it be submitted electronically. The director may also require that the plan be submitted on an ongoing basis in electronic format as part of the quarterly report submitted under (8)(a) below or resubmitted separately within 30 days after any change is made to the plan in accordance with (iii) below.

(iii) Whenever a WEB source makes a replacement, modification, or change in one of the systems or methodologies provided for in (1)(a)(ii) above, including a change in the automated data acquisition and handling system or in the flue gas handling system, that affects information reported in the monitoring plan, such as a change to serial number for a component of a monitoring system, then the WEB source shall update the monitoring plan.

(b) A WEB source with a sulfur dioxide emitting unit that uses a method under (1)(a)(i) above shall meet the requirements

of this subsection (2) by preparing, maintaining and submitting a monitoring plan in accordance with the requirements of 40 CFR Part 75. If requested, the WEB source also shall submit the entire monitoring plan to the director.

(c) Initial Monitoring Plan. The account representative shall submit an initial monitoring plan for each sulfur dioxide emitting unit or group of units sharing a common methodology that, except as otherwise specified in an applicable provision in Appendix B of State Implementation Plan Section XX, contains the following information:

(i) For all sulfur dioxide emitting units:

(A) plant name and location;

(B) plant and unit identification numbers assigned by the director;

(C) type of unit, or units for a group of units using a common monitoring methodology;

(D) identification of all stacks or pipes associated with the monitoring plan;

(E) types of fuels fired or sulfur containing process materials used in the sulfur dioxide emitting unit, and the fuel classification of the unit if combusting more than one type of fuel and using a 40 CFR Part 75 methodology;

(F) types of emissions controls for sulfur dioxide installed or to be installed, including specifications of whether such controls are pre-combustion, post-combustion, or integral to the combustion process;

(G) maximum hourly heat input capacity, or process throughput capacity, if applicable;

(H) identification of all units using a common stack; and

(I) indicator of whether any stack identified in the plan is a bypass stack.

(ii) For each unit and parameter required to be monitored, identification of monitoring methodology information, consisting of monitoring methodology, monitor locations, substitute data approach for the methodology, and general identification of quality assurance procedures. If the proposed methodology is a specific methodology submitted pursuant to (1)(a)(ii)(D) above, the description under this paragraph shall describe fully all aspects of the monitoring equipment, installation locations, operating characteristics, certification testing, ongoing quality assurance and maintenance procedures, and substitute data procedures.

(iii) If a WEB source intends to petition for a change to any specific monitoring requirement otherwise required under this Section, such petition may be submitted as part of the initial monitoring plan.

(iv) The director may issue a notice of approval or disapproval of the initial monitoring plan based on the compliance of the proposed methodology with the requirements for monitoring in this Section.

(d) Detailed Monitoring Plan. The account representative shall submit a detailed monitoring plan that, except as otherwise specified in an applicable provision in Appendix C of State Implementation Plan Section XX, the Regional Haze SIP, shall contain the following information:

(i) Identification and description of each monitoring component (including each monitor and its identifiable components, such as analyzer or probe) in a continuous emissions monitoring system (e.g., sulfur dioxide pollutant concentration monitor, flow monitor, moisture monitor), a 40 CFR Part 75, Appendix D monitoring system (e.g., fuel flowmeter, data acquisition and handling system), or a protocol in Appendix B of SIP Section XX, including:

(A) manufacturer, model number and serial number;

(B) component and system identification code assigned by the facility to each identifiable monitoring component, such as the analyzer and/or probe;

(C) designation of the component type and method of sample acquisition or operation such as in situ pollutant

concentration monitor or thermal flow monitor;

(D) designation of the system as a primary or backup system;

(E) first and last dates the system reported data;

(F) status of the monitoring component; and

(G) parameter monitored.

(ii) Identification and description of all major hardware and software components of the automated data acquisition and handling system, including:

(A) hardware components that perform emission calculations or store data for quarterly reporting purposes, including the manufacturer and model number; and

(B) identification of the provider and model or version number of the software components.

(iii) Explicit formulas for each measured emissions parameter, using component or system identification codes for the monitoring system used to measure the parameter that links the system observations with the reported concentrations and mass emissions. The formulas must contain all constants and factors required to derive mass emissions from component or system code observations and an indication of whether the formula is being added, corrected, deleted, or is unchanged. The WEB source with a low mass emissions unit for which the WEB source is using the optional low mass emissions excepted methodology in 40 CFR Part 75.19(c) is not required to report such formulas.

(iv) For units with flow monitors only, the inside cross-sectional area in square feet at the flow monitoring location.

(v) If using CEMS for sulfur dioxide and flow, for each parameter monitored, include the scale, maximum potential concentration and method of calculation, maximum expected concentration, if applicable, and method of calculation, maximum potential flow rate and method of calculations, span value, full-scale range, daily calibration units of measure, span effective date and hour, span inactivation date and hour, indication of whether dual spans are required, default high range value, flow rate span, and flow rate span value and full scale value in standard cubic feet per hour for each unit or stack using sulfur dioxide or flow component monitors.

(vi) If the monitoring system or excepted methodology provides for use of a constant, assumed, or default value for a parameter under specific circumstances, then include the following information for each value of such parameter:

(A) identification of the parameter;

(B) default, maximum, minimum, or constant value, and units of measure for the value;

(C) purpose of the value;

(D) indicator of use during controlled and uncontrolled hours;

(E) types of fuel;

(F) source of the value;

(G) value effective date and hour;

(H) date and hour value is no longer effective, if applicable; and

(I) for units using the excepted methodology under 40 CFR 75.19, the applicable sulfur dioxide emission factor.

(vii) Unless otherwise specified in subsection 6.5.2.1 of Appendix A to 40 CFR Part 75, for each unit or common stack on which continuous emissions monitoring system hardware are installed:

(A) the upper and lower boundaries of the range of operation as defined in subsection 6.5.2.1 of Appendix A to 40 CFR Part 75, or thousands of pounds per hour (lb/hr) of steam, or feet per second (ft/sec), as applicable;

(B) the load or operating level(s) designated as normal in subsection 6.5.2.1 of Appendix A to 40 CFR Part 75, or thousands of lb/hr of steam, or ft/sec, as applicable;

(C) the two load or operating levels (i.e., low, mid, or high) identified in subsection 6.5.2.1 of Appendix A to 40 CFR

Part 75 as the most frequently used;

(D) the date of the data analysis used to determine the normal load (or operating) level(s) and the two most frequently-used load or operating levels; and

(E) activation and deactivation dates when the normal load or operating levels change and are updated.

(viii) For each unit that is complying with 40 CFR Part 75 for which the optional fuel flow-to-load test in subsection 2.1.7 of Appendix D to 40 CFR Part 75 is used:

(A) the upper and lower boundaries of the range of operation as defined in subsection 6.5.2.1 of Appendix A to 40 CFR Part 75, expressed in thousands of lb/hr of steam;

(B) the load level designated as normal, pursuant to subsection 6.5.2.1 of Appendix A to 40 CFR Part 75, expressed in thousands of lb/hr of steam; and

(C) the date of the load analysis used to determine the normal load level.

(ix) Information related to quality assurance testing, including, as applicable: identification of the test strategy; protocol for the relative accuracy test audit; other relevant test information; calibration gas levels expressed as percent of span for the calibration error test and linearity check; and calculations for determining maximum potential concentration, maximum expected concentration if applicable, maximum potential flow rate, and span.

(x) If applicable, apportionment strategies under sections 75.10 through 75.18 of 40 CFR Part 75.

(xi) Description of site locations for each monitoring component in a monitoring system, including schematic diagrams and engineering drawings and any other documentation that demonstrates each monitor location meets the appropriate siting criteria. For units monitored by a continuous emission monitoring system, diagrams shall include:

(A) a schematic diagram identifying entire gas handling system from unit to stack for all units, using identification numbers for units, monitor components, and stacks corresponding to the identification numbers provided in the initial monitoring plan and (i) and (iii) above. The schematic diagram must depict the height of any monitor locations. Comprehensive and/or separate schematic diagrams shall be used to describe groups of units using a common stack; and

(B) stack and duct engineering diagrams showing the dimensions and locations of fans, turning vanes, air preheaters, monitor components, probes, reference method sampling ports, and other equipment that affects the monitoring system location, performance, or quality control checks.

(xii) A data flow diagram denoting the complete information handling path from output signals of CEMS components to final reports.

(e) In addition to supplying the information in (c) and (d) above, the WEB source with a sulfur dioxide emitting unit using either of the methodologies in (1)(a)(ii)(B) above shall include the following information in its monitoring plan for the specific situations described:

(i) For each gas-fired or oil-fired sulfur dioxide emitting unit for which the WEB source uses the optional protocol in Appendix D to 40 CFR Part 75 for sulfur dioxide mass emissions, the Account Representative shall include the following information in the monitoring plan:

(A) parameter monitored;

(B) type of fuel measured, maximum fuel flow rate, units of measure, and basis of maximum fuel flow rate expressed as the upper range value or unit maximum for each fuel flowmeter;

(C) test method used to check the accuracy of each fuel flowmeter;

(D) submission status of the data;

(E) monitoring system identification code;

(F) the method used to demonstrate that the unit qualifies for monthly gross calorific value (GCV) sampling or for daily

or annual fuel sampling for sulfur content, as applicable;

(G) a schematic diagram identifying the relationship between the unit, all fuel supply lines, the fuel flowmeters, and the stacks. The schematic diagram must depict the installation location of each fuel flowmeter and the fuel sampling locations. Comprehensive or separate schematic diagrams shall be used to describe groups of units using a common pipe;

(H) for units using the optional default sulfur dioxide emission rate for "pipeline natural gas" or "natural gas" in appendix D to 40 CFR Part 75, the information on the sulfur content of the gaseous fuel used to demonstrate compliance with either subsection 2.3.1.4 or 2.3.2.4 of Appendix D to 40 CFR Part 75;

(I) for units using the 720 hour test under subsection 2.3.6 of Appendix D to 40 CFR Part 75 to determine the required sulfur sampling requirements, report the procedures and results of the test; and

(J) for units using the 720 hour test under subsection 2.3.5 of Appendix D to 40 CFR Part 75 to determine the appropriate fuel GCV sampling frequency, report the procedures used and the results of the test.

(ii) For each sulfur dioxide emitting unit for which the WEB source uses the low mass emission excepted methodology of 40 CFR 75.19, the WEB source shall include the information in (A) through (F) in the monitoring plan that accompanies the initial certification application.

(A) The results of the analysis performed to qualify as a low mass emissions unit under 40 CFR 75.19(c). This report will include either the previous three years' actual or projected emissions. The report will include the current calendar year of application; the type of qualification; years one, two, and three; annual measured, estimated or projected sulfur dioxide mass emissions for years one, two, and three; and annual operating hours for years one, two, and three.

(B) A schematic diagram identifying the relationship between the unit, all fuel supply lines and tanks, any fuel flowmeters, and the stacks. Comprehensive or separate schematic diagrams shall be used to describe groups of units using a common pipe.

(C) For units which use the long term fuel flow methodology under 40 CFR 75.19(c)(3), a diagram of the fuel flow to each unit or group of units and a detailed description of the procedures used to determine the long term fuel flow for a unit or group of units for each fuel combusted by the unit or group of units.

(D) A statement that the unit burns only gaseous fuels or fuel oil and a list of the fuels that are burned or a statement that the unit is projected to burn only gaseous fuels or fuel oil and a list of the fuels that are projected to be burned.

(E) A statement that the unit meets the applicability requirements in 40 CFR 75.19(a) and (b) with respect to sulfur dioxide emissions.

(F) Any unit historical actual, estimated and projected sulfur dioxide emissions data and calculated sulfur dioxide emissions data demonstrating that the unit qualifies as a low mass emissions unit under 40 CFR 75.19(a) and (b).

(iii) For each gas-fired unit, the account representative shall include the following in the monitoring plan: current calendar year, fuel usage data as specified in the definition of gas-fired in 40 CFR 72.2, and an indication of whether the data are actual or projected data.

(f) The specific elements of a monitoring plan under this section shall not be part of a WEB source's operating permit issued under R307-415, and modifications to the elements of the plan shall not require a permit modification.

### (3) Certification and Recertification.

(a) All monitoring systems are subject to initial certification and recertification testing as specified in 40 CFR Part 75 or Appendix B of State Implementation Plan Section

XX, as applicable. Certification or recertification of a monitoring system by the U.S. EPA for a WEB source that is subject to 40 CFR Part 75 under a requirement separate from this Rule shall constitute certification under the WEB Trading Program.

(b) The WEB source with a sulfur dioxide emitting unit not otherwise subject to 40 CFR Part 75 that monitors sulfur dioxide mass emissions in accordance with 40 CFR Part 75 to satisfy the requirements of this section shall perform all of the tests required by that regulation and shall submit the following to the director:

(i) a test notice, not later than 21 days before the certification testing of the monitoring system, provided that the director may establish additional requirements for adjusting test dates after this notice as part of the approval of the initial monitoring plan under (2)(c) above; and

(ii) an initial certification application within 45 days after testing is complete.

(c) A monitoring system will be considered provisionally certified while the application is pending.

(d) Upon receipt of a disapproval of the certification of a monitoring system or component, the certification is revoked. The data measured and recorded shall not be considered valid quality-assured data from the date of issuance of the notification of revocation until the WEB source completes a subsequently-approved certification or re-certification test in accordance with the procedures in this rule. The WEB source shall apply the substitute data procedures in this rule to replace all of the invalid data for each disapproved system or component.

(4) Ongoing Quality Assurance and Quality Control. The WEB source shall satisfy the applicable quality assurance and quality control requirements of 40 CFR Part 75 or, if the WEB source is subject to a WEB protocol in Appendix B of State Implementation Plan Section XX, the applicable quality assurance and quality control requirements in Appendix B of State Implementation Plan Section XX on and after the date that certification testing commences.

### (5) Substitute Data Procedures.

(a) For any period after certification testing is complete in which quality assured, valid data are not being recorded by a monitoring system certified and operating in accordance with R307-250, missing or invalid data shall be replaced with substitute data in accordance with 40 CFR Part 75 or, if the WEB source is subject to a WEB protocol in Appendix B of State Implementation Plan Section XX, with substitute data in accordance with that Appendix.

(b) For a sulfur dioxide emitting unit that does not have a certified or provisionally certified monitoring system in place as of the beginning of the first control period for which the unit is subject to the WEB Trading Program, the WEB source shall use one of the following procedures.

(i) If the WEB source will use a continuous emissions monitoring system to comply with this Section, substitute the maximum potential concentration of sulfur dioxide for the unit and the maximum potential flow rate, as determined in accordance with 40 CFR Part 75. The procedures for conditional data validation under section 75.20(b)(3) may be used for any monitoring system under this Rule that uses these 40 CFR Part 75 procedures, as applicable.

(ii) If the WEB source will use the 40 CFR Part 75 Appendix D methodology, substitute the maximum potential sulfur content, density or gross calorific value for the fuel and the maximum potential fuel flow rate, in accordance with section 2.4 of Appendix D to 40 CFR Part 75.

(iii) If the WEB source will use the 40 CFR Part 75 methodology for low mass emissions units, substitute the sulfur dioxide emission factor required for the unit as specified in 40 CFR 75.19 and the maximum rated hourly heat input, as defined in 40 CFR 72.2.



(iv) If using a protocol in Appendix B of State Implementation Plan Section XX, follow the procedures in the applicable protocol.

(6) Deadlines.

(a) The initial monitoring plan required under R307-250-9(2)(a)(i) shall be submitted by the following dates:

(i) for each source that is a WEB source on or before the program trigger date, the monitoring plan shall be submitted 180 days after such program trigger date.

(ii) for any existing source that becomes a WEB source after the program trigger date, the monitoring plan shall be submitted by September 30 of the year following the inventory year in which the source exceeded the 100 tons per year sulfur dioxide emissions threshold in R307-250-4(1)(b).

(iii) for any new WEB source, the monitoring plan shall be included with the notice of intent required by R307-401.

(b) The detailed monitoring plan required under R307-250-9(2)(a)(ii) shall be submitted no later than 45 days prior to commencing certification testing in accordance with (c) below. Modifications to the monitoring plan shall be submitted within 90 days of implementing revised monitoring plans.

(c) Emission monitoring systems shall be installed, operational and shall have met all of the certification testing requirements of R307-250-9(3), including any referenced in Appendix B of State Implementation Plan Section XX, by the following dates:

(i) for each source that is a WEB source on or before the program trigger date, two years prior to the start of the first control period as described in R307-250-12.

(ii) for any existing source that becomes a WEB source after the program trigger date, one year after the due date for the monitoring plan under (6)(a)(ii) above.

(iii) for any new WEB source or any new unit at a WEB source, the earlier of 90 unit operating days or 180 calendar days after the date the new source commences operation.

(d) The WEB source shall submit test notices and certification applications in accordance with the deadlines set forth in R307-250-9(3)(b).

(e) For each control period, the WEB source shall submit each quarterly report no later than 30 days after the end of each calendar quarter, and shall submit each annual report no later than 60 days after the end of each calendar year.

(7) Recordkeeping.

(a) The WEB source shall keep copies of all reports, registration materials, compliance certifications, sulfur dioxide emissions data, quality assurance data, and other submissions under this Rule for a period of five years. In addition, the WEB source shall keep a copy of all certificates for the duration of the WEB Trading Program. Unless otherwise requested by the WEB source and approved by the director, the copies shall be kept on site.

(b) The WEB source shall keep records of all operating hours, quality assurance activities, fuel sampling measurements, hourly averages for sulfur dioxide, stack flow, fuel flow, or other continuous measurements, as applicable, and any other applicable data elements specified in this section or in Appendix B of State Implementation Plan Section XX. The WEB source shall maintain the applicable records specified in 40 CFR Part 75 for any sulfur dioxide emitting unit that uses a Part 75 monitoring method to meet the requirements of this Section.

(8) Reporting.

(a) Quarterly Reports. For each sulfur dioxide emitting unit, the account representative shall submit a quarterly report within thirty days after the end of each calendar quarter. The report shall be in a format specified by the director, including hourly and quality assurance activity information, and shall be submitted in a manner compatible with the WEB EATS. If the WEB source submits a quarterly report under 40 CFR Part 75 to the U.S. EPA Administrator, no additional report under this

paragraph (a) shall be required. The director may require that a copy of that report or a separate statement of quarterly and cumulative annual sulfur dioxide mass emissions be submitted separately.

(b) Annual Report. Based on the quarterly reports, each WEB source shall submit an annual statement of total annual sulfur dioxide emissions for all sulfur dioxide emitting units at the source. The annual report shall identify total emissions for all units monitored in accordance with (1)(a) above and the total emissions for all units with emissions estimated in accordance with (1)(b) above. The annual report shall be submitted within 60 days after the end of a control period.

(c) If directed by the director, monitoring plans, reports, certifications or recertifications, or emissions data required to be submitted under this section also shall be submitted to the TSA.

(d) If the director rejects any report submitted under this subsection that contains errors or fails to satisfy the requirements of this section, the account representative shall resubmit the report to correct any deficiencies.

(9) Petitions. A WEB source may petition for an alternative to any requirement specified in (1)(a)(ii) above. The petition shall require approval of the director and the Administrator. Any petition submitted under this paragraph shall include sufficient information for the evaluation of the petition, including, at a minimum, the following information:

(a) identification of the WEB source and applicable sulfur dioxide emitting unit(s);

(b) a detailed explanation of why the proposed alternative is being suggested in lieu of the requirement;

(c) a description and diagram of any equipment and procedures used in the proposed alternative, if applicable; and

(d) a demonstration that the proposed alternative is consistent with the purposes of the requirement for which the alternative is proposed, is consistent with the purposes of R307-250, and that any adverse effect of approving such alternative will be de minimis; and

(e) any other relevant information that the director may require.

(10) For any monitoring plans, reports, or other information submitted under this Rule, the account representative shall ensure that, where applicable, identifying information is consistent with the identifying information provided in the most recent certificate for the WEB source submitted under R307-250-5.

#### **R307-250-10. Allowance Transfers.**

(1) Procedure. To transfer allowances, the account representative shall submit the following information to the TSA:

(a) the number or numbers identifying the transferor account;

(b) the number or numbers identifying the transferee account;

(c) the serial number of each allowance to be transferred; and

(d) the transferor's account representative's name, signature, and the date of submission.

(2) Allowance Transfer Deadline. The allowance transfer deadline is midnight Pacific Standard Time on March 1 of each year, or, if this date is not a business day, midnight of the first business day thereafter, following the end of the control period. By this time, the transfer of the allowances into the WEB source's compliance account must be correctly submitted to the TSA in order to demonstrate compliance under R307-250-12 for that control period.

(3) Retirement of Allowances. To permanently retire allowances, the transferor's account representative shall submit the following information to the TSA:

(a) the transfer account number identifying the transferor

account;

(b) the serial number of each allowance to be retired; and  
 (c) the transferor's account representative's name, signature, and the date of submission accompanied by a signed statement acknowledging that each retired allowance is no longer available for future transfers from or to any account.

(4) Special Reserve Compliance Accounts. Allowances shall not be transferred out of special reserve compliance accounts. Allowances may be transferred into special reserve compliance accounts in accordance with the procedures in paragraph (1) above.

#### **R307-250-11. Use of Allowances from a Previous Year.**

(1) Any allowance that is held in a compliance account or general account will remain in the account until the allowance is either deducted in conjunction with the compliance process, or transferred to another account.

(2) In order to demonstrate compliance under R307-250-12(1) for a control period, WEB sources shall only use allowances allocated for that control period or any previous year.

(3) If flow control procedures for the current control period have been triggered as outlined in SIP Section XX.E.3.h(2), then the use of allowances that were allocated for any previous year will be limited in the following ways.

(a) The number of allowances that are held in each compliance account and general account as of the allowance transfer deadline for the immediately previous year and that were allocated for any previous year will be determined.

(b) The number determined in (a) above will be multiplied by the flow control ratio established in accordance with SIP Section XX.E.3.h to determine the number of allowances that were allocated for a previous year that can be used without restriction for the current control period.

(c) Allowances that were allocated for a previous year in excess of the number determined in (b) above may also be used for the current control period. If such allowances are used to make a deduction, two allowances must be deducted for each deduction of one allowance required under R307-250-12.

(4) Special provisions for the year 2018. After compliance with the 2017 allowance limitation has been determined in accordance with R307-250-12(1), allowances allocated for any year prior to 2018 shall not be used for determining compliance with the 2018 allowance limitation or any future allowance limitation.

(5) Special Reserve Compliance Accounts. Unused allowances in any special reserve compliance account will be retired after the compliance deductions under R307-250-12 have been completed for each control period, and shall not be available for use in any future control period.

#### **R307-250-12. Compliance.**

(1) Compliance with Allowance Limitations.

(a) The WEB source must hold allowances, in accordance with (b) and (c) below and R307-250-11, as of the allowance transfer deadline in the WEB source's compliance account, together with any current control year allowances held in the WEB source's special reserve compliance account under R307-250-9(1)(b), in an amount not less than the total sulfur dioxide emissions for the control period from the WEB source, as determined under the monitoring and reporting requirements of R307-250-9.

(i) For each source that is a WEB source on or before the program trigger date, the first control period is the calendar year that is six years following the calendar year for which sulfur dioxide emissions exceeded the milestone as determined in accordance with SIP Section XX.E.1.

(ii) For any existing source that becomes a WEB source after the program trigger date, the first control period is the

calendar year that is four years following the inventory year in which the source became a WEB source.

(iii) For any new WEB source after the program trigger date, the first control period is the first full calendar year that the source is in operation.

(iv) If the WEB Trading Program is triggered in accordance with the 2013 review procedures in SIP Section XX.E.1.d, the first control period for each source that is a WEB source on or before the program trigger date is the year 2018.

(b) Allowance transfer deadline. An allowance may only be deducted from the WEB source's compliance account if:

(i) the allowance was allocated for the current control period or meets the requirements in R307-250-11 for use of allowances from a previous control period, and

(ii) the allowance was held in the WEB source's compliance account as of the allowance transfer deadline for the current control period, or was transferred into the compliance account by an allowance transfer correctly submitted for recording by the allowance transfer deadline for the current control period.

(c) Compliance with allowance limitations shall be determined as follows.

(i) The total annual sulfur dioxide emissions for all sulfur dioxide emitting units at the source that are monitored under R307-250-9(1)(b), as reported by the source to the director, in accordance with R307-250-9, and recorded in the WEB EATS shall be compared to the allowances held in the source's special reserve compliance account as of the allowance transfer deadline for the current control period, adjusted in accordance with R307-250-11. If the emissions are equal to or less than the allowances in such account, all such allowances shall be retired to satisfy the obligation to hold allowances for such emissions. If the total emissions from such units exceed the allowances in such special reserve compliance account, the WEB source shall account for such excess emissions in the following paragraph (ii).

(ii) The total annual sulfur dioxide emissions for all sulfur dioxide emitting units at the source that are monitored under R307-250-9(1)(a), as reported by the source to the director in accordance with R307-250-9 and recorded in the WEB EATS, together with any excess emissions as calculated in the preceding paragraph (i), shall be compared to the allowances held in the source's compliance account as of the allowance transfer deadline for the current control period, adjusted in accordance with R307-250-11.

(iii) If the comparison in paragraph (ii) above results in emissions that exceed the allowances held in the source's compliance account, the source has exceeded its allowance limitation and the excess emissions are subject to the allowance deduction penalty in R307-250-12(3)(a).

(d) Other than allowances in a special reserve compliance account for units monitored under R307-250-9(1)(b), to the extent consistent with R307-250-11, allowances shall be deducted for a WEB source for compliance with the allowance limitation as directed by the WEB source's account representative. Deduction of any other allowances as necessary for compliance with the allowance limitation shall be on a first-in, first-out accounting basis in the order of the date and time of their recording in the WEB source's compliance account, beginning with the allowances allocated to the WEB source and continuing with the allowances transferred to the WEB source's compliance account from another compliance account or general account. The allowances held in a special reserve compliance account pursuant to R307-250-9(1)(b) shall be deducted as specified in paragraph (c)(i) above.

(2) Certification of Compliance.

(a) For each control period in which a WEB source is subject to the allowance limitation, the account representative of the source shall submit to the director a compliance

certification report for the source.

(b) The compliance certification report shall be submitted no later than the allowance transfer deadline of each control period, and shall contain the following:

- (i) identification of each WEB source;
- (ii) at the account representative's option, the serial numbers of the allowances that are to be deducted from a source's compliance account or special reserve compliance account for compliance with the allowance limitation; and
- (iii) the compliance certification report according to (c) below.

(c) In the compliance certification report, the account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the WEB source in compliance with the WEB Trading Program, whether the WEB source for which the compliance certification is submitted was operated in compliance with the requirements of the WEB Trading Program applicable to the source during the control period covered by the report, including:

- (i) whether the WEB source operated in compliance with the sulfur dioxide allowance limitation;
- (ii) whether sulfur dioxide emissions data was submitted to the director in accordance with R307-250-9(8) and other applicable requirements for review, revision as necessary, and finalization;
- (iii) whether the monitoring plan for the WEB source has been maintained to reflect the actual operation and monitoring of the source, and contains all information necessary to attribute sulfur dioxide emissions to the source, in accordance with R307-250-9(2);
- (iv) whether all the sulfur dioxide emissions from the WEB source if applicable, were monitored or accounted for either through the applicable monitoring or through application of the appropriate missing data procedures;
- (v) if applicable, whether any sulfur dioxide emitting unit for which the WEB source is not required to monitor in accordance with R307-250-9(1)(a)(iii) of this rule remained permanently retired and had no emissions for the entire applicable period; and
- (vi) whether there were any changes in the method of operating or monitoring the WEB source that required monitor recertification. If there were any such changes, the report must specify the nature, reason, and date of the change, the method to determine compliance status subsequent to the change, and specifically, the method to determine sulfur dioxide emissions.

(3) Penalties for Any WEB Source Exceeding Its Allowance Limitations.

(a) Allowance Deduction Penalty.

(i) An allowance deduction penalty will be assessed equal to three times the number of the WEB source's tons of sulfur dioxide emissions in excess of its allowance limitation for a control period, determined in accordance with R307-250-12(1). Allowances allocated for the following control period in the amount of the allowance deduction penalty will be deducted from the source's compliance account. If the compliance account does not have sufficient allowances allocated for that control period, the required number of allowances will be deducted from the WEB source's compliance account regardless of the control period for which they were allocated, once allowances are recorded in the account.

(ii) Any allowance deduction required under R307-250-12(1)(c) shall not affect the liability of the owners and operators of the WEB source for any fine, penalty or assessment or their obligation to comply with any other remedy, for the same violation, as ordered under the Clean Air Act, implementing regulations or Utah Code 19-2. Accordingly, a violation can be assessed each day of the control period for each ton of sulfur dioxide emissions in excess of its allowance limitation, or for each other violation of R307-250.

(4) Liability.

(a) WEB Source liability for non-compliance. Separate and regardless of any allowance deduction penalty, a WEB source that violates any requirement of this Rule is subject to civil and criminal penalties under Utah Code 19-2. Each day of the control period is a separate violation, and each ton of sulfur dioxide emissions in excess of a source's allowance limitation is a separate violation.

(b) General Liability.

(i) Any provision of the WEB Trading Program that applies to a source or an account representative shall apply also to the owners and operators of such source.

(ii) Any person who violates any requirement or prohibition of the WEB Trading Program will be subject to enforcement pursuant to Utah Code 19-2.

(iii) Any person who knowingly makes a false material statement in any record, submission, or report under this WEB Trading Program shall be subject to criminal enforcement pursuant to the Utah Code.

### **R307-250-13. Special Penalty Provisions for the 2018 Milestone.**

(1) If the WEB Trading Program is triggered as outlined in SIP Section XX.E.1, and the first control period will not occur until after the year 2018, the following provisions shall apply for the 2018 emissions year.

(a) All WEB sources shall register, and shall open a compliance account within 180 days after the program trigger date, in accordance with R307-250-6(1) and R307-250-8.

(b) The TSA will record the allowances for the 2018 control period for each WEB source in the source's compliance account once the director allocates the 2018 allowances under SIP Section XX.E.3.a and XX.E.4.

(c) The allowance transfer deadline is midnight Pacific Standard Time on May 31, 2021 (or if this date is not a business day, midnight of the first business day thereafter). WEB sources may transfer allowances as provided in R307-250-10(1) until the allowance transfer deadline.

(d) A WEB source must hold allowances allocated for 2018, including those transferred into the compliance account or a special reserve account by an allowance transfer correctly submitted by the allowance transfer deadline, in an amount not less than the WEB source's total sulfur dioxide emissions for 2018. Emissions will be determined using the pre-trigger monitoring provisions in SIP Section XX.E.2, and R307-150

(e) In accordance with R307-250-11(4) and (d) above, the director will seek a minimum financial penalty of \$5,000 per ton of sulfur dioxide emissions in excess of the WEB source's allowance limitation.

(i) Any source may resolve its excess emissions violation by agreeing to a streamline settlement approach where the source pays a penalty of \$5,000 per ton or partial ton of excess emissions, and payment is received within 90 calendar days after the issuance of a notice of violation.

(ii) Any source that does not resolve its excess emissions violation in accordance with the streamlined settlement approach in (i) above will be subject to enforcement action in which the director will seek a financial penalty for the excess emissions based on the statutory maximum civil penalties.

(f) Each ton of sulfur dioxide emissions in excess of a source's allowance limitation is a separate violation and each day of a control period is a separate violation.

(2) The provisions in R307-250-13 shall continue to apply for each year after the 2018 emission year until:

(a) the first control period under the WEB trading program; or

(b) the director determines, in accordance with SIP Section XX.E.1.c(10), that the 2018 sulfur dioxide milestone has been met.

(3) If the special penalty provisions continue after the year 2018 as outlined in (2) above, the deadlines listed in (1)(b) through (e) above will be adjusted as follows:

(i) for the 2019 control period the dates will be adjusted forward by one year, except that the allowance transfer deadline shall be midnight Pacific Standard Time on May 31, 2021 (or if this date is not a business day, midnight of the first business day thereafter); and

(ii) for each control period after 2018 that the special penalty provisions are assessed, the dates in (i) above for the 2019 control period will be adjusted forward by one year.

(4) The TSA will record the same number of allowances for each WEB source as were recorded for the 2018 control period for each subsequent control period.

**R307-250-14. Integration into Permits.**

(1) Initial Permitting. Each source that is a WEB source on or before the program trigger date shall follow the procedures outlined in R307-415 to incorporate all of the applicable requirements of this rule into the permit issued to it under R307-415.

(2) Post Trigger Permitting.

(a) New WEB Source. Any existing source that becomes a WEB source after the program trigger date shall submit a Notice of Intent pursuant to R307-401 to incorporate all of the requirements of this rule into an approval order issued under R307-401 within 90 days of the date the source became a WEB source, and shall follow the procedures of R307-415 to obtain an operating permit.

(b) WEB Sources No Longer Subject to Permitting Under R307-415. If a WEB source's permit issued under R307-415 ceases to be effective or required, the WEB source must submit a Notice of Intent pursuant to R307-401 to incorporate all of the requirements of this rule into an approval order issued under R307-401 within 90 days of the date the permit issued under R307-415 ceased to be effective or required.

**KEY: air pollution, sulfur dioxide, market trading program  
November 10, 2008                      19-2-104(1)(a)  
Notice of Continuation March 8, 2018                      19-2-104(3)(e)**

**R307. Environmental Quality, Air Quality.****R307-303. Commercial Cooking.****R307-303-1. Purpose.**

The purpose of this rule is to reduce volatile organic compound (VOC) and PM<sub>2.5</sub> emissions from commercial cooking equipment.

**R307-303-2. Applicability.**

R307-303 shall apply to Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.

**R307-303-3. Definitions.**

"Catalytic oxidizer" means an emission control device that employs a catalyst fixed onto a substrate to oxidize air pollutants in an exhaust stream.

"Chain-driven charbroiler" means a semi-enclosed charbroiler designed to mechanically move food on a grated grill through the broiler.

"Charbroiler" means a cooking device composed of a grated grill and a heat source, where food resting on the grated grill cooks as the food receives direct heat from the heat source or a radiant surface.

**R307-303-4. Performance Standards and Recordkeeping.**

(1) Owners or operators of all chain-driven charbroilers in food service establishments shall install, maintain and operate a catalytic oxidizer.

(2) Any emission control device installed and operated under this rule shall be operated, cleaned, and maintained in accordance with the manufacturer's specifications. Manufacturer specifications for all emission controls must be maintained onsite.

(3) The owner or operator shall maintain on the premises of the food service establishment records of each of the following:

- (a) The date of installation of the emission control device;
- (b) When applicable, the date of the catalyst replacement;

and

(c) For a minimum of five years, the date, time, and a brief description of all maintenance performed on the emission control device, including, but not limited to, preventative maintenance, breakdown repair, and cleaning.

(4) Opacity of exhaust stream shall not exceed 20% opacity using EPA Method 9.

**KEY: commercial cooking, charbroilers, PM<sub>2.5</sub>, VOC  
December 15, 2015 19-2-101  
Notice of Continuation March 8, 2018**

**R307. Environmental Quality, Air Quality.**  
**R307-312. Aggregate Processing Operations for PM2.5 Nonattainment Areas.**

**R307-312-1. Purpose.**

R307-312 establishes emission standards for sources in the aggregate processing industry, including aggregate processing equipment, hot mix asphalt plants, and concrete batch plants.

**R307-312-2. Applicability.**

(1) R307-312 applies to all crushers, screens, conveyors, hot mix asphalt plants, and concrete batch plants located within a PM2.5 nonattainment and maintenance area as defined in 40 CFR 81.345 (July 1, 2011) and geographically described as all regions of Salt Lake and Davis counties; all portions of the Cache Valley; all regions in Weber and Utah counties west of the Wasatch mountain range; in Box Elder County, from the Wasatch mountain range west to the Promontory mountain range and south of Portage; and in Tooele County, from the northernmost part of the Oquirrh mountain range to the northern most part of the Stansbury mountain range and north of Route 199.

(2) The provisions of R307-312 do not apply to temporary hot mix asphalt plants.

**R307-312-3. Definitions.**

The following definitions apply to R307-312:

"Aggregate" means material of which the majority is nonmetallic minerals.

"Concrete batch plant" means any facility used to manufacture concrete by mixing aggregate with cement.

"Conveyor" means a device for transporting nonmetallic materials from one piece of equipment to another.

"Crusher" means a machine used to crush any nonmetallic minerals.

"Hot mix asphalt plant" means any facility used to manufacture hot mix asphalt by heating and drying aggregate and mixing with asphalt cements.

"Nonmetallic mineral" has the same definition as defined in 40 CFR 60.671.

"Screen" means a device for separating nonmetallic minerals according to size by passing undersize material through one or more mesh surfaces in series, and retaining oversize material on the mesh surfaces.

"Temporary" means not more than 180 operating days and not more than 365 calendar days.

**R307-312-4. Visible Emissions.**

(1) Visible emissions from sources subject to R307-312 shall not exceed the opacity limits as specified in Table 1.

CATEGORY	OPACITY LIMIT
Crushers	12%
Screens	7%
Conveyor transfer points	7%
Concrete batch plants	7%

(2) Opacity Observation.

(a) Opacity observations of emissions shall be conducted according to 40 CFR 60, Appendix A, Method 9.

(b) The duration of the Method 9 observations shall be 30 minutes (five six-minute averages).

(c) Compliance shall be based on the average of the five six-minute averages. The duration of Method 9 may be reduced to 6 minutes (one six-minute average) if the first six-minute average is below the limit specified in Table 1.

**R307-312-5. Hot Mix Asphalt Plants.**

(1) The filterable PM2.5 emission rate from a hot mix asphalt plant dryer shall not exceed 0.024 grains per dscf.

(a) Filterable PM2.5 emissions shall be determined by 40 CFR 51, Appendix M, Method 201A.

(2) From November 1 to March 1, a hot mix asphalt plant burning a fuel other than natural gas or liquefied petroleum gas (LPG) shall not produce more than 50% of its rated capacity.

(a) Production shall be determined by scale house records, belt scale records or manifest statements on a daily basis.

(b) Compliance shall be based on either the daily amount of hot mix asphalt produced averaged over the operating day or the daily amount of hot mix asphalt produced while burning a fuel other than natural gas or LPG averaged over the time the plant is operating while burning a fuel other than natural gas or LPG each day.

(c) Compliance shall be determined by production records and fuel records.

**R307-312-6. Compliance Schedule.**

(1) All sources subject to R307-312-4 or R307-312-5(2) shall be in compliance with this rule by June 7, 2013.

(2) All sources subject to R307-312-5(1) that begin construction prior to June 7, 2013, shall submit test results demonstrating compliance with R307-312-5(1) to the director by December 14, 2015.

(3) All sources subject to R307-312-5(1) that begin construction on or after June 7, 2013, shall submit test results demonstrating compliance with R307-312-5(1) to the director no later than 180 days after initial startup.

**KEY: air pollution, aggregate, asphalt, concrete**  
**February 4, 2016** 19-2-101  
**Notice of Continuation March 8, 2018** 19-2-104  
 19-2-109

**R307. Environmental Quality, Air Quality.****R307-342. Adhesives and Sealants.****R307-342-1. Purpose.**

The purpose of this rule is to limit emissions of volatile organic compounds (VOCs) from adhesives, sealants, primers and cleaning solvents.

**R307-342-2. Applicability.**

Beginning September 1, 2014, R307-342 applies to any person who manufactures any adhesive, sealant, adhesive primer or sealant primer in Box Elder, Cache, Davis, Salt Lake, Utah or Weber counties and to any person who sells, supplies, or applies any adhesive, sealant, adhesive primer or sealant primer in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah or Weber counties manufactured on or after September 1, 2014.

**R307-342-3. Exemptions.**

(1) The requirements of R307-342 do not apply to the following:

(a) Adhesives, sealants, adhesive primers or sealant primers being tested or evaluated in any research and development, quality assurance or analytical laboratory;

(b) Adhesives and sealants that contain less than 20 grams of VOC per liter of adhesive or sealant, less water and exempt solvents, as applied;

(c) Cyanoacrylate adhesives;

(d) Adhesives, sealants, adhesive primers or sealant primers that are sold or supplied by the manufacturer or supplier in containers with a net volume of 16 fluid ounces or less or that have a net weight of one pound or less, except plastic cement welding adhesives and contact adhesives;

(e) Contact adhesives that are sold or supplied by the manufacturer or supplier in containers with a net volume of one gallon or less;

(f) Aerosol adhesives and primers dispensed from aerosol spray cans; or

(g) Polyester bonding putties to assemble fiberglass parts at fiberglass boat manufacturing facilities and at other reinforced plastic composite manufacturing facilities.

(2) The requirements of R307-342 do not apply to the use of adhesives, sealants, adhesive primers, sealant primers, surface preparation and cleanup solvents in the following operations:

(a) Tire repair operations, provided the label of the adhesive states "for tire repair only;"

(b) In the production, rework, repair, or maintenance of aerospace vehicles and components, and undersea-based weapon systems;

(c) In the manufacture of medical equipment;

(d) Operations that are exclusively covered by Department of Defense military technical specifications and standards and performed by a Department of Defense contractor and/or on site at installations owned and/or operated by the United States Armed Forces.

(e) Plaque laminating operations in which adhesives are used to bond clear, polyester acetate laminate to wood with lamination equipment installed prior to July 1, 1992.

(3) The requirements of R307-342 do not apply to commercial and industrial operations if the total VOC emissions from all adhesives, sealants, adhesive primers and sealant primers used at the source are less than 200 pounds per calendar year.

(4) Adhesive products and sealant products shipped, supplied or sold exclusively outside of the areas specified in R307-342-2 are exempt from the requirements of this rule.

(5) R307-342 shall not apply to any adhesive, sealant, adhesive primer or sealant primer products manufactured for shipment and use outside of the counties specified R307-342-2 as long as the manufacturer or distributor can demonstrate both that the product is intended for shipment and use outside of the

applicable counties and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the product is not distributed to the applicable counties.

(6) R307-342 shall not apply to the use of any adhesives, sealants, adhesive primers, sealant primers, cleanup solvents and surface preparation solvents, provided the total volume of noncomplying adhesives, sealants, primers, cleanup and surface preparation solvents applied facility-wide does not exceed 55 gallons per rolling 12-month period.

(7) Commercial and industrial operations claiming exemption pursuant to R307-342-3 shall record and maintain operational records sufficient to demonstrate compliance.

**R307-342-4. Definitions.**

The following additional definitions apply to R307-342:

"Acrylonitrile-butadiene-styrene (ABS) welding adhesive" means any adhesive intended by the manufacturer to weld acrylonitrile-butadiene-styrene pipe, which is made by reacting monomers of acrylonitrile, butadiene and styrene.

"Adhesive" means any chemical substance that is applied for the purpose of bonding two surfaces together other than by mechanical means.

"Adhesive primer" means any product intended by the manufacturer for application to a substrate, prior to the application of an adhesive, to provide a bonding surface.

"Aerospace component" means a fabricated part, assembled part, or completed unit, including passenger safety equipment, of any aircraft, helicopter, missile or space vehicle.

"Architectural sealant or primer" means any sealant or sealant primer intended by the manufacturer to be applied to stationary structures, including mobile homes and their appurtenances. Appurtenances to an architectural structure include, but are not limited to: hand railings, cabinets, bathroom and kitchen fixtures, fences, rain gutters and downspouts, and windows.

"Automotive glass adhesive primer" means an adhesive primer labeled by the manufacturer to be applied to automotive glass prior to installation of the glass using an adhesive or sealant.

"Ceramic tile installation adhesive" means any adhesive intended by the manufacturer for use in the installation of ceramic tiles.

"Chlorinated polyvinyl chloride plastic (CPVC) plastic" means a polymer of the vinyl chloride monomer that contains 67% chlorine and is typically identified with a CPVC marking.

"Chlorinated polyvinyl chloride (CPVC) welding adhesive" means an adhesive labeled for welding of chlorinated polyvinyl chloride plastic.

"Cleanup solvent" means a VOC-containing material used either to remove a loosely held uncured (i.e., not dry to the touch) adhesive or sealant from a substrate or to clean equipment used in applying a material.

"Computer diskette jacket manufacturing adhesive" means any adhesive intended by the manufacturer to glue the fold-over flaps to the body of a vinyl computer diskette jacket.

"Contact bond adhesive" means an adhesive that:

(1) is designed for application to both surfaces to be bonded together;

(2) is allowed to dry before the two surfaces are placed in contact with each other;

(3) forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other; and

(4) does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces.

"Contact adhesive" means an adhesive that feels dry to the touch and bonds instantly. Contact adhesives do not include

rubber cements that are primarily intended for use on paper substrates and vulcanizing fluids that are designed and labeled for tire repair only.

"Cove base" means a flooring trim unit, generally made of vinyl or rubber, having a concave radius on one edge and a convex radius on the opposite edge that is used in forming a junction between the bottom wall course and the floor or to form an inside corner.

"Cove base installation adhesive" means any adhesive intended by the manufacturer to be used for the installation of cove base or wall base on a wall or vertical surface at floor level.

"Cyanoacrylate adhesive" means any adhesive with a cyanoacrylate content of at least 95% by weight.

"Department of Defense military technical data" means a specification that specifies design requirements, such as materials to be used, how a requirement is to be achieved, or how an item is to be fabricated or constructed.

"Enclosed cleaning system" means a cleaner consisting of a closed container with a door or top that can be opened and closed and fitted with cleaning connections. A spray gun is attached to the enclosed cleaning system by a connection, and solvent is pumped through the gun to clean it. The cleaning solvent falls back into the cleaning system's solvent reservoir for recirculation.

"Flexible vinyl" means non-rigid polyvinyl chloride plastic with at least 5% by weight plasticizer content.

"Fiberglass" means a material consisting of extremely fine glass fibers.

"Indoor floor covering installation adhesive" means any adhesive intended by the manufacturer for use in the installation of wood flooring, carpet, resilient tile, vinyl tile, vinyl backed carpet, resilient sheet and roll or artificial grass. Adhesives used to install ceramic tile and perimeter bonded sheet flooring with vinyl backing onto a non-porous substrate, such as flexible vinyl, are excluded from this category.

"Laminate" means a product made by bonding together two or more layers of material.

"Marine deck sealant" or "marine deck sealant primer" means any sealant or sealant primer labeled for application to wooden marine decks.

"Medical equipment manufacturing" means the manufacture of medical devices, such as, but not limited to, catheters, heart valves, blood cardioplegia machines, tracheostomy tubes, blood oxygenators, and cardiatory reservoirs.

"Metal to urethane/rubber molding or casting adhesive" means any adhesive intended by the manufacturer to bond metal to high density or elastomeric urethane or molded rubber materials, in heater molding or casting processes, to fabricate products such as rollers for computer printers or other paper handling equipment.

"Multipurpose construction adhesive" means any adhesive intended by the manufacturer for use in the installation or repair of various construction materials, including but not limited to drywall, subfloor, panel, fiberglass reinforced plastic (FRP), ceiling tile and acoustical tile.

"Nonmembrane roof installation/repair adhesive" means any adhesive intended by the manufacturer for use in the installation or repair of nonmembrane roofs and that is not intended for the installation of prefabricated single-ply flexible roofing membrane, including, but not limited to, plastic or asphalt roof cement, asphalt roof coating and cold application cement.

"Outdoor floor covering installation adhesive" means any adhesive intended by the manufacturer for use in the installation of floor covering that is not in an enclosure and that is exposed to ambient weather conditions during normal use.

"Panel installation" means the installation of plywood, pre-decorated hardboard (or tileboard), fiberglass reinforced plastic,

and similar pre-decorated or non-decorated panels to studs or solid surfaces using an adhesive formulated for that purpose.

"Perimeter bonded sheet flooring installation" means the installation of sheet flooring with vinyl backing onto a nonporous substrate using an adhesive designed to be applied only to a strip of up to four inches wide around the perimeter of the sheet flooring.

"Plastic cement welding adhesive" means any adhesive intended by the manufacturer for use to dissolve the surface of plastic to form a bond between mating surfaces.

"Plastic cement welding adhesive primer" means any primer intended by the manufacturer for use to prepare plastic substrates prior to bonding or welding.

"Plasticizer" means a material such as a high boiling point organic solvent that is incorporated into a vinyl to increase its flexibility, workability, or distensibility, as determined by ASTM Method E-260-96.

"Polyvinyl chloride (PVC) plastic" means a polymer of the chlorinated vinyl monomer that contains 57% chlorine.

"Polyvinyl chloride welding adhesive" or "PVC welding adhesive" means any adhesive intended by the manufacturer for use in the welding of PVC plastic pipe.

"Porous material" means a substance that has tiny openings, often microscopic, in which fluids may be absorbed or discharged, including, but not limited to, wood, paper and corrugated paperboard.

"Roadway sealant" means any sealant intended by the manufacturer for application to public streets, highways and other surfaces, including but not limited to curbs, berms, driveways and parking lots.

"Rubber" means any natural or manmade rubber substrate, including styrene-butadiene rubber, polychloroprene (neoprene), butyl rubber, nitrile rubber, chlorosulfonated polyethylene and ethylene propylene diene terpolymer.

"Sealant primer" means any product intended by the manufacturer for application to a substrate, prior to the application of a sealant, to enhance the bonding surface.

"Sealant" means any material with adhesive properties, including sealant primers and caulks, that is formulated primarily to fill, seal, waterproof or weatherproof gaps or joints between two surfaces. "Sheet-applied rubber installation" means the process of applying sheet rubber liners by hand to metal or plastic substrates to protect the underlying substrate from corrosion or abrasion. These operations also include laminating sheet rubber to fabric by hand.

"Single-ply roof membrane" means a prefabricated single sheet of rubber, normally ethylene-propylenediene terpolymer, that is field applied to a building roof using one layer of membrane material.

"Single-ply roof membrane installation and repair adhesive" means any adhesive labeled for use in the installation or repair of single-ply roof membrane.

(1) Installation includes, as a minimum, attaching the edge of the membrane to the edge of the roof and applying flashings to vents, pipes and ducts that protrude through the membrane.

(2) Repair includes gluing the edges of torn membrane together, attaching a patch over a hole and reapplying flashings to vents, pipes or ducts installed through the membrane.

"Single-ply roof membrane adhesive primer" means any primer labeled for use to clean and promote adhesion of the single-ply roof membrane seams or splices prior to bonding.

"Single-ply roof membrane sealant" means any sealant labeled for application to single-ply roof membrane.

"Structural glazing adhesive" means any adhesive intended by the manufacturer to apply glass, ceramic, metal, stone or composite panels to exterior building frames.

"Subfloor installation" means the installation of subflooring material over floor joists, including the construction of any load bearing joists. Subflooring is covered by a finish



surface material.

"Surface preparation solvent" means a solvent used to remove dirt, oil and other contaminants from a substrate prior to the application of a primer, adhesive or sealant.

"Thin metal laminating adhesive" means any adhesive intended by the manufacturer for use in bonding multiple layers of metal to metal or metal to plastic in the production of electronic or magnetic components in which the thickness of the bond line is less than 0.25 mils.

"Tire repair" means a process that includes expanding a hole, tear, fissure or blemish in a tire casing by grinding or gouging, applying adhesive, and filling the hole or crevice with rubber.

"Traffic marking tape" means preformed reflective film intended by the manufacturer for application to public streets, highways and other surfaces, including curbs, berms, driveways and parking lots.

"Traffic marking tape adhesive primer" means any primer intended by the manufacturer for application to surfaces prior to installation of traffic marking tape.

"Undersea-based weapons systems components" means the fabrication of parts, assembly of parts or completed units of any portion of a missile launching system used on undersea ships.

"Waterproof resorcinol glue" means a two-part resorcinol-resin-based adhesive designed for applications where the bond line must be resistant to conditions of continuous immersion in fresh or salt water.

**R307-342-5. VOC Content Limits.**

(1) Beginning September 1, 2014, no person shall manufacture any adhesive, sealant, adhesive primer or sealant primer with a VOC content in excess of the limits in Table 1.

(2) Beginning September 1, 2014, no person shall sell supply or offer for sale any adhesive, sealant, adhesive primer or sealant primer with a VOC content in excess of the limits in Table 1 and that was manufactured on or after September 1, 2014.

(3) Beginning September 1, 2014, no person shall apply any adhesive, sealant, adhesive primer or sealant primer with a VOC content in excess of the limits in Table 1 unless that person uses an add-on control device as specified in R307-342-8 or unless the adhesive, sealant, adhesive primer or sealant primer was manufactured before September 1, 2014.

(4) The VOC content limits in Table 1 for adhesives applied to particular substrates shall apply as follows:

(a) If a person uses an adhesive or sealant subject to a specific VOC content limit for such adhesive or sealant in Table 1, such specific limit is applicable rather than an adhesive-to-substrate limit; and

(b) If an adhesive is used to bond dissimilar substrates together, the applicable substrate category with the highest VOC content shall be the limit for such use.

TABLE 1

VOC Content Limits for Adhesives, Sealants, Adhesive Primers, Sealant Primers and Adhesives Applied to Particular Substrates (minus water and exempt compounds (compounds that are not defined as VOC in R307-101-2)), as applied

Adhesive, Sealant, Adhesive Primer Category	VOC Content Limit (grams VOC/liter)
<b>Adhesives</b>	
ABS welding	400
Ceramic tile installation	130
Computer diskette jacket manufacturing	850
Contact bond	250

Cove base installation	150
CPVC welding	490
Indoor floor covering installation	150
Metal to urethane/rubber molding or casting	850
Multipurpose construction	200
Nonmembrane roof installation/repair	300
Other plastic cement welding	510
Outdoor floor covering installation	250
PVC welding	510
Single-ply roof membrane installation/repair	250
Structural glazing	100
Thin metal laminating	780
Tire retread	100
Perimeter bonded sheet vinyl flooring installation	660
Waterproof resorcinol glue	170
Sheet-applied rubber installation	850
<b>Sealants</b>	
Architectural	250
Marine deck	760
Nonmembrane roof installation/repair	300
Roadway	250
Single-ply roof membrane	450
Other	420
<b>Adhesive Primers</b>	
Automotive glass	700
Plastic cement welding	650
Single-ply roof membrane	250
Traffic marking tape	150
Other	250
<b>Sealant Primers</b>	
Non-porous architectural	250
Porous architectural	775
Marine deck	760
Other	750
<b>Adhesives Applied to the Listed Substrate</b>	
Flexible vinyl	250
Fiberglass	200
Metal	30
Porous material	120
Rubber	250
Other substrates	250

**R307-342-6. Application Equipment.**

(1) An operator shall only use the following equipment to apply adhesives and sealants:

- (a) Electrostatic application;
- (b) Flow coater;
- (c) Roll coater;
- (d) Dip coater;
- (e) Hand application method;
- (f) Airless spray and air-assisted airless spray;
- (g) High volume, low pressure spray equipment operated in accordance with the manufacturers specifications; or
- (h) Other methods having a minimum 65% transfer efficiency.

(2) Removal of an adhesive, sealant, adhesive primer or sealant primer from the parts of spray application equipment shall be performed as follows:

- (a) In an enclosed cleaning system;
- (b) Using a solvent (excluding water and solvents exempt from the definition of volatile organic compounds found in R307-101-2) with a VOC content less than or equal to 70 grams of VOC per liter of material; or
- (c) Parts containing dried adhesive may be soaked in a solvent if the composite vapor pressure of the solvent, excluding water and exempt compounds, is less than or equal to 9.5 mm Hg at 20 degrees Celsius and the parts and solvent are in a closed container that remains closed except when adding parts to or removing parts from the container.

#### **R307-342-7. Administrative Requirements.**

(1) Each person that manufactures adhesives, sealants, and adhesive primers subject to this rule shall maintain records demonstrating compliance.

(2) Commercial and industrial operations that are not exempt under R307-342-3 shall maintain records demonstrating compliance with this rule, including:

- (a) A list of each adhesive, sealant, adhesive primer, sealant primer cleanup solvent and surface preparation solvent in use and in storage;
- (b) A material data sheet for each adhesive, sealant, adhesive primer, sealant primer, cleanup solvent and surface preparation solvent;
- (c) A list of catalysts, reducers or other components used and the mix ratio;
- (d) The VOC content or vapor pressure, as applied; and
- (e) The monthly volume of each adhesive, sealant, adhesive primer, sealant primer cleanup solvent and surface preparation solvent used.

(2) Except as provided in R307-342-6(2), no person shall use materials containing VOCs for the removal of adhesives, sealants, or adhesive or sealant primers from surfaces, other than spray application equipment, unless the composite vapor pressure of the solvent used is less than 45 mm Hg at 20 degrees Celsius.

#### **R307-342-8. Add-On Controls Systems Operations.**

(1) The owner or operator shall install and maintain an incinerator, carbon adsorption, or any other add-on emission control system, provided that the emission control system is operated and maintained in accordance with the manufacturer recommendations in order to maintain at least 85% capture and control efficiency. Determination of overall capture and control efficiency shall be determined using EPA approved methods, as follows.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test

methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

(2) The owner or operator of a control system shall provide documentation that the emission control system will attain the requirements of R307-342-8(1).

(3) The owner or operator shall maintain records of key system parameters necessary to ensure compliance with R307-342-8. Key system parameters may include, but are not limited to, temperature, pressure and flow rates. Operator inspection schedule, monitoring, recordkeeping, and key parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(4) The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.

#### **R307-342-9. Container Labeling.**

Each manufacturer of an adhesive, sealant, adhesive primer or sealant primer subject to this rule shall display the following information on the product container or label:

(1) A statement of the manufacture's recommendation regarding thinning, reducing, or mixing of the product.

(a) R307-342-9 does not apply to the thinning of a product with water.

(b) If the thinning of the product prior to use is not necessary, the recommendation shall specify that the product is to be applied without thinning.

(2) The maximum or the actual VOC content of the product in accordance with Table 1, as supplied, displayed in grams of VOC per liter of product; and

(3) The maximum or the actual VOC content of the product in accordance with Table 1, which includes the manufacture's maximum recommendation for thinning, as applied, displayed in grams of VOC per liter of product.

**KEY: air pollution, adhesives, sealants, primers  
December 1, 2014 19-2-104(1)(a)  
Notice of Continuation March 8, 2018**

**R307. Environmental Quality, Air Quality.**

**R307-344. Paper, Film, and Foil Coatings.**

**R307-344-1. Purpose.**

The purpose of this rule is to limit volatile organic compound (VOC) emissions from paper, film, and foil coating operations.

**R307-344-2. Applicability.**

(1) R307-344 applies to paper, film, and foil coating operations located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.

(2) Before September 1, 2018, R307-344 applies to a paper, film and foil coating operations that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities.

(3) Effective September 1, 2018, R307-344 shall apply to a paper, film and foil coating operations that use a combined 20 gallons or more of coating products and associated solvents per year.

**R307-344-3. Definitions.**

The following additional definitions apply to R307-344:  
 "As applied" means the VOC and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Film coating" means any coating applied in a web coating process on any film substrate other than paper or fabric, including, but not limited to, typewriter ribbons, photographic film, magnetic tape, and metal foil gift wrap.

"Foil coating" means a coating applied in a web coating process on any foil substrate other than paper or fabric, including, but not limited to, typewriter ribbons, photographic film, magnetic tape, and metal foil gift wrap, but excluding coatings applied to packaging used exclusively for food and health care products for human and animal consumption.

"Paper coating" means uniform distribution of coatings put on paper, film, foils and pressure sensitive tapes regardless of substrate. Related web coating processes on plastic film and decorative coatings on metal foil are included in this definition. Paper coating covers saturation operations as well as coating operations.

"Saturation" means dipping the web into a bath.

"Web" means a continuous sheet of substrate.

**R307-344-4. VOC Content Limits.**

No owner or operator shall apply coatings with a VOC content greater than the amounts specified in Table 1, unless the owner or operator uses an add-on control device as specified in R307-344-6.

TABLE 1

Paper, Film, and Foil Coating Limitations  
 (values in pounds VOC per pound of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

Coating Category	VOC Content Limits (lb/lb)
Paper, film and foil	0.08
Pressure sensitive tape and label	0.067

**R307-344-5. Work Practices.**

(1) Control techniques and work practices are to be implemented at all times to reduce VOC emissions. Control techniques and work practices include:

- (a) Using covered containers for solvent wiping cloths;
- (b) Using collection hoods for areas where solvent is used for cleanup;

(c) Minimizing spills of VOC-containing cleaning materials;

(d) Conveying VOC-containing materials from one location to another in closed containers or pipes; and

(e) Cleaning spray guns in enclosed systems

(2) No person shall apply coatings unless these materials are applied with equipment operated according to the manufacturer's specifications, and by the use of one of the following methods:

- (a) Flow coater;
- (b) Roll coater;
- (c) Dip coater;
- (d) Foam coater;
- (e) Die coater;
- (f) Hand application methods;
- (g) High-volume, low pressure (HVLV) spray; or
- (h) Other application method capable of achieving 65% or greater transfer efficiency, as certified by the manufacturer.

(3) Solvent cleaning operations shall be performed using cleaning materials having a VOC composite vapor pressure no greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-344-6.

**R307-344-6. Add-On Controls Systems Operations.**

(1) If an add-on control system is used, the owner or operator shall install and maintain the add-on emission control system in accordance with the manufacturer recommendations and maintain 90% or greater capture and control efficiency. The overall capture and control efficiency shall be determined using EPA approved methods, as follows.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

**R307-344-7. Recordkeeping.**

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-344. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-344.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-344-6.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

**KEY: VOC emission, paper coating, film coating, foil coating**

December 6, 2017

Notice of Continuation March 8, 2018

19-2-104(1)(a)

**R307. Environmental Quality, Air Quality.****R307-345. Fabric and Vinyl Coatings.****R307-345-1. Purpose.**

The purpose of this rule is to limit volatile organic compound (VOC) emissions from fabric and vinyl coating operations.

**R307-345-2. Applicability.**

(1) R307-345 applies to fabric and vinyl coating operations located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.

(2) Before September 1, 2018, R307-345 applies to fabric and vinyl coating operations that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities.

(3) Effective September 1, 2018, R307-345 shall apply to fabric and vinyl coating operations that use a combined 20 gallons or more of coating products and associated solvents per year.

**R307-345-3. Definitions.**

The following additional definitions apply to R307-345:

"As applied" means the VOC and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Fabric coating" means the coating or saturation of a textile substrate with a knife, roll or rotogravure coater to impart characteristics that are not initially present, such as strength, stability, water or acid repellency, or appearance. Fabric coatings can include, but are not limited to, industrial and electrical tapes, tie cord, utility meter seals, imitation leathers, tarpaulins, shoe material, and upholstery fabrics.

"Knife coating" means the application of a coating material to a substrate by means of drawing the substrate beneath a blade that spreads the coating evenly over the width of the substrate.

"Roller coating" the coating material is applied to the moving fabric, in a direction opposite to the movement of the substrate, by hard rubber or steel rolls.

"Rotogravure coating" means the application of a uniform layer of material across the entire width of the web to substrate by means of a roll coating technique in which the pattern to be applied is etched on the coating roll. The coating material is picked up in these recessed areas and is transferred to the substrate.

"Vinyl coating" means applying a decorative or protective top coat, or printing on vinyl coated fabric or vinyl sheets.

**R307-345-4. VOC Content Limits.**

(1) No owner or operator shall apply fabric or vinyl coatings with a VOC content greater than 2.2 pounds of VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied, unless the owner or operator uses an add-on device as specified in R307-345-6.

(2) Organosol and plastisol coatings shall not be used to bubble emissions from vinyl printing and top coating.

**R307-345-5. Work Practices.**

(1) Control techniques and work practices are to be implemented at all times to reduce VOC emissions. Control techniques and work practices include:

- (a) Covered containers for solvent wiping cloths;
- (b) Collection hoods for areas where solvent is used for cleanup;
- (c) Covered mixing tanks; and
- (d) Covered hoods and oven routed to add-on control devices, which may include, but are not limited to, after burners, thermal incinerators, catalytic oxidation, or carbon adsorption.

(2) No person shall apply any coating unless the coating application method achieves a demonstrated 65% transfer efficiency.

The following applications achieve a minimum of 65% transfer efficiency and must be operated in accordance with the manufacturers specifications:

- (a) Foam coat;
- (b) Flow coat;
- (c) Roll coat;
- (d) Dip coat;
- (e) Die coat;
- (e) High-volume, low-pressure (HVLP) spray;
- (f) Hand application methods; or
- (g) Other application method capable of achieving 65% or greater transfer efficiency, as certified by the manufacturer.

(3) Solvent cleaning operations shall be performed using cleaning materials having a VOC composite vapor pressure no greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-345-6.

**R307-345-6. Add-On Controls Systems Operations.**

(1) If an add-on control system is used, the owner or operator shall install and maintain the add-on emission control system in accordance with the manufacturer recommendations and maintain 90% or greater capture and control efficiency. The overall capture and control efficiency shall be determined using EPA approved methods, as follows.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

**R307-345-7. Recordkeeping.**

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-345. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-345.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-345-6.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

**KEY: air pollution, emission controls, fabric coating, vinyl coating**

**December 6, 2017**

**19-2-104(1)(a)**

**Notice of Continuation March 8, 2018**

**R307. Environmental Quality, Air Quality.**  
**R307-346. Metal Furniture Surface Coatings.**  
**R307-346-1. Purpose.**

The purpose of this rule is to limit volatile organic compound (VOC) emissions from metal furniture surface coating operations in application areas, flash-off areas, and ovens of metal furniture coating lines involved in prime and top-coat or single coat operations.

**R307-346-2. Applicability.**

(1) R307-346 applies to metal furniture surface coating operations located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.

(2) Before September 1, 2018, R307-346 applies to metal furniture surface coating operations that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities.

(3) Effective September 1, 2018, R307-346 shall apply to metal furniture surface coating operations that use a combined 20 gallons or more of coating products and associated solvents per year.

**R307-346-3. Exemptions.**

(1) The requirements of R307-346 do not apply to the following:

- (a) Stencil coatings;
- (b) Safety-indicating coatings;
- (c) Solid-film lubricants;
- (d) Electrical-insulating and thermal-conducting coatings;
- (e) Touch-up and repair coatings; or
- (f) Coating applications utilizing hand-held aerosol cans.

**R307-346-4. Definitions.**

The following additional definitions apply to R307-346:  
 "Air dried coating" means coatings that are dried by the use of air or a forced warm air at temperatures up to 194 degrees Fahrenheit.

"Application area" means the area where the coating is applied by spraying, dipping, or flow coating techniques.

"As applied" means the VOC and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Baked coating" means a coating that is cured at a temperature at or above 194 degrees Fahrenheit.

"Extreme performance coatings" means coatings designed for harsh exposure or extreme environmental conditions.

"Metal furniture surface coating" means the surface coating of any furniture made of metal or any metal part that will be assembled with other metal, wood fabric, plastic, or glass parts to form a furniture piece.

**R307-346-5. VOC Content Limits.**

No owner or operator shall apply coatings with a VOC content greater than the amounts specified in Table 1, unless the owner or operator uses an add-on control device as specified in R307-346-7.

TABLE 1

METAL FURNITURE SURFACE COATING VOC LIMITS  
 (values in pounds of VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

Coating Category	VOC Content Limits (lb/gal)	
	Baked	Air Dried
General, One Component	2.3	2.3
General, Multi-Component	2.3	2.8
Extreme High Gloss	3.0	2.8
Extreme Performance	3.0	3.5

Heat Resistant	3.0	3.5
Metallic	3.5	3.5
Pretreatment Coatings	3.5	3.5
Solar Absorbent	3.0	3.5

**R307-346-6. Work Practices.**

- (1) The owner or operator shall:
- (a) Store all VOC-containing coatings, thinners, and cleaning materials in closed containers;
  - (b) Minimize spills of VOC-containing coatings, thinners, and cleaning materials;
  - (c) Clean up spills immediately;
  - (d) Convey any coatings, thinners, and cleaning materials in closed containers or pipes;
  - (e) Close mixing vessels that contain VOC coatings and other materials except when specifically in use; and
  - (f) Minimize usage of solvents during cleaning of storage, mixing, and conveying equipment.
- (2) No person shall apply any coating unless the coating application method achieves a demonstrated 65% transfer efficiency.

The following applications achieve a minimum of 65% transfer efficiency and shall be operated in accordance with the manufacturers specifications:

- (a) Electrostatic application;
- (b) Electrodeposition;
- (c) Brush coat;
- (d) Flow coat;
- (e) Roll coat;
- (f) Dip coat;
- (g) Continuous coating;
- (h) High-volume, low-pressure (HVLV) spray; or
- (i) Other application method capable of achieving 65% or greater transfer efficiency, as certified by the manufacturer.

(3) Solvent cleaning operations shall be performed using cleaning materials having a VOC composite vapor pressure no greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-346-7.

**R307-346-7. Add-On Controls Systems Operations.**

(1) If an add-on control system is used, the owner or operator shall install and maintain the add-on emission control system in accordance with the manufacturer recommendations and maintain 90% or greater capture and control efficiency. Determination of overall capture and control efficiency shall be determined using EPA approved methods, as follows.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

**R307-346-8. Recordkeeping.**

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-346. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-346.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-346-7.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

**KEY: air pollution, emission controls, surface coating, metal furniture**

**December 6, 2017**

**19-2-104(1)(a)**

**Notice of Continuation March 8, 2018**

**R307. Environmental Quality, Air Quality.**  
**R307-347. Large Appliance Surface Coatings.**  
**R307-347-1. Purpose.**

The purpose of this rule is to reduce volatile organic compound (VOC) emissions from large appliance surface coating operations.

**R307-347-2. Applicability.**

(1) R307-347 applies to large appliance surface coating operations located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.

(2) Before September 1, 2018, R307-347 applies to large appliance surface coating operations that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities.

(3) Effective September 1, 2018, R307-347 shall apply to large appliance surface coating operations that use a combined 20 gallons or more of coating products and associated solvents per year.

**R307-347-3. Exemptions.**

(1) The requirements of R307-347 do not apply to the following:

- (a) Stencil coatings;
- (b) Safety-indicating coatings;
- (c) Solid-film lubricants;
- (d) Electric-insulating and thermal-conducting coatings;
- (e) Touch-up and repair coatings; or
- (f) Coating applications utilizing hand-held aerosol cans.

**R307-347-4. Definitions.**

The following additional definitions apply to R307-347:

"Air dried coating" means coatings that are dried by the use of air or a forced warm air at temperatures up to 194 degrees Fahrenheit.

"As applied" means the VOC and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Baked coating" means a coating that is cured at a temperature at or above 198 degrees Fahrenheit.

"Extreme performance coatings" means coatings designed for harsh exposure or extreme environmental conditions.

"Large appliance" means doors, cases, lids, panels, and interior support parts of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dishwashers, trash compactors, air conditioners, and other similar products.

**R307-347-5. VOC Content Limits.**

No owner or operator shall apply coatings with a VOC content greater than the amounts specified in Table 1, unless the owner or operator uses an add-on control device as specified in R307-347-7.

TABLE 1

Large Appliance Surface Coating Limitations  
 (values in pounds VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

Coating Category (lb/gal)	VOC Content Limits	
	Baked	Air Dried
General, one component	2.3	2.3
General, multi-component	2.3	2.8
Extreme high gloss	3.0	2.8
Extreme performance	3.0	3.5
Heat resistance	3.0	3.5
Solar absorbent	3.0	3.5
Metallic	3.5	3.5

Pretreatment coatings 3.5 3.5

**R307-347-6. Work Practices.**

- (1) The owner or operator shall:
  - (a) Store all VOC-containing coatings, thinners, and cleaning materials in closed containers;
  - (b) Minimize spills of VOC-containing coatings, thinners, and cleaning materials;
  - (c) Clean up spills immediately;
  - (d) Convey any coatings, thinners, and cleaning materials in closed containers or pipes;
  - (e) Close mixing vessels that contain VOC coatings and other materials except when specifically in use; and
  - (f) Minimize usage of solvents during cleaning of storage, mixing, and conveying equipment.

(2) No person shall apply any coating unless the coating application method achieves a 65% or greater transfer efficiency. The following applications achieve a minimum of 65% transfer efficiency and shall be operated in accordance with the manufacturers specifications:

- (a) Electrostatic application;
- (b) Electrodeposition;
- (c) Brush coat;
- (d) Flow coat;
- (e) Roll coat;
- (f) Dip coat;
- (g) High-volume, low-pressure (HVLP) spray; or
- (h) Other application method capable of achieving 65% or greater transfer efficiency, as certified by the manufacturer.

(3) Solvent cleaning operations shall be performed using cleaning materials having a VOC composite vapor pressure no greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-347-7.

**R307-347-7. Add-On Controls Systems Operations.**

(1) If an add-on control system is used, the owner or operator shall install and maintain the add-on emission control system in accordance with the manufacturer recommendations and maintain 90% or greater capture and control efficiency. The overall capture and control efficiency shall be determined using EPA approved methods, as follows.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

**R307-347-8. Recordkeeping.**

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-347. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-347.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-347-7.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to



demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

**KEY: air pollution, emission controls, large appliances, surface coating**  
**December 6, 2017**                      **19-2-104(1)(a)**  
**Notice of Continuation March 8, 2018**

**R307. Environmental Quality, Air Quality.****R307-348. Magnet Wire Coatings.****R307-348-1. Purpose.**

The purpose of this rule is to limit volatile organic compound (VOC) emissions from magnet wire coating operations.

**R307-348-2. Applicability.**

R307-348 applies to sources that emit 2 tons per year or more of VOC emissions, including related cleaning activities, that are located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah or Weber counties. Operations that are exclusively covered by Department of Defense military technical data and performed by the United States Armed Forces are exempt from the requirements of R307-348.

**R307-348-3. Definitions.**

The following additional definition applies to R307-348: "Magnet wire coating" means the process of applying coating of electrical insulating varnish or enamel to aluminum or copper wire for use in electrical machinery.

**R307-348-4. VOC Content Limit.**

No owner or operator shall apply coatings with a VOC content greater than 200 grams VOC per liter (1.7 pounds per gallon), excluding water, and exempt solvents (compounds not classified as VOCs as defined in R307-101-2), unless the owner or operator uses an add-on control device as specified in R307-348-6.

**R307-348-5. Work Practices.**

- (1) The owner or operator shall:
  - (a) Store all VOC-containing coatings and cleaning materials in closed containers;
  - (b) Minimize spills of VOC-containing coatings and cleaning materials;
  - (c) Clean up spills immediately;
  - (d) Convey any coatings, thinners, and cleaning materials in closed containers or pipes;
  - (e) Close mixing vessels that contain VOC coatings and other materials except when specifically in use; and
  - (f) Minimize usage of solvents during cleaning of storage, mixing, and conveying equipment.
- (2) Solvent cleaning operations shall be performed using cleaning materials having a VOC composite vapor pressure no greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-348-6.

**R307-348-6. Add-On Control Systems Operations.**

- (1) If an add-on control system is used it must be installed, operated, and maintained in accordance with manufacturer recommendations.
  - (a) An add-on control device must have a 90% or greater capture and control efficiency rating. Efficiency must be determined using EPA approved methods as follows:
    - (i) Capture efficiency must be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 C.F.R. Parts 51, Appendix M, Methods 204-204F, as applicable.
    - (ii) Control efficiency must be determined using test methods in Appendices A-1, A-6, and A-7 to 40 C.F.R. Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.
    - (iii) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

**R307-348-7. Recordkeeping.**

- (1) The owner or operator shall maintain records of the

following:

- (a) Records that demonstrate compliance with R307-348. Records must include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-348.
- (b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-348-6.
  - (i) Key system parameters include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.
  - (ii) Key inspection parameters must be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.
- (2) All records must be maintained for a minimum of 2 years.
- (3) Records must be made available to the director upon request.

**KEY: air pollution, emission controls, surface coating, magnet wires**

**December 6, 2017**

**Notice of Continuation March 8, 2018**

**19-2-104(1)(a)**

**R307. Environmental Quality, Air Quality.****R307-349. Flat Wood Paneling Coatings.****R307-349-1. Purpose.**

The purpose of R307-349 is to limit volatile organic compound (VOC) emissions from flat wood paneling coating sources.

**R307-349-2. Applicability.**

(1) R307-349 applies to flat wood paneling coating operations located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.

(2) Before September 1, 2018, R307-349 applies to flat wood paneling coating operations that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities.

(3) Effective September 1, 2018, R307-349 shall apply to flat wood paneling coating operations that use a combined 20 gallons or more of coating products and associated solvents per year.

**R307-349-3. Definitions.**

The following additional definitions apply to R307-349:

"As applied" means the VOC and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Finishing material" means a coating used in the flat wood panel industry, including basecoats, stains, washcoats, sealers, and topcoats.

"Flat wood paneling" means wood paneling products that are any decorative interior, exterior or tileboard (class I hardboard) panel to which a protective, decorative, or functional material or layer has been applied.

"Strippable booth coating" means a coating that is applied to a booth wall to provide a protective film to receive overspray during finishing and that is subsequently peeled and disposed. Strippable booth coatings are intended to reduce or eliminate the need to use organic solvents to clean booth walls.

**R307-349-4. VOC Content Limit.**

(1) No owner or operator shall apply coatings with a VOC content greater than 2.1 pounds of VOC per gallon, excluding water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), unless an add-on control device is used as specified in R307-349-6.

(2) No owner or operator shall use a strippable booth coating with a VOC content greater than 3.8 pounds VOC per gallon, excluding water and exempt solvents (compounds that are not defined as VOC), unless an add-on control device is used as specified in R307-349-6.

**R307-349-5. Work Practice.**

(1) The owner or operator shall:

(a) Store all VOC-containing coatings, thinners, and cleaning materials in closed containers;

(b) Minimize spills of VOC-containing coatings, thinners, and cleaning materials;

(c) Clean up spills immediately;

(d) Convey any coatings, thinners, and cleaning materials in closed containers or pipes;

(e) Close mixing vessels that contain VOC coatings and other materials except when specifically in use; and

(f) Minimize usage of solvents during cleaning of storage, mixing, and conveying of equipment.

(2) No person shall apply any coating unless the coating application method achieves a demonstrated 65% transfer efficiency.

The following applications achieve a minimum of 65% transfer efficiency and shall be operated in accordance with the

manufacturers specifications:

(a) Paint brush;

(b) Flow coat;

(c) Roll coat;

(d) Dip coat;

(e) Detailing or touch-up guns;

(e) High-volume, low-pressure (HVLP) spray;

(f) Hand application methods; or

(g) Other application method capable of achieving 65% or greater transfer efficiency, as certified by the manufacturer.

(3) No owner or operator shall perform solvent cleaning operations using materials with a VOC composite vapor pressure greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-349-6.

**R307-349-6. Add-On Controls Systems Operations.**

(1) If an add-on control system is used, the owner or operator shall install and maintain the add-on emission control system in accordance with the manufacturer recommendations and maintain 90% or greater capture and control efficiency. The overall capture and control efficiency shall be determined using EPA approved methods, as follows.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

**R307-349-7. Recordkeeping.**

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-349. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-349.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-349-6.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

**KEY: air pollution, emission controls, flat wood paneling, coatings**

**December 6, 2017**

**Notice of Continuation March 8, 2018**

**19-2-104(1)(a)**

**R307. Environmental Quality, Air Quality.****R307-350. Miscellaneous Metal Parts and Products Coatings.****R307-350-1. Purpose.**

The purpose of R307-350 is to limit volatile organic compound (VOC) emissions from miscellaneous metal parts and products coating operations.

**R307-350-2. Applicability.**

(1) R307-350 applies to miscellaneous metal parts and products coating operations located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.

(2) Before September 1, 2018, R307-350 applies to miscellaneous metal parts and products coating operations that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities.

(3) Effective September 1, 2018, R307-350 shall apply to miscellaneous metal parts and products coating operations that use a combined 20 gallons or more of coating products and associated solvents per year.

(4) R307-350 applies to, but is not limited to, the following:

- (a) Large farm machinery (harvesting, fertilizing, planting, tractors, combines, etc.);
- (b) Small farm machinery (lawn and garden tractors, lawn mowers, rototillers, etc.);
- (c) Small appliance (fans, mixers, blenders, crock pots, vacuum cleaners, etc.);
- (d) Commercial machinery (computers, typewriters, calculators, vending machines, etc.);
- (e) Industrial machinery (pumps, compressors, conveyor components, fans, blowers, transformers, etc.);
- (f) Fabricated metal products (metal covered doors, frames, trailer frames, etc.); and
- (g) Any other industrial category that coats metal parts or products under the standard Industrial Classification Code of major group 33 (primary metal industries), major group 34 (fabricated metal products), major group 35 (nonelectric machinery), major group 36 (electrical machinery), major group 37 (transportation equipment) major group 38 (miscellaneous instruments), and major group 39 (miscellaneous manufacturing industries).

**R307-350-3. Exemptions.**

(1) The requirements of R307-350 do not apply to the following:

- (a) The surface coating of automobiles subject to R307-354 and light-duty trucks;
- (b) Flat metal sheets and strips in the form of rolls or coils;
- (c) Surface coating of aerospace vehicles and components subject to R307-355;
- (d) The exterior of marine vessels;
- (e) Customized top coating of automobiles and trucks if production is less than 35 vehicles per day;
- (f) Military munitions manufactured by or for the Armed Forces of the United States;
- (g) Operations that are exclusively covered by Department of Defense military technical data and performed by a Department of Defense contractor and/or on site at installations owned and/or operated by the United States Armed Forces;
- (h) Stripping of cured coatings and adhesives;
- (i) Canned aerosol coating products;
- (j) Research and development, quality control, or performance testing activities; or
- (k) The provisions of R307-350 shall not apply to coating products on medical devices up to 800 pounds of VOC per year.

(2) The requirements of R307-350-5 do not apply to the following:

- (a) Stencil and hand lettering coatings;

(b) Safety-indicating coatings;

(c) Solid-film lubricants;

(d) Electric-insulating and thermal-conducting coatings;

(e) Magnetic data storage disk coatings; or

(f) Plastic extruded onto metal parts to form a coating.

(3) The requirements of R307-350-6 do not apply to the following:

(a) Touch-up coatings;

(b) Repair coatings; or

(c) Textured finishes.

**R307-350-4. Definitions.**

The following additional definitions apply to R307-350:

"Aerospace vehicles and components" is defined in R307-355.

"Air dried coating" means coatings that are dried by the use of air or forced warm air at temperatures up to 194 degrees Fahrenheit.

"As applied" means the VOC and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Baked coating" means coatings that are cured at a temperature at or above 194 degrees Fahrenheit.

"Camouflage coating" means coatings that are used, principally by the military, to conceal equipment from detection.

"Cured coating or adhesive" means a coating or adhesive, which is dry to the touch.

"Department of Defense military technical data" means a specification that specifies design requirements, such as materials to be used, how a requirement is to be achieved, or how an item is to be fabricated or constructed.

"Dip coating" means a method of applying coatings to a substrate by submersion into and removal from a coating bath.

"Electric-insulating varnish" means a non-convertible-type coating applied to electric motors, components of electric motors, or power transformers, to provide electrical, mechanical, and environmental protection or resistance.

"Electric-insulating and thermal-conducting" means a coating that is characterized as having an electrical insulation of at least 1000 volts DC per mil on a flat test plate and an average thermal conductivity of at least 0.27 BTU per hour-foot-degree-Fahrenheit.

"Electrostatic application" means a method of applying coating particles or coating droplets to a grounded substrate by electrically charging them.

"Etching filler" mean a coating that contains less than 23% solids by weight and at least 0.5% acid by weight, and is used instead of applying a pretreatment coating followed by a primer.

"Extreme high-gloss coating" means a coating which, when tested by the American Society for Testing Material (ASTM) Test Method D-523 adopted in 1980, shows a reflectance of 75 or more on a 60 degree meter.

"Extreme performance coatings" means coatings designed for harsh exposure or extreme environmental conditions.

"Flow coat" means a non-atomized technique of applying coatings to a substrate with a fluid nozzle in a fan pattern with no air supplied to the nozzle.

"Hand lettering" means an application method utilizing small paint markers, paint brush, or other similar appliance that is administered by hand application equipment to add identification letters, numbers, or markings on a substrate.

"Heat-resistant coating" means a coating that must withstand a temperature of at least 400 degrees Fahrenheit during normal use.

"High-performance architectural coating" means a coating used to protect architectural subsections and which meets the requirements of the Architectural Aluminum Manufacturer Association's publication number AAMA 605.2-1980.

"High-temperature coating" means a coating that is certified to withstand a temperature of 1,000 degrees Fahrenheit for 24 hours.

"High-volume, low-pressure (HVLP) spray" means a coating application system which is designed to be operated and which is operated between 0.1 and 10 pounds per square inch gauge (psig) air pressure, measured dynamically at the center of the air cap and the air horns.

"Magnetic data storage disk coating" means a coating used on a metal disk which stores data magnetically.

"Medical device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar article including any component or accessory, that is intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment, or prevention of disease, or is intended to affect the structure or any function of the body. For the purpose of this rule, a medical device shall also include associated manufacturing or assembly apparatus.

"Metallic coating" means a coating which contains more than 5 grams of metal particles per liter of coating, as applied.

"Military specification coating" means a coating applied to metal parts and products and which has a formulation approved by a United States military agency for use on military equipment.

"Mold-seal coating" means the initial coating applied to a new mold or repaired mold to provide a smooth surface which, when coated with a mold release coating, prevents products from sticking to the mold.

"Multi-component coating" means a coating requiring the addition of a separate reactive resin, commonly known as a catalyst or hardener, before application to form an acceptable dry film.

"One-component coating" means a coating that is ready for application as it comes out of its container to form an acceptable dry film. A thinner, necessary to reduce the viscosity of the coating, is not considered a component.

"Pan backing coating" means a coating applied to the surface of pots, pans, or other cooking implements that are exposed directly to a flame or other heating elements.

"Prefabricated architectural component coatings" means coatings applied to metal parts and products that are to be used as an architectural structure or their appurtenances including, but not limited to, hand railings, cabinets, bathroom and kitchen fixtures, fences, rain-gutters and down-spouts, window screens, lamp-posts, heating and air conditioning equipment, other mechanical equipment, and large fixed stationary tools.

"Pretreatment coating" means a coating which contains no more than 12% solids by weight, and at least 0.5% acid, by weight, is used to provide surface etching, and is applied directly to metal surfaces to provide corrosion resistance, adhesion, and ease of stripping.

"Primer" means a coating applied to a surface to provide a firm bond between the substrate and subsequent coats.

"Repair coating" means a coating used to recoat portions of a part or product which has sustained mechanical damage to the coating.

"Safety-indicating coating" means a coating which changes physical characteristics, such as color, to indicate unsafe condition.

"Silicone release coating" means any coating which contains silicone resin and is intended to prevent food from sticking to metal surfaces.

"Solar-absorbent coating" means a coating which has as its prime purpose the absorption of solar radiation.

"Solid-film lubricant" means a very thin coating consisting of a binder system containing as its chief pigment material one or more of molybdenum disulfide, graphite, polytetrafluoroethylene (PTFE) or other solids that act as a dry lubricant between faying surfaces.

"Stencil coating" means an ink or a coating which is rolled or brushed onto a template or stamp in order to add identifying letters, numbers, or markings to metal parts and products.

"Textured finish" means a rough surface produced by spraying and splattering large drops of coating onto a previously applied coating. The coatings used to form the appearance of the textured finish are referred to as textured coatings.

"Repair and touch-up coating" means a coating used to cover minor coating imperfections appearing after the main coating operation.

"Vacuum-metalizing coating" means the undercoat applied to the substrate on which the metal is deposited or the overcoat applied directly to a metal film.

**R307-350-5. VOC Content Limits.**

(1) No owner or operator shall apply coatings with a VOC content greater than the amounts specified in Table 1, unless the owner or operator uses an add-on control device as specified in R307-350-8.

TABLE 1

METAL PARTS AND PRODUCTS VOC CONTENT LIMITS  
(values in pounds of VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

Coating Category	VOC Content Limits (lb/gal)	
	Air Dried	Baked
General One Component	2.8	2.3
General Multi Component	2.8	2.3
Camouflage	3.5	3.5
Electric-Insulating varnish	3.5	3.5
Etching Filler	3.5	3.5
Extreme High-Gloss	3.5	3.0
Extreme Performance	3.5	3.0
Heat-Resistant	3.5	3.0
High-Performance architectural	6.2	6.2
High-Temperature	3.5	3.5
Metallic	3.5	3.5
Military Specification	2.8	2.3
Mold-Seal	3.5	3.5
Pan Backing	3.5	3.5
Prefabricated Architectural Multi-Component	3.5	2.3
Prefabricated Architectural One-Component	3.5	2.3
Pretreatment Coatings	3.5	3.5
Repair and Touch Up	3.5	3.0
Silicone Release	3.5	3.5
Solar-Absorbent	3.5	3.0
Vacuum-Metalizing	3.5	3.5
Drum Coating, New, Exterior	2.8	2.8
Drum Coating, New, Interior	3.5	3.5
Drum Coating, Reconditioned, Exterior	3.5	3.5
Drum Coating, Reconditioned, Interior	4.2	4.2

(2) If more than one content limit indicated in this section applies to a specific coating, then the most stringent content limit shall apply.

**R307-350-6. Application Methods.**

No owner or operator shall apply VOC containing coatings to metal parts and products unless the coating is applied with equipment operated according to the equipment manufacturer specifications, and by the use of one of the following methods:

- (1) Electrostatic application;
- (2) Flow coat;
- (3) Dip/electrodeposition coat;
- (4) Roll coat;
- (5) Hand Application Methods;
- (6) High-volume, low-pressure (HVLP) spray; or
- (7) Another application method capable of achieving 65% or greater transfer efficiency equivalent or better to HVLP

spray, as certified by the manufacturer.

**R307-350-7. Work Practices.**

(1) Control techniques and work practices shall be implemented at all times to reduce VOC emissions. Control techniques and work practices shall include:

(a) Storing all VOC-containing coatings, thinners, and coating-related waste materials in closed containers, containers with activated carbon or other control method approved by the EPA Administrator;

(b) Ensuring that mixing and storage containers used for VOC-containing coatings, thinners, and coating-related waste material are kept closed at all times except when depositing or removing these materials, unless a container has activated carbon or other control method approved by the EPA Administrator;

(c) Minimizing spills of VOC-containing coatings, thinners, and coating-related waste materials; and

(d) Conveying VOC-containing coatings, thinners, and coating-related waste materials from one location to another in closed containers, containers with activated carbon or other control method approved by the EPA Administrator, or pipes; and

(e) Minimizing VOC emission from cleaning of application, storage, mixing, and conveying equipment by ensuring that equipment cleaning is performed without atomizing the cleaning solvent and all spent solvent is captured in closed containers.

(2) Solvent cleaning operations shall be performed using cleaning materials having a VOC composite vapor pressure no greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-350-8.

**R307-350-8. Add-On Controls Systems Operations.**

(1) If an add-on control system is used, the owner or operator shall install and maintain the add-on emission control system in accordance with the manufacturer recommendations and maintain 90% or greater capture and control efficiency. The overall capture and control efficiency shall be determined using EPA approved methods, as follows.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

**R307-350-9. Recordkeeping.**

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-350. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-350.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-350-8.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission

reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

**KEY: air pollution, emission controls, coatings, miscellaneous metal parts**

**December 6, 2017**

**19-2-104(1)(a)**

**Notice of Continuation March 8, 2018**

**R307. Environmental Quality, Air Quality.**

**R307-351. Graphic Arts.**

**R307-351-1. Purpose.**

The purpose of R307-351 is to limit volatile organic compound (VOC) emissions from graphic arts printing operations.

**R307-351-2. Applicability.**

(1) R307-351 applies to graphic arts printing operations located in Box Elder, Cache, Davis, Salt Lake, Utah, Tooele and Weber counties.

(2) Before September 1, 2018, R307-351 applies to graphic arts printing operations that emit 2.7 tons or greater per year of VOC emissions.

(3) Effective September 1, 2018, R307-351 shall apply to graphic arts printing operations that use a combined 450 gallons or more of all VOC-containing materials per year.

**R307-351-3. Exemptions.**

(1) The provisions of R307-351 shall not apply to graphic arts materials that have a VOC content of less than 25 g/L, minus water and exempt VOCs, as applied.

(2) A graphic arts printing operation may use up to 55 gallons of cleaning materials per year that do not comply with the VOC composite vapor pressure requirement or the VOC content requirement in R307-351-5(4).

(3) The provisions of R307-351 shall not apply to medical devices and their packaging.

**R307-351-4. Definitions.**

The following additional definitions apply to R307-351:

"Alcohol" means any of the following compounds, when used as a fountain solution additive for offset lithographic printing: ethanol, n-propanol, and isopropanol.

"Alcohol Substitute" means a non-alcohol additive that contains VOCs and is used in the fountain solution.

"Cleaning materials and solutions" means a liquid solvent or solution used to clean the operating surfaces of a printing press and its parts. Cleaning materials and solutions include, but are not limited to blanket wash, roller wash, metering roller cleaner, plate cleaner, impression cylinder washes, rubber rejuvenators, and other cleaners used for cleaning a press, press parts, or to remove dried ink or coating from areas around the press.

"Blanket" means a synthetic rubber material that is wrapped around a cylinder used in offset lithography to transfer or "offset" an image from an image carrier.

"Control system" means the combination of capture and control devices used to reduce emissions to the atmosphere.

"Flexographic printing" means the application of words, designs, and pictures to substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastomeric materials.

"Fountain solution" means a mixture of water and other volatile and non-volatile chemicals and additives that wets the non-image area of a lithographic printing plate so that the ink is maintained within the image areas.

"Graphic arts materials" means any inks, coatings, or adhesives, including added thinners or retarders, used in printing or related coating or laminating processes.

"Graphic arts printing" means the application of words and images using the offset lithographic, letterpress, rotogravure, or flexographic printing process.

"Heatset" means an offset lithographic printing or letterpress printing operation in which the ink solvents are vaporized by passing the printed surface through a dryer.

"Letterpress printing" means a method where the image area is raised relative to the non-image area and the ink is

transferred to the substrate directly from the image surface.

"Non-heatset", also called coldset, means an offset lithographic printing or letterpress printing operation in which the ink dries by oxidation and/or absorption into the substrate without use of heat from dryers. For the purposes of this rule, use of an infrared heater or printing conducted using ultraviolet-cured or electron beam-cured inks is considered non-heatset.

"Medical device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar article including any component or accessory, that is intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment, or prevention of disease, or is intended to affect the structure or any function of the body. For the purpose of this rule, a medical device shall also include associated manufacturing or assembly apparatus.

"Offset lithographic printing" means a plane-o-graphic method in which the image and non-image areas are on the same plane and the ink is offset from a plate to a rubber blanket, and then from the blanket to the substrate.

"Printing operation" means the application of words, designs, or pictures on a substrate. All units in a machine which have both coating and printing units shall be considered as performing a printing operation.

"Rotogravure printing" means the application of words, designs, and pictures to a substrate by means of a roll printing technique that involves a recessed image area in the form of cells.

"Web" means a continuous roll of substrate.

**R307-351-5. VOC Content Limits.**

(1) No owner or operator shall apply graphic arts materials with a VOC content greater than the amounts specified in Table 1 or Table 2, unless the owner or operator uses an add-on control device as specified in R307-351-6.

TABLE 1

VOC Limits  
(values in gram of VOC per liter, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2))

Graphic Art Material	VOC Limit (g/L)
Adhesive	150
Coating	300
Flexographic Fluorescent Ink	300
Flexographic Ink-Non-Porous Substrate	300
Flexographic Ink-Porous Substrate	225
Gravure Ink	300
Letterpress Ink	300
Offset Lithographic Ink	300
Heatset Web Offset Lithographic ink	300
Heatset Web Offset Lithographic Ink: Used on Book Presses and Presses Less Than 22 Inches in Diameter	400
Used on Presses With Potential to Emit Less Than 10 Tons/Year	400

(2) No owner or operator shall apply fountain solution, including additives with a VOC content greater than the amounts specified in Table 2, unless the owner or operator uses an add-on control device as specified in R307-351-6.

TABLE 2

VOC Limits  
(values in gram of VOC per liter, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

Graphic Art Material (g/L)	VOC Limit (g/L)
Heatset Web-Fed Alcohol without Refrigerated Chiller	16
Alcohol with Refrigerated Chiller	30

Sheet-Fed	Alcohol Substitute	50
	Alcohol without Refrigerated Chiller	50
	Alcohol with Refrigerated Chiller	85
	Alcohol Substitute	50
Non-Heatset Web-Fed	All Alcohol Substitutes	50

(3) Alcohol containing fountain solutions shall not be used in non-heatset web-fed operations.

(4) Cleaning materials with a VOC composite vapor pressure of less than 10 mm Hg at 68 degrees Fahrenheit or cleaning materials containing less than 50 percent VOC by weight shall be used.

**R307-351-6. Add-on Controls Systems Operations.**

(1) If an add-on control system is used, the owner or operator shall install and maintain the add-on emission control system in accordance with the manufacturer recommendations.

(a) Control devices for individual heatset web offset lithographic printing presses and individual heatset web letterpress printing press dryers that were installed prior to January 1, 2017, must maintain a 90% or greater control efficiency. Similar control devices installed after January 1, 2017, must maintain a 95% or greater control efficiency.

(b) Control devices for individual flexographic printing presses and individual rotogravure printing presses shall comply with a 90% or greater overall control efficiency.

(c) As an alternative to the control efficiency, the control device outlet concentration may be reduced to 20 ppmv as hexane on a dry basis to accommodate situations where the inlet VOC concentration is low or there is no identifiable measurable inlet. The control outlet concentration shall be determined using EPA Method 25A.

(d) The capture efficiency of a VOC emission control system's VOC collection device for flexographic and rotogravure presses shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(e) The capture efficiency of a VOC emission control system's VOC collection device for a heatset web offset press shall be determined by demonstrating that the airflow in the dryer is negative to the surrounding pressroom during the initial test using an air flow direction indicator, such as a smoke stick or aluminum ribbons, or differential pressure gauge.

(f) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(g) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

**R307-351-7. Work Practices.**

(1) Control techniques and work practices shall be implemented at all times to reduce VOC emissions. Control techniques and work practices include:

(a) Keeping cleaning materials, used shop towels, and solvent wiping cloths in closed containers; and

(b) Minimizing spills of VOC-containing cleaning materials.

**R307-351-8. Recordkeeping.**

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-351. Records must include, but are not limited to, inventory and product data sheets of all graphic arts materials and cleaning solutions subject to R307-351.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-351-6. Key system parameters include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule. Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate that operations provide continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

**KEY: air pollution, graphic arts, VOC, printing operations  
December 6, 2017  
Notice of Continuation March 8, 2018**

**19-2-104(1)(a)**



**R307. Environmental Quality, Air Quality.**  
**R307-352. Metal Container, Closure, and Coil Coatings.**  
**R307-352-1. Purpose.**

The purpose of this rule is to reduce volatile organic compound (VOC) emissions from the coating of metal containers, closures and coils in the manufacturing or reconditioning process.

**R307-352-2. Applicability.**

(1) R307-352 applies to metal containers, closure and coil coating operations located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.

(2) Before September 1, 2018, R307-352 applies to metal containers, closure and coil coating operations that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities.

(3) Effective September 1, 2018, R307-352 shall apply to metal containers, closure and coil coating operations that use a combined 20 gallons or more of coating products and associated solvents per year.

**R307-352-3. Definitions.**

The following additional definitions apply to R307-352:

"Aerosol coating product" means a pressurized spray system that dispenses product ingredients by means of a propellant or mechanically induced force but does not include pump sprays.

"As applied" means the volatile organic compound and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"End sealing compound" means a compound which is coated onto can ends and which functions as a gasket when the end is assembled onto the can.

"Exterior body spray" means a coating sprayed on the exterior of the container body to provide a decorative or protective finish.

"Interior body spray" means a coating sprayed on the interior of the container body to provide a protective film between the product and the can.

"Metal container or closure coating" means any coating applied to either the interior or exterior of formed metal cans, pails, lids or crowns or flat metal sheets which are intended to be formed into cans, pails, lids or crowns.

"Overvarnish" means a coating applied directly over a design coating to reduce the coefficient of friction, to provide gloss, and to protect the finish against abrasion and corrosion.

"Reconditioned" means any metal container which is reused, recycled or remanufactured.

"Three-piece can coating" means a coating sprayed on the exterior and/or interior of a welded, cemented or soldered seam to protect the exposed metal.

"Two-piece can exterior coating" means a coating applied to the exterior bottom end of a can to reduce the coefficient of friction and to provide protection to the metal.

**R307-352-4. VOC Content Limits.**

(1) Operations that use aerosol coating products are exempt.

(2) No owner or operator shall apply coatings with a VOC content greater than the amounts specified in Table 1, unless the owner or operator uses an add-on control device as specified in R307-352-6.

Coating Category	VOC Content Limits (lb/gal)
<b>CANS</b>	
Sheet basecoat (interior and exterior) and overvarnish	1.9
Two-piece can exterior basecoat, overvarnish, and end coating	2.1
<b>Interior body spray</b>	
Two-piece cans	3.5
Three-piece cans	3.0
<b>Three-piece can side seam spray</b>	
End sealing compound: Food cans, non-food cans, and beverage cans	0.1
Exterior body spray	3.5
<b>PAILS AND LIDS</b>	
<b>Body spray</b>	
Reconditioned interior	4.2
Reconditioned exterior	3.5
New interior	3.5
New exterior	2.8
End sealing compound	0.5
Inks, all applications	2.5
<b>Coil</b>	
Coil coating	1.7

**R307-352-5. Work Practices.**

(1) The owner or operator shall:

- (a) Store all VOC-containing coatings, thinners, and cleaning materials in closed containers;
- (b) Minimize spills of VOC-containing coatings, thinners, and cleaning materials;
- (c) Clean up spills immediately;
- (d) Convey any coatings, thinners, and cleaning materials in closed containers or pipes;
- (e) Close mixing vessels that contain VOC coatings and other materials except when specifically in use; and
- (f) Minimize usage of solvents during cleaning of storage, mixing, and conveying equipment.

(2) No person shall apply any coating unless the coating application method has a transfer efficiency of at least 65%.

The following applications achieve a minimum of 65% transfer efficiency and shall be operated in accordance with the manufacturers specifications:

- (a) Electrostatic application;
- (b) Flow coat;
- (c) Roll coat;
- (d) Dip coat;
- (e) High-volume, low-pressure (HVLP) spray;
- (f) Hand application methods;
- (g) Printing techniques; or
- (h) Other application method capable of achieving at least 65% transfer efficiency, as certified by the manufacturer.

(3) Solvent cleaning operations shall be performed using cleaning materials having a VOC composite vapor pressure no greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-352-6.

(3) Solvent cleaning operations shall be performed using cleaning materials having a VOC composite vapor pressure no greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-352-6.

**R307-352-6. Add-On Controls Systems Operations.**

(1) If an add-on control system is used, the owner or operator shall install and maintain the add-on emission control system in accordance with the manufacturer recommendations and maintain 90% or greater capture and control efficiency. The overall capture and control efficiency shall be determined using EPA approved methods, as follows.

TABLE 1

METAL CONTAINER AND CLOSURE COIL COATING LIMITATIONS  
 (values in pounds VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

**R307-352-7. Recordkeeping.**

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-352. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-352.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-352-6.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

**KEY: air pollution, emission controls, metal containers, coil coatings**

**December 6, 2017**

**19-2-104(1)(a)**

**Notice of Continuation March 8, 2018**

**R307. Environmental Quality, Air Quality.****R307-353. Plastic Parts Coatings.****R307-353-1. Purpose.**

The purpose of this rule is to limit volatile organic compound (VOC) emissions from the application of coatings to any plastic product.

**R307-353-2. Applicability.**

(1) R307-353 applies to plastic parts coating operations located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.

(2) Before September 1, 2018, R307-353 applies to plastic parts coating operations that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities.

(3) Effective September 1, 2018, R307-353 shall apply to plastic parts coating operations that use a combined 20 gallons or more of coating products and associated solvents per year.

**R307-353-3. Exemptions.**

(1) The provisions of this rule shall not apply to any of the following:

- (a) Stencil coatings;
- (b) Safety-indicating coatings;
- (c) Electric-insulating and thermal-conducting coatings;
- (d) Magnetic data storage disk coatings;
- (e) Plastic extruded onto metal parts to form a coating; and
- (f) Textured finishes.

(2) If a coating line is subject to the requirements for existing automobile, light-duty truck, and other product and material coatings or for existing metallic surface coating lines, the coating line shall be exempt from this rule.

(3) Canned aerosol coating products up to 22 fl. oz. that are used exclusively for touch-up and repairs.

(4) Aerospace vehicles and components subject to R307-355.

(5) The provisions of R307-353 shall not apply to coating products on medical devices up to 800 pounds of VOC per year.

(6) Research and development, quality control, or performance testing activities.

**R307-353-4. Definitions.**

The following additional definitions apply to R307-353:

"Air dried coating" means coatings that are dried by the use of air or a forced warm air at temperatures up to 194 degrees Fahrenheit.

"As applied" means the volatile organic compound and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Baked coating" means coatings that are cured at a temperature at or above 194 degrees Fahrenheit.

"Electric-insulating and thermal-conducting" means a coating that displays an electrical insulation of at least 1000 volts DC per mil on a flat test plate and an average thermal conductivity of at least 0.27 BTU per hour-foot-degree-Fahrenheit.

"Magnetic data storage disk coating" means a coating used on a metal disk which stores data magnetically.

"Medical device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar article including any component or accessory, that is intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment, or prevention of disease, or is intended to affect the structure or any function of the body. For the purpose of this rule, a medical device shall also include associated manufacturing or assembly apparatus.

"Metallic coating" means a coating which contains more than 5 grams of metal particles per liter of coating as applied.

"Military specification coating" means a coating which has

a formulation approved by a United States military agency for use on military equipment.

"Mirror backing" means the coating applied over the silvered surface of a mirror.

"Mold-seal coating" means the initial coating applied to a new mold or a repaired mold to provide a smooth surface which, when coated with a mold release coating, prevents products from sticking to the mold.

"Multi-colored coating" means a coating which exhibits more than one color when applied, and which is packaged in a single container and applied in a single coat.

"Multi-component coating" means a coating requiring the addition of a separate reactive resin, commonly known as a catalyst, before application to form an acceptable dry film.

"One-component coating" means a coating that is ready for application as it comes out of its container to form an acceptable dry film. A thinner necessary to reduce the viscosity is not considered a component.

"Optical coating" means a coating applied to an optical lens.

"Plastic" means a substrate containing one or more resins that may be solid, porous, flexible, or rigid, and includes fiber reinforced plastic composites.

"Primer" means a coating applied to a surface to provide a firm bond between the substrate and subsequent coats.

"Repair coating" means a coating used to recoat portions of a part or product which has sustained mechanical damage to the coating.

"Roller Coated" means a type of coating application equipment that utilizes a series of mechanical rollers to form a thin coating film on the surface of a roller, which is then applied to a substrate by moving the substrate underneath the roller.

"Safety-indicating coating" means a coating which changes physical characteristics, such as color, to indicate unsafe condition.

"Stencil coating" means an ink or a coating which is rolled or brushed onto a template or stamp in order to add identifying letters or numbers to metal parts and products.

"Textured finish" means a rough surface produced by spraying and splattering large drops of coating onto a previously applied coating. The coatings used to form the appearance of the textured finish are referred to as textured coatings.

"Touch-up coating" means a coating used to cover minor coating imperfections appearing after the main coating operation.

"Topcoat" means the last film-building finishing material applied in a finishing system. Non-permanent final finishes are not topcoats.

**R307-353-5. VOC Content Limits.**

(1) For automobile and truck plastic parts coating lines:

(a) No owner or operator shall apply coatings with a VOC content greater than the amounts specified in Table 1, unless the owner or operator uses an add-on control device as specified in R307-353-8.

(b) For red and black coatings, the content limitation shall be determined by multiplying the appropriate limit in Table 1 by 1.15.

(c) When EPA Method 24 is used to determine the VOC content of a high bake coating, the applicable content limitation shall be determined by adding 0.5 to the appropriate limit in Table 1.

(d) When EPA Method 24 is used to determine the VOC content of an air-dried coating, the applicable content limitation shall be determined by adding 0.1 to the appropriate limit in Table 1.

TABLE 1

AUTOMOBILE AND TRUCK PLASTIC PARTS COATING LINES

(values in pounds of VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

Coating Category	VOC Content Limits (lb/gal)
High bake coating - exterior and interior parts	
Prime	
Flexible coating	4.5
Nonflexible coating	3.5
Topcoat	
Basecoat	4.3
Clearcoat	4.0
Non-basecoat/clearcoat	4.3
Air-dried coating - exterior parts	
Prime	4.8
Topcoat	
Basecoat	5.0
Clearcoat	4.5
Non-basecoat/clearcoat	5.0
Air-dried coating - interior parts	5.0
Touch-up and repair	5.2

(2) No owner or operator of a business machine plastic parts coating line shall apply coatings with a VOC content greater than the amounts specified in Table 2, unless the owner or operator uses an add-on control device as specified in R307-353-8.

TABLE 2

BUSINESS MACHINE PLASTIC PARTS COATING LINES  
(values in pounds of VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

Coating Category	VOC Content Limits (lb/gal)
Prime	2.9
Topcoat	2.9
Texture coat	2.9
Fog coat	2.2
Touch-up and repair	2.9

(3) No owner or operator engaged in the other plastic product coating operations listed in Table 3 shall apply coatings with a VOC content greater than the amounts specified in Table 3, unless the owner or operator uses an add-on control device as specified in R307-353-8.

TABLE 3

OTHER PLASTIC PRODUCT COATING CATEGORIES  
(values in pounds of VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

Coating Category	VOC Content Limits (lb/gal)
General One-Component	2.3
General Multi-Component	3.5
Electric Dissipating Coatings And Shock-Free Coatings	3.0

Extreme Performance	3.5 (2-pack coatings)
Metallic	3.5
Military Specification	2.8 (1 pack) 3.5 (2 pack)
Mold-Seal	6.3
Multi-colored Coatings	5.7
Optical Coatings	6.7
Vacuum-Metalizing	6.7
Mirror Backing	
Curtain Coated	4.2
Roll Coated	3.6

(4) If a part consists of both plastic and metal surfaces, then the coatings applied to the part must comply with the content limits of this rule.

**R307-353-6. Application Methods.**

No person shall apply VOC containing coatings unless the coating is applied with equipment operated according to the manufacturer specifications, and by use of one of the following methods:

- (1) Electrostatic application;
- (2) Flow coat;
- (3) Roller coat;
- (4) Dip/electrodeposition coat;
- (5) Airless Spray;
- (6) High-volume, low-pressure (HVLP) spray; or
- (7) Other application method equal to or better than HVLP, as certified by the manufacturer.

**R307-353-7. Work Practices.**

- (1) The owner or operator shall:
  - (a) Store all VOC-containing coatings, thinners, and cleaning materials in closed containers;
  - (b) Minimize spills of VOC-containing coatings, thinners, and cleaning materials;
  - (c) Clean up spills immediately;
  - (d) Convey any coatings, thinners, and cleaning materials in closed containers or pipes;
  - (e) Close mixing vessels that contain VOC coatings and other materials except when specifically in use; and
  - (f) Minimize usage of solvents during cleaning of storage, mixing, and conveying equipment.
- (2) Solvent cleaning operations shall be performed using cleaning material having a VOC composite vapor pressure no greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-353-8.

**R307-353-8. Add-On Controls Systems Operations.**

(1) If an add-on control system is used, the owner or operator shall install and maintain in accordance with the manufacturer recommendations and maintain 90% or greater capture and control efficiency. The overall capture and control efficiency shall be determined using EPA approved methods, as follows.

- (a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.
- (b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.
- (c) An alternative test method may be substituted for the

preceding test methods after review and approval by the EPA Administrator.

**R307-353-9. Recordkeeping.**

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-353. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-353.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-353-8.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

**KEY: air pollution, emission controls, coatings, plastic parts  
December 6, 2017 19-2-104(1)(a)  
Notice of Continuation March 8, 2018**

**R307. Environmental Quality, Air Quality.  
R307-354. Automotive Refinishing Coatings.  
R307-354-1. Purpose.**

The purpose of R307-354 is to limit volatile organic compound emissions (VOC) from automotive refinishing sources.

**R307-354-2. Applicability.**

(1) R307-354 applies to automotive refinishing coating operations located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.

(2) Before September 1, 2018, R307-354 applies to an automotive refinishing operations that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities.

(3) Effective September 1, 2018, R307-354 shall apply to an automotive refinishing operation that uses a combined 20 gallons or more of coating products and associated solvents per year.

**R307-354-3. Exemptions.**

The requirements of R307-354 shall not apply to any canned aerosol coating products.

**R307-354-4. Definitions.**

The following additional definitions apply to R307-354:

"Adhesion promoter" means a coating which is labeled and formulated to be applied to uncoated plastic surfaces to facilitate bonding of subsequent coatings, and on which, a subsequent coating is applied.

"As applied" means the volatile organic compound and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Automotive" means passenger cars, vans, motorcycles, trucks, buses, golf carts and all other mobile equipment.

"Automotive refinishing" means the process of coating automobiles, after-market automobiles, motorcycles, light and medium-duty trucks and vans that are performed in auto body shops, auto repair shops, production paint shops, new car dealer repair and paint shops, fleet operation repair and paint shops, and any other facility which coats vehicles under the Standard Industrial Classification Code 7532 (Top, Body and Upholstery Repair Shops and Paint Shops). This includes dealer repair of vehicles damaged in transit. It does not include refinishing operations for other types of mobile equipment, such as farm machinery and construction equipment or their parts, including partial body collision repairs, that is subsequent to the original coating applied at an automobile original equipment manufacturing plant.

"Clear coating" means any coating that contains no pigments and is labeled and formulated for application over a color coating or clear coating.

"Color coating" means any pigmented coating, excluding adhesion promoters, primers, and multi-color coatings, that requires a subsequent clear coating and which is applied over a primer, adhesion promoter, or color coating. Color coatings include metallic and iridescent color coatings.

"Enclosed paint gun cleaner" means a cleaner consisting of a closed container with a door or top that can be opened and closed and fitted with cleaning connections. The spray gun is attached to a connection, and solvent is pumped through the gun and onto the exterior of the gun. Cleaning solvent falls back into the cleaner's solvent reservoir for recirculation.

"Metallic/Iridescent color coating" means a coating which contains iridescent particles, composed of either metal as metallic particles or silicon as mica particles, in excess of 0.042 pounds per gallon as applied, where such particles are visible in the dried film.

"Multi-color coating" means a coating which exhibits more than one color when applied, and which is packaged in a single container and applied in a single coat.

"Non-enclosed paint gun cleaner" means cleaner consisting of a basin similar to a sink in which the operator washes the outside of the gun under a solvent stream. The gun cup is filled with recirculated solvent, the gun tip is placed into a canister attached to the basin, and suction draws the solvent from the cup through the gun. The solvent gravitates to the bottom of the basin and drains through a small hole to a reservoir that supplies solvent to the recirculation pump.

"Pretreatment coating" means a coating which contains no more than 16% solids, by weight, and at least 0.5% acid, by weight, is used to provide surface etching, and is applied directly to bare metal surfaces to provide corrosion resistance and promote adhesion for subsequent coatings.

"Primer" means any coating which is labeled and formulated for application to a substrate to provide a bond between the substrate and subsequent coats; corrosion resistance; a smooth substrate surface; or resistance to penetration of subsequent coats, and on which a subsequent coating is applied. Primers may be pigmented.

"Primer sealer" means any coating which is labeled and formulated for application prior to the application of a color coating for the purpose of color uniformity, or to promote the ability of the underlying coating to resist penetration by the color coating.

"Single-stage coating" means any pigmented coating, excluding primers and multi-color coatings, labeled and formulated for application without a subsequent clear coat. Single-stage coatings include single-stage metallic/iridescent coatings.

"Solids" means the part of the coating that remains after the coating is dried or cured; solids content is determined using data from EPA Method 24.

"Temporary protective coating" means any coating which is labeled and formulated for the purpose of temporarily protecting areas from overspray or mechanical damage.

"Topcoat" means any coating or series of coatings applied over a primer or an existing finish for the purpose of protection or beautification.

"Truck bed liner coating" means any coating, excluding clear, color, multi-color, and single-stage coatings, labeled and formulated for application to a truck bed to protect it from surface abrasion.

"Underbody coating" means any coating labeled and formulated for application to wheel wells, the inside of door panels or fenders, the underside of a trunk or hood, or the underside of a motor vehicle.

"Uniform finish coating" means any coating labeled and formulated for application to the area around a spot repair for the purpose of blending a repaired area's color or clear coat to match the appearance of an adjacent area's existing coating.

**R307-354-5. VOC Content Limits.**

No owner or operator shall apply coatings with a VOC content greater than the amounts specified in Table 1, unless the owner or operator uses an add-on control device as specified in R307-354-7.

TABLE 1

AUTOMOTIVE REFINISHING VOC LIMITS  
(values in pounds of VOC per gallon of coating, minus water and exempt solvent (compounds not defined as VOC in R307-101-2), as applied)

Coating Category	VOC Content Limits (lb/gal)
Adhesion Promoter	4.5
Clear Coating	2.1

Color Coating	3.5
Multi-color Coating	5.7
Pretreatment Coating	5.5
Primer	2.1
Primer Sealer	2.1
Single-stage Coating	2.8
Temporary Protective Coating	0.5
Truck Bed Liner Coating	2.6
Underbody Coating	3.6
Uniform Finish Coating	4.5
Any Other Coating Type	2.1

**R307-354-6. Work Practice.**

(1) Control techniques and work practices are to be implemented at all times to reduce VOC emissions. Control techniques and work practices include:

(a) Closed containers shall be used for the disposal of solvent wiping cloths;

(b) Minimizing spills of VOC-containing cleaning materials;

(c) Conveying VOC-containing materials from one location to another in closed containers or pipes; and

(d) Cleaning spray guns in enclosed systems or in a non-enclosed paint gun cleaning process may be used if the vapor pressure of the cleaning solvent (excluding water and solvents exempt from the definition of VOCs) is less than 100 mm Hg at 68 degrees Fahrenheit and the solvent is directed towards a drain that leads directly to an enclosed remote reservoir. Automotive spray gun solvent cleaning materials that are defined as a "consumer product" under R307-357 are exempt from the vapor pressure requirement and are regulated under the requirements in R307-357.

(2) Application equipment requirements:

(a) A person shall not apply any coating to an automotive part or component unless the coating application method achieves a minimum 65% transfer efficiency. The following coating application methods have been demonstrated to achieve a minimum of 65% transfer efficiency:

(i) Brush, dip or roll coating operated in accordance with the manufacturers specifications;

(ii) Electrostatic application equipment operated in accordance with the manufacturers specifications; and

(iii) High Volume, Low Pressure spray equipment operated in accordance with the manufacturers specifications.

(3) Other coating application methods may be used that have been demonstrated to be capable of achieving at least 65% transfer efficiency, as certified by the manufacturer.

**R307-354-7. Add-On Controls Systems Operations.**

(1) If an add-on control system is used, the owner or operator shall install and maintain the add-on emission control system in accordance with the manufacturer recommendations and maintain 90% or greater capture and control efficiency. The overall capture and control efficiency shall be determined using EPA approved methods, as follows.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations,

or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

**R307-354-8. Recordkeeping.**

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-354. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-354.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-354-7.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records must be maintained for a minimum of 2 years.

(3) Records must be made available to the director upon request.

**KEY: air pollution, automotive refinishing, VOC, coatings  
December 6, 2017**

**19-2-104(1)(a)**

**Notice of Continuation March 8, 2018**

**R307. Environmental Quality, Air Quality.****R307-355. Aerospace Manufacture and Rework Facilities.****R307-355-1. Purpose.**

The purpose of R307-355 is to limit the emissions of volatile organic compounds (VOCs) from aerospace coatings and adhesives, from organic solvent cleaning, and from the storage and disposal of solvents and waste solvent materials.

**R307-355-2. Applicability.**

(1) R307-355 applies to all aerospace manufacture and rework facilities located in Box Elder, Cache, Davis, Salt Lake, Utah, Tooele or Weber counties.

(2) Before February 1, 2018, R307-355 applies to all aerospace manufacture and rework facilities that have the potential to emit 10 tons or more per year of VOCs.

(3) Effective February 2, 2018, R307-355 applies to all aerospace manufacture and rework facilities that use a combined 55 gallons or more of coating products and associated solvents and adhesives per year.

**R307-355-3. Exemptions.**

(1) R307-355 does not apply to the following:

(a) Cleaning and coating activities in research and development, quality control, laboratory testing, and electronic parts and assemblies, except for cleaning and coating of completed assemblies;

(b) Manufacturing or rework operations involving space vehicles;

(c) Rework operations performed on antique aerospace vehicles or components;

(d) Touchup and repair operations;

(e) Hand-held aerosol spray cans up to 24 fluid ounces;

(f) Department of Defense classified coatings;

(g) Separate formulations that are used in volumes of less than 50 gallon per year subject to a maximum exemption of 200 gallons in any calendar year;

(h) Adhesives with separate formulations that are used in volumes of less than 0.5 gallons on any day or 10 gallons in any calendar year; and

(i) Cleaning of laser hardware, scientific instruments, and high-precision optics.

**R307-355-4. Definitions.**

The following additional definitions apply to R307-355:

"Ablative coating" means a coating, applied to both new and rework aerospace components, which chars and becomes intumescent when exposed to open flame, such as would occur during the failure of an engine casing. The purpose of the coating is to act as an isolative barrier and protect adjacent metal parts from an open flame.

"Adhesion promoter" means a very thin coating applied to a substrate to promote wetting and form a chemical bond with the subsequently applied material.

"Adhesive bonding primer" means a primer applied in a thin film to aerospace components for the purpose of corrosion inhibition and increased adhesive bond strength by attachment. There are two categories of adhesive bonding primers: primers with a design cure at 250 degrees Fahrenheit or below and primers with a design cure above 250 degrees Fahrenheit.

"Aerospace manufacture and rework facility" means any installation that produces, reworks, or repairs in any amount any commercial, civil, or military aerospace vehicle or component.

"Aerospace vehicle or component" means any fabricated part, processed part, assembly of parts, or completed unit, with the exception of electronic components, of any aircraft including but not limited to airplanes, helicopters, missiles, rockets, and space vehicles. This definition includes integral equipment such as models, mock-ups, prototypes, molds, jigs, and tooling. It also includes auxiliary equipment associated with test, transport

and storage that through contamination can compromise aerospace vehicle performance.

"Antique aerospace vehicle or component" means an aircraft or component thereof that was built at least 30 years ago and would not routinely be in commercial or military service in the capacity for which it was designed.

"Bearing coating" means a coating applied to an antifriction bearing, a bearing housing, or the area adjacent to such a bearing in order to facilitate bearing function or to protect base material from excessive wear. A material shall not be classified as a bearing coating if it can also be classified as a dry lubricative material or a solid film lubricant.

"Caulking and smoothing compounds" means semi-solid materials which are applied by hand application methods and are used to aerodynamically smooth exterior vehicle surfaces or fill cavities such as bolt hole accesses. A material shall not be classified as a caulking and smoothing compound if it can also be classified as a sealant.

"Chemical agent-resistant coating" means an exterior topcoat designed to withstand exposure to chemical warfare agents or the decontaminants used on these agents.

"Chemical milling maskants" means a coating that is applied directly to aluminum components to protect surface areas when chemical milling the component with a Type I or Type II etchant. Type I chemical milling maskants are used with a Type I etchant and Type II chemical milling maskants are used with a Type II etchant.

"Clear coating" means a transparent coating usually applied over a colored opaque coating, metallic substrate, or placard to give improved gloss and protection to the color coat. In some cases, a clear coat refers to any transparent coating without regard to substrate.

"Commercial exterior aerodynamic structure primer" means a primer used on aerodynamic components and structures that protrude from the fuselage, such as wings and attached components, control surfaces, horizontal stabilizers, vertical fins, wing-to-body fairings, antennae, and landing gear and doors, for the purpose of extended corrosion protection and enhanced adhesion.

"Compatible substrate primer" means either compatible epoxy primer or adhesive primer. Compatible epoxy primer is primer that is compatible with the filled elastomeric coating and is epoxy based. The compatible substrate primer is an epoxy polyamide primer used to promote adhesion of elastomeric coatings such as impact-resistant coatings. Adhesive primer is a coating that:

(1) inhibits corrosion and serves as a primer applied to bare metal surfaces or prior to adhesive application, or

(2) is applied to surfaces that can be expected to contain fuel. Fuel tank coatings are excluded from this category.

"Corrosion prevention" means a coating that provides corrosion protection by displacing water and penetrating mating surfaces, forming a protective barrier between the metal surface and moisture. Coatings containing oils or waxes are excluded from this category.

"Cryoprotective coating" means a coating that insulates cryogenic or subcooled surfaces to limit propellant boil-off, maintain structural integrity of metallic structures during ascent or re-entry, and prevent ice formation.

"Electric or radiation-effect coating" means a coating or coating system engineered to interact, through absorption or reflection, with specific regions of the electromagnetic energy spectrum, such as the ultraviolet, visible, infrared, or microwave regions. Uses include, but are not limited to, lightning strike protection, electromagnetic pulse (EMP) protection, and radar avoidance. Coatings that have been designated as "classified" by the Department of Defense are exempt.

"Electrostatic discharge and electromagnetic interference (EMI) coating" means a coating applied to space vehicles,



missiles, aircraft radomes, and helicopter blades to disperse static energy or reduce electromagnetic interference.

"Elevated-temperature Skydrol-resistant primer" means a primer that must withstand immersion in phosphate-ester (PE) hydraulic fluid (Skydrol 500b A-9 or equivalent) at the elevated temperature of 150 degrees Fahrenheit for 1,000 hours.

"Epoxy polyamide topcoat" means a coating used where harder films are required or in some areas where engraving is accomplished in camouflage colors.

"Fire-resistant (interior) coating" means for civilian aircraft, fire-resistant interior coatings are used on passenger cabin interior parts that are subject to the FAA fireworthiness requirements. For military aircraft, fire-resistant interior coatings are used on parts that are subject to the flammability requirements of MIL-STD-1630A and MIL-A-87721. For space applications, these coatings are used on parts that are subject to the flammability requirements of SE-R-0006 and SSP 30233.

"Flexible primer" means a primer that meets flexibility requirements such as those needed for adhesive bond primed fastener heads or on surfaces expected to contain fuel. The flexible coating is required because it provides a compatible, flexible substrate over bonded sheet rubber and rubber-type coatings as well as a flexible bridge between the fasteners, skin, and skin-to-skin joints on outer aircraft skins. This flexible bridge allows more topcoat flexibility around fasteners and decreases the chance of the topcoat cracking around the fasteners. The result is better corrosion resistance.

"Flight test coating" means a coating applied to aircraft other than missiles or single-use aircraft prior to flight testing to protect the aircraft from corrosion and to provide required marking during flight test evaluation.

"Fuel tank coating" means a coating applied to fuel tank components for the purpose of corrosion and/or bacterial growth inhibition and to assure sealant adhesion in extreme environmental conditions.

"General aviation" means that segment of civil aviation that encompasses all facets of aviation except air carriers, commuters, and military. General aviation includes charter and corporate-executive transportation, instruction, rental, aerial application, aerial observation, business, pleasure, and other special uses.

"High-temperature coating" means a coating designed to withstand temperatures of more than 350 degrees Fahrenheit.

"Insulation covering" means material that is applied to foam insulation to protect the insulation from mechanical or environmental damage.

"Intermediate release coating" means a thin coating applied beneath topcoats to assist in removing the topcoat in repainting operations and generally to allow the use of less hazardous repainting methods.

"Lacquer" means a clear or pigmented coating formulated with nitrocellulose or synthetic resin to dry by evaporation without a chemical reaction. Lacquers are resoluble in their original solvent.

"Low vapor pressure hydrocarbon-based cleaning solvent" means a cleaning solvent that is composed of a mixture of photochemically reactive hydrocarbons and oxygenated hydrocarbons and has a maximum vapor pressure of 7 mm Hg at 68 degrees Fahrenheit. These cleaners must not contain hazardous air pollutants.

"Maskants" means a coating that is applied directly to aluminum components to protect surface areas when chemical milling the component with a Type I or Type II etchant. Type I chemical milling maskants are used with a Type I etchant and Type II chemical milling maskants are used with a Type II etchant.

"Metalized epoxy coating" means a coating that contains relatively large quantities of metallic pigmentation for appearance and/or added protection.

"Mold release" means a coating applied to a mold surface to prevent the molded piece from sticking to the mold as it is removed.

"Optical anti-reflection coating" means a coating with a low reflectance in the infrared and visible wavelength ranges that is used for antireflection on or near optical and laser hardware.

"Part marking coating" means coatings or inks used to make identifying markings on materials, components, and/or assemblies. These markings may be either permanent or temporary.

"Pretreatment coating" means an organic coating that contains at least 0.5 percent acids by weight and is applied directly to A-12 metal or composite surfaces to provide surface etching, corrosion resistance, adhesion, and ease of stripping.

"Primer" means the first layer and any subsequent layers of identically formulated coating applied to the surface of an aerospace vehicle or component. Primers are typically used for corrosion prevention, protection from the environment, functional fluid resistance, and adhesion of subsequent coatings. Primers that are defined as specialty coatings are not included under this definition.

"Rain erosion resistant coating" means a coating applied primarily to radomes, canopies, and leading edges of aircraft to provide protection from erosion due to rain, dust, and other airborne particles.

"Rework facility" means any installation that repairs any aerospace vehicle or component.

"Rocket motor nozzle coating" means a catalyzed epoxy coating system used in elevated temperature applications on rocket motor nozzles.

"Scale inhibitor" means a coating that is applied to the surface of a part prior to thermal processing to inhibit the formation of scale.

"Screen print ink" means an ink used in screen printing processes during fabrication of decorative laminates and decals.

"Sealant" means a material used to prevent the intrusion of water, fuel, air, or other liquids or solids from certain areas of aerospace vehicles or components. There are two categories of sealants: extrudable/rollable/brushable sealants and sprayable sealants.

"Silicone insulation material" means an insulating material applied to exterior metal surfaces for protection from high temperatures caused by atmospheric friction or engine exhaust. These materials differ from ablative coatings in that they are not "sacrificial."

"Solid film lubricant" means a dry lubricant coating used to reduce friction between faying metal surfaces. The coating consists of an organic binder system containing one or more of the following substances: molybdenum disulfide, graphite, polytetrafluoroethylene (Teflon PTFE), other types of Teflon, lauric acid, cetyl alcohol, or waxes.

"Space vehicle" means a man-made device, either manned or unmanned, designed for operation beyond earth's atmosphere. This definition includes integral equipment such as models, mock-ups, prototypes, mold, jigs, tooling, hardware jackets and test coupons. Also included, auxiliary equipment associated with test, transport and storage that through contamination can compromise the space vehicle performance.

"Specialized function coating" means a coating that fulfills extremely specific engineering requirements that are limited in application and are characterized by low volume usage. This category excludes coatings covered in other Specialty Coating categories.

"Specialty coating" means a coating that, even though it meets the definition of a primer, topcoat, or self-priming topcoat, has additional performance criteria beyond those of primers, topcoats, and self-priming topcoats for specific applications.

(1) These performance criteria may include, but are not limited to, temperature or fire resistance, substrate compatibility, antireflection, temporary protection or marking, sealing, adhesively joining substrates, or enhanced corrosion protection.

"Temporary protective coating" means a coating applied to provide scratch or corrosion protection during manufacturing, storage, or transportation. Two types include peelable protective coatings and alkaline removable coatings. These materials are not intended to protect against strong acid or alkaline solutions. Coatings that provide this type of protection from chemical processing are not included in this category.

"Thermal control coating" means a coating formulated with specific thermal conductive or radiative properties to permit temperature control of the substrate.

"Topcoat" means a coating that is applied over a primer or component for appearance, identification, camouflage, or protection. Topcoats that are defined as specialty coatings are not included under this definition.

"Wet fastener installation coating" means a primer or sealer applied by dipping, brushing, or daubing to fasteners that are installed before the coating is cured.

"Wing coating" means a corrosion-resistant topcoat that is resilient enough to withstand the flexing of the wings.

**R307-355-5. VOC Content Limits.**

The owner or operator shall not apply coatings to aerospace vehicles or components with a VOC content greater than the amounts specified in Table 1 unless the owner or operator uses an add-on control device as specified in R307-355-9.

TABLE 1

(Values in grams of VOC per liter of material, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

Coating type	VOC Content Limit (g/l)
Ablative Coating	600
Adhesion Promoter	890
Adhesive Bonding Primers:	
Cured at 250 deg F or below	850
Cured above 250 deg F	1030
Adhesives:	
Commercial Interior Adhesive	760
Cyanoacrylate Adhesive	1,020
Fuel Tank Adhesive	620
Nonstructural Adhesive	360
Rocket Motor Bonding Adhesive	890
Rubber-based Adhesive	850
Structural Autoclavable Adhesive	60
Structural Nonautoclavable Adhesive	850
Antichafe Coating	660
Bearing Coating	620
Caulking and Smoothing Compounds	850
Chemical Agent-Resistant Coating	550
Clear Coating	720
Commercial Exterior Aerodynamic Compatible Substrate Primer	780
Corrosion Prevention Compound	710
Cryogenic Flexible Primer	645
Dry Lubricative Material	880
Cryoprotective Coating	600
Electric or Radiation-Effect Coating	800
Electrostatic Discharge and Electromagnetic Interference (EMI) Coating	800
Elevated-Temperature Skydrol-Resistant Primer	740
Epoxy Polyamide Topcoat	660
Fire-Resistant (interior) Coating	800
Flexible Primer	640
Flight-Test Coatings:	
Missile or Single Use Aircraft	420
All Other	840
Fuel-Tank Coating	720
General Aviation Rework Primer and Topcoat	540
High-Temperature Coating	850
Insulation Covering	740
Intermediate Release Coating	750
Lacquer	830
Maskants:	

Bonding Maskant	1,230
Critical Use and Line Sealer Maskant	1,020
Seal Coat Maskant	1,230
Metalized Epoxy Coating	740
Mold Release	780
Optical Anti-Reflective Coating	750
Part Marking Coating	850
Pretreatment Coating	780
Primer	350
Rain Erosion Resistant Coating	850
Rocket Motor Nozzle Coating	660
Scale Inhibitor	880
Screen Print Ink	840
Sealants:	
Extrudable/Rollable/Brushable Sealant	280
Sprayable Sealant	600
Silicone Insulation Material	850
Solid Film Lubricant	880
Specialized Function Coating	890
Temporary Protective Coating	320
Thermal Control Coating	800
Topcoat	420
Type I chemical milling maskant	622
Type II chemical milling maskants	160
Wet Fastener Installation Coating	675
Wing Coating	850

**R307-355-6. Application Method.**

(1) No owner or operator shall apply any coating to aerospace vehicles or components unless one of the following application methods is used:

- (a) Electrostatic application;
- (b) Flow/curtain coat;
- (c) Dip/electrodeposition coat;
- (d) Roll coat;
- (e) Brush coating;
- (f) cotton-tipped swab application;
- (g) High-Volume, Low-Pressure (HVLP) Spray;
- (h) Hand Application Methods; or
- (i) Other coating application methods that achieve emission reductions equivalent to HVLP or electrostatic spray application methods, as determined according to the requirements in 40 CFR 63.750(i).

(2) The following conditions are exempt from R307-355-6(1):

- (a) Any situation that normally requires the use of an airbrush or an extension on the spray gun to properly reach limited access spaces.
- (b) The application of coatings that contain fillers that adversely affect atomization with HVLP spray guns and that cannot be applied by any of the application methods specified in R307-355-6.
- (c) The application of coatings that normally have dried film thickness of less than 0.0013 centimeters (0.0005 inches) and that cannot be applied by any of the application methods specified in R307-355-6.
- (d) Airbrush application methods for stenciling, lettering, and other identification markings.
- (e) Application of specialty coatings.

**R307-355-7. Work Practices.**

(1) Control techniques and work practices shall be implemented at all times to reduce VOC emissions from coating and solvent cleaning operations on aerospace vehicles or components. Control techniques and work practices shall include, but are not limited to:

- (a) Storing all VOC-containing coatings, adhesives, thinners, and coating-related waste materials in closed containers, containers with activated carbon, or other control approved by the EPA Administrator;
- (b) Ensuring that mixing and storage containers used for VOC-containing coatings, adhesives, thinners, and coating-related waste material are kept closed at all times except when depositing or removing these materials unless a container has an activated carbon or other control approved by the EPA

administrator;

(c) Minimizing spills of VOC-containing coatings, adhesives, thinners, and coating-related waste materials; and

(d) Conveying VOC-containing coatings, adhesives, thinners, and coating-related waste materials from one location to another in closed container, in pipes, containers with activated carbon, or other control approved by the EPA Administrator.

#### **R307-355-8. Solvent Cleaning.**

(1) Hand-wipe cleaning. Cleaning solvents (excluding water and exempt solvents) used in hand-wipe cleaning operations on aerospace vehicles or components shall meet one of the following requirements:

(a) Have a VOC composite vapor pressure less than or equal to 45 mm Hg at 68 degrees Fahrenheit;

(b) Have an aqueous cleaning solvent in which water is at least 80% of the solvent as applied; or

(c) Have a low vapor pressure hydrocarbon-based cleaning solvent.

(2) The following exemptions apply:

(a) Cleaning during the manufacture, assembly, installation, maintenance, or testing of components of breathing oxygen systems that are exposed to the breathing oxygen.

(b) Cleaning during the manufacture, assembly, installation, maintenance, or testing of parts, subassemblies, or assemblies that are exposed to strong oxidizers or reducers (e.g., nitrogen tetroxide, liquid oxygen, hydrazine).

(c) Cleaning and surface activation prior to adhesive bonding.

(d) Cleaning of electronics parts and assemblies containing electronics parts.

(e) Cleaning of aircraft and ground support equipment fluid systems that are exposed to the fluid, including air-to-air heat exchangers and hydraulic fluid systems.

(f) Cleaning of fuel cells, fuel tanks, and confined spaces.

(g) Surface cleaning of solar cells, coated optics, and thermal control surfaces.

(h) Cleaning during fabrication, assembly, installation, and maintenance of upholstery, curtains, carpet, and other textile materials used on the interior of the aircraft.

(i) Cleaning of metallic and nonmetallic materials used in honeycomb cores during the manufacture or maintenance of these cores, and cleaning of the completed cores used in the manufacture of aerospace vehicles or components.

(j) Cleaning of aircraft transparencies, polycarbonate, or glass substrates.

(k) Cleaning and solvent usage associated with research and development, quality control, or laboratory testing.

(l) Cleaning operations, using nonflammable liquids, conducted within five feet of energized electrical systems.

(3) Flush cleaning. Cleaning solvents used in flush cleaning of aerospace vehicle or component parts, assemblies and coating unit components must be emptied into an enclosed container or collection system that is kept closed when not in use.

(4) Spray gun cleaning. All spray guns used to apply coatings to aerospace vehicle or component shall be cleaned by one or more of the following methods:

(a) Enclosed system that is closed at all times except when inserting or removing the spray gun. If leaks in the system are found, repairs shall be made as soon as practicable, but no later than 15 days after the leak was found. If the leak is not repaired by the 15th day, the cleaning solvent shall be removed and the enclosed cleaner shall be shut down until the leak is repaired or its use is permanently discontinued.

(b) Nonatomized cleaning.

(i) Spray guns shall be cleaned by placing cleaning solvent in the pressure pot and forcing it through the gun with the

atomizing cap in place.

(ii) The cleaning solvent from the spray gun shall be directed into a vat, drum, or other waste container that is closed when not in use.

(c) Disassembled spray gun cleaning.

(i) Spray guns shall be cleaned by disassembling and cleaning the components by hand in a vat, which shall remain closed at all times except when in use.

(ii) Spray gun components shall be soaked in a vat, which shall remain closed during the soaking period and when not inserting or removing components.

(d) Atomizing spray into a waste container that is fitted with a device designed to capture atomized solvent emissions.

(e) Cleaning of the nozzle tips of automated spray equipment systems, except for robotic systems that can be programmed to spray into a closed container, shall be exempt from these requirements.

#### **R307-355-9. Add-On Controls Systems Operations.**

If an add-on control system is used, the owner or operator shall install and maintain the add-on emission control system in accordance with the manufacturer recommendations and maintain 85% or greater capture and control efficiency. The overall capture and control efficiency shall be determined using EPA approved methods, as follows.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

#### **R307-355-10. Recordkeeping.**

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-355. Records must include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-355.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-355-9.

(i) Key system parameters must include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters must be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

**KEY: air pollution, coatings, aerospace  
March 8, 2018  
Notice of Continuation March 8, 2018**

**19-2-104(1)(a)**

**R307. Environmental Quality, Air Quality.****R307-356. Appliance Pilot Light.****R307-356-1. Purpose.**

The purpose of R307-356 is to reduce volatile organic compound (VOC) emissions from natural gas-fired fan-type central furnaces, gas fireplaces, and gas stoves.

**R307-356-2. Applicability.**

R307-356 applies to manufacturers, distributors, retailers, and installers of residential, institutional, and commercial natural gas-fired fan-type central furnaces, fireplaces, stoves, and cooktops, and applies in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah, and Weber counties.

**R307-356-3. Exemptions.**

The requirements of R307-356 shall not apply to:

- (1) Units using a fuel other than natural gas;
- (2) Units using an intermittent pilot ignition;
- (3) Units used in recreational vehicles; or
- (4) Units manufactured and sold in Box Elder, Davis, Cache, Weber, Salt Lake, and Utah counties that are for shipment and use outside of those counties.

**R307-356-4. Definitions.**

The following additional definitions apply to R307-356:

"Fan type central furnace" means a self-contained space heater providing for circulation of heated air at pressures other than atmospheric through ducts more than ten inches in length that have rated heat input capacity of less than 175,000 BTU per hour and that require single phase electric supply.

"Fireplace" means a vented or non-vented gas appliance, including freestanding, recessed, zero clearance, or a fireplace insert, that simulates a solid fuel fireplace.

"Rated heat input capacity" means the gross heat input capacity specified on the nameplate of either the unit or the burner.

"Recreational vehicle" means a motor home, travel trailer, truck camper, or camping trailer, with or without motive power, designed for human habitation for recreational, emergency, or other occupancy.

**R307-356-5. General Provisions.**

After January 1, 2014, no person shall manufacture for sale, distribute, sell, offer for sale, or install any natural gas-fired fan-type central furnaces, gas fireplaces, or gas stoves that require the use of a continuous pilot light for ignition.

**KEY: pilot lights, furnaces, fireplaces, stoves**

**January 1, 2013**

**19-2-101**

**Notice of Continuation March 8, 2018**

**19-2-104**

**R307. Environmental Quality, Air Quality.****R307-357. Consumer Products.****R307-357-1. Purpose.**

The purpose of this rule is to reduce volatile organic compound (VOC) emissions from consumer products.

**R307-357-2. Applicability.**

R307-357 applies to any person who sells, supplies, offers for sale, distributes for sale, or manufactures for sale consumer products on or after the effective date in Table 1 for use in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah, and Weber counties.

**R307-357-3. Definitions.**

The following additional definitions apply to R307-357:

"Adhesive" means any product that is used to bond one surface to another by attachment.

(1) Adhesive does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, or any other product with an adhesive incorporated onto or in an inert substrate.

(2) For contact adhesive, construction, panel, and floor covering adhesive and general purpose adhesive only, adhesive also does not include units of product, less packaging, which consist of more than one gallon. This limitation does not apply to aerosol adhesives.

"Adhesive remover" means a product designed exclusively for the removal of adhesives, caulk and other bonding materials from either a specific substrate or a variety of substrates.

"Aerosol adhesive" means an aerosol product in which the spray mechanism is permanently housed in a nonrefillable can designed for hand-held application without the need for ancillary hoses or spray equipment.

"Aerosol cooking spray" means any aerosol product designed to reduce sticking on cooking and baking surfaces and is applied on cooking surfaces, baking surfaces, or food.

"Aerosol Product" means a pressurized spray system that dispenses product ingredients by means of a propellant or mechanically induced force but does not include pump sprays.

"Agricultural use" means the use of any pesticide or method or device for the control of pests in connection with the commercial production, storage or processing of any animal or plant crop.

(1) Agricultural use does not include the sale or use of pesticides in properly labeled packages or containers which are intended for:

- (a) Home use;
- (b) Use in structural pest control;
- (c) Industrial; or
- (d) Institutional use.

(2) For the purposes of this definition only:

(a) "Home use" means use in a household or its immediate environment.

(b) "Structural pest control" means a use requiring a license under state or federal pesticide licensing requirements.

(c) "Industrial use" means use for or in a manufacturing, mining, or chemical process or use in the operation of factories, processing plants, and similar sites.

(d) "Institutional use" means use within the lines of, or on property necessary for the operation of buildings such as hospitals, schools, libraries, auditoriums, and office complexes.

"Air freshener" means any product, including, but not limited to, sprays, wicks, wipes, diffusers, powders, and crystals, designed for the purpose of masking odors, or freshening, cleaning, scenting, or deodorizing the air.

(1) Air freshener does not include products that are used on the human body, products that function primarily as cleaning products as indicated on the product label, or odor remover/eliminator products.

"All other carbon containing compounds" means all other compounds which contain at least one carbon atom and are not a VOC defined compound or a LVP-VOC.

"All other forms" means all consumer product forms for which no form specific VOC standard is specified, and unless specified otherwise by the applicable VOC standard, all other forms include, but are not limited to, solids, liquids, wicks, powders, crystals, and cloth or paper wipes (towelettes).

"Antimicrobial hand or body cleaner or soap" means a cleaner or soap which is designed to reduce the level of microorganisms on the skin through germicidal activity.

(1) Antimicrobial hand or body cleaner or soap includes, but is not limited to:

- (a) Antimicrobial hand or body washes and cleaners;
- (b) Foodhandler hand washes;
- (c) Healthcare personnel hand washes;
- (d) Pre-operative skin preparations; and
- (e) Surgical scrubs.

(2) Antimicrobial hand or body cleaner or soap does not include prescription drug products, antiperspirants, astringent/toner, deodorant, facial cleaner or soap, general-use hand or body cleaner or soap, hand dishwashing detergent (including antimicrobial), heavy-duty hand cleaner or soap, medicated astringent/medicated toner, or rubbing alcohol.

"Antiperspirant" means any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze bottles, that is intended by the manufacturer to be used to reduce perspiration in the human axilla by at least 20 percent in at least 50 percent of a target population.

"Anti-static product" means a product that is labeled to eliminate, prevent, or inhibit the accumulation of static electricity.

"Architectural coating" means a coating applied to stationary structures and their appurtenances, to mobile homes, to pavements, or to curbs.

"ASTM" means the American Society for Testing and Materials.

"Astringent/toner" means any product not regulated as a drug by the United States Food and Drug Administration (FDA) which is applied to the skin for the purpose of cleaning or tightening pores.

(1) This category also includes clarifiers and substrate-impregnated products.

(2) This category does not include any hand, face, or body cleaner or soap product, medicated astringent/medicated toner, cold cream, lotion, or antiperspirant.

"Automotive hard paste wax" means an automotive wax or polish that is:

- (1) Designed to protect and improve the appearance of automotive paint surfaces;
- (2) A solid at room temperature; and
- (3) Contains 0% water by formulation.

"Automotive instant detailer" means a product designed for use in a pump spray that is applied to the painted surface of automobiles and wiped off prior to the product being allowed to dry.

"Automotive rubbing or polishing compound" means a product designed primarily to remove oxidation, old paint, scratches or "swirl marks," and other defects from the painted surfaces of motor vehicles without leaving a protective barrier.

"Automotive wax, polish, sealant or glaze" means a product designed to seal out moisture, increase gloss, or otherwise enhance a motor vehicle's painted surfaces.

(1) Automotive wax, polish, sealant or glaze includes, but is not limited to, products designed for use in autobody repair shops, drive-through car washes and products designed for the general public.

(2) Automotive wax, polish, sealant or glaze does not include automotive rubbing or polishing compounds,

automotive wash and wax products, surfactant-containing car wash products, and products designed for use on unpainted surfaces such as bare metal, chrome, glass, or plastic.

"Automotive windshield washer fluid" means any liquid designed for use in a motor vehicle windshield washer system either as an antifreeze or for the purpose of cleaning, washing, or wetting the windshield but does not include fluids placed by the manufacturer in a new vehicle.

"Bait station insecticide" means containers enclosing an insecticidal bait that is not more than 0.5 ounce by weight, where the bait is designed to be ingested by insects and is composed of solid material feeding stimulants with less than 5% active ingredients.

"Bathroom and tile cleaner" means a product designed to clean tile or surfaces in bathrooms but does not include products specifically designed to clean toilet bowls or toilet tanks.

"Brake cleaner" means a cleaning product designed to remove oil, grease, brake fluid, brake pad material or dirt from motor vehicle brake mechanisms.

"Bug and tar remover" means a product designed to remove either or both of the following from painted motor vehicle surfaces without causing damage to the finish:

- (1) Biological-type residues such as insect carcasses and tree sap; and
- (2) Road grime, such as road tar, roadway paint markings, and asphalt.

"CARB" means the California Air Resources Board.

"Carburetor or fuel-injection air intake cleaners" means a product designed to remove fuel deposits, dirt, or other contaminants from a carburetor, choke, throttle body of a fuel-injection system, or associated linkages but does not include products designed exclusively to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor or fuel injectors.

"Carpet and upholstery cleaner" means a cleaning product designed for the purpose of eliminating dirt and stains on rugs, carpeting, the interior of motor vehicles, household furniture, or objects upholstered or covered with fabrics such as wool, cotton, nylon or other synthetic fabrics.

- (1) Carpet and upholstery cleaner includes, but is not limited to, products that make fabric protectant claims.
- (2) Carpet and upholstery cleaner does not include general purpose cleaners, spot removers, vinyl or leather cleaners, dry cleaning fluids, or products designed exclusively for use at industrial facilities engaged in furniture or carpet manufacturing.

"Charcoal lighter material" means any combustible material designed to be applied on, incorporated in, added to, or used with charcoal to enhance ignition.

"Colorant" means any pigment or coloring material used in a consumer product for an aesthetic effect, or to dramatize an ingredient.

"Construction, panel, and floor covering adhesive" means any one component adhesive that is designed exclusively for the installation, remodeling, maintenance, or repair of:

- (1) Structural and building components that include, but are not limited to, beams, trusses, studs, paneling (drywall or drywall laminates, fiberglass reinforced plastic (FRP), plywood, particle board, insulation board, pre-decorated hardboard or tileboard, etc.), ceiling and acoustical tile, molding, fixtures, countertops or countertop laminates, cove or wall bases, and flooring or subflooring; or
- (2) Floor or wall coverings that include, but are not limited to, wood or simulated wood covering, carpet, carpet pad or cushion, vinyl backed carpet, flexible flooring material, nonresilient flooring material, mirror tiles and other types of tiles, and artificial grass.
- (3) Construction, panel, and floor covering adhesive does not include floor seam sealer.

"Consumer" means any person who purchases, or acquires

any consumer product for personal, family, household, or institutional use, and persons acquiring a consumer product for resale are not consumers for that product.

"Consumer product" means a chemically formulated product used by household and institutional consumers including, but not limited to, detergents; cleaning compounds; polishes; floor finishes; cosmetics; personal care products; home, lawn, and garden products; disinfectants; sanitizers; aerosol paints; and automotive specialty products but does not include other paint products, furniture coatings, or architectural coatings.

"Contact adhesive" means a non-aerosol adhesive that:

- (1) Is designed for application to both surfaces to be bonded together;
- (2) Is allowed to dry before the two surfaces are placed in contact with each other;
- (3) Forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other; and
- (4) Does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces.

(5) Contact adhesive does not include rubber cements that are primarily intended for use on paper substrates.

(6) Contact adhesive does not include vulcanizing fluids that are designed and labeled for tire repair only.

"Container/packaging" means the part or parts of the consumer or institutional product which serve only to contain, enclose, incorporate, deliver, dispense, wrap or store the chemically formulated substance or mixture of substances which is solely responsible for accomplishing the purposes for which the product was designed or intended and includes any article onto or into which the principal display panel and other accompanying literature or graphics are incorporated, etched, printed or attached.

"Crawling bug insecticide" means any insecticide product that is designed for use against ants, cockroaches, or other household crawling arthropods, including, but not limited to, mites, silverfish or spiders but does not include products designed to be used exclusively on humans or animals, or any house dust mite product.

(1) For the purposes of this definition only:

(a) "House dust mite product" means a product whose label, packaging, or accompanying literature states that the product is suitable for use against house dust mites, but does not indicate that the product is suitable for use against ants, cockroaches, or other household crawling arthropods.

(b) "House dust mite" means mites which feed primarily on skin cells shed in the home by humans and pets and which belong to the phylum Arthropoda, the subphylum Chelicerata, the class Arachnida, the subclass Acari, the order Astigmata, and the family Pyroglyphidae.

"Date-Code" means the day, month and year on which the consumer product was manufactured, filled, or packaged, or a code indicating such a date.

"Deodorant" means any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze bottles, that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria which cause the decomposition of perspiration.

"Device" means any instrument or contrivance (other than a firearm) which is designed for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals) but does not include equipment used for the application of pesticides when sold separately therefrom.

"Disinfectant" means any product that is labeled as a

disinfectant or is labeled as a product that destroys or irreversibly inactivates infectious or other undesirable bacteria, pathogenic fungi, or viruses on surfaces or inanimate objects and whose label is registered as a disinfectant under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136, et seq.).

(1) Products that are labeled as both a "sanitizer" and a "disinfectant" are considered disinfectants.

(2) Disinfectant does not include any of the following:

(a) Products labeled as solely for use on human or animals;

(b) Products labeled as solely for agricultural use;

(c) Products labeled as solely for use in swimming pools, therapeutic tubs, or hot tubs;

(d) Products that are labeled to be used on heat sensitive critical or semi-critical medical devices or medical equipment surfaces;

(e) Products that are pre-moistened wipes or towelettes sold exclusively to medical, convalescent, or veterinary establishments;

(f) Products that are labeled to be applied to food-contact surfaces and are not required to be rinsed prior to contact with food; or

(g) Products labeled as bathroom and tile cleaners, glass cleaners, general purpose cleaners, metal polishes, carpet cleaners or fabric refreshers that may also make disinfecting or antimicrobial claims on the label.

"Distributor" means any person to whom a consumer product is sold or supplied for the purposes of resale or distribution in commerce, except that manufacturers, retailers, and consumers are not distributors.

"Double phase aerosol air freshener" means an aerosol air freshener with the liquid contents in two or more distinct phases that requires the product container be shaken before use to mix the phases, producing an emulsion.

"Dry cleaning fluid" means any non-aqueous liquid product designed and labeled exclusively for use on fabrics which are labeled for dry clean only, such as clothing or drapery or s-coded fabrics.

(1) Dry cleaning fluid includes, but is not limited to, those products used by commercial dry cleaners and commercial businesses that clean fabrics such as draperies at the customer's residence or work place.

(2) Dry cleaning fluid does not include spot remover or carpet and upholstery cleaner.

"Dual purpose air freshener/disinfectant" means an aerosol product that is represented on the product container for use as both a disinfectant and an air freshener or is so represented on any sticker, label, packaging, or literature attached to the product container.

"Dusting aid" means a product designed to assist in removing dust and other soils from floors and other surfaces without leaving a wax or silicone based coating but does not include products which consist entirely of compressed gases for use in electronic or other specialty areas.

"Electrical cleaner" means a product labeled as a product that removes heavy soils such as grease, grime, or oil from electrical equipment, including, but not limited to, electric motors, armatures, relays, electric panels, or generators.

(1) Electrical cleaner does not include general purpose cleaner, general purpose degreaser, dusting aid, electronic cleaner, energized electrical cleaner, pressurized gas duster, engine degreaser, anti-static product, or products designed to clean the casings or housings of electrical equipment.

"Electronic cleaner" means a product labeled as a product that removes dirt, moisture, dust, flux or oxide from the internal components of electronic or labeled as precision equipment such as circuit boards and the internal components of electronic devices, including, but not limited to, radios, compact disc players, digital video disc players, and computers.

"Engine degreaser" means a cleaning product designed to remove grease, grime, oil and other contaminants from the external surfaces of engines and other mechanical parts.

"Fabric protectant" means a product labeled as a product to be applied to fabric substrates to protect the surface from soiling from dirt and other impurities or to reduce absorption of liquid into the fabric's fibers but does not include waterproofers or products labeled for use solely on leather.

(1) Fabric protectant does not include pigmented products that are designed to be used primarily for coloring, products used for construction, reconstruction, modification, structural maintenance or repair of fabric substrates, or products that renew or restore fabric and qualifying as either clear coating or vinyl, fabric, leather, or polycarbonate coatings.

"Fabric refresher" means a product labeled to neutralize or eliminate odors on non-laundered fabric, including, but not limited to, soft household surfaces, rugs, carpeting, draperies, bedding, automotive interiors, footwear, athletic equipment, clothing or on household furniture or objects upholstered or covered with fabrics such as wool, cotton, or nylon. Fabric refresher does not include anti-static products, carpet and upholstery cleaners, footwear or leather care products, spot removers, disinfectants, or products labeled for application to both fabric and human skin.

"Facial cleaner or soap" means a cleaner or soap designed primarily to clean the face.

(1) Facial cleaner or soap includes, but is not limited to, facial cleansing creams, gels, liquids, lotions, and substrate-impregnated forms.

(2) Facial cleaner or soap does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent/toner, general-use hand or body cleaner or soap, medicated astringent/medicated toner, or rubbing alcohol.

"Flea and tick insecticide" means any insecticide product that is designed for use against fleas, ticks, their larvae, or their eggs but does not include products that are designed to be used exclusively on humans or animals and their bedding.

"Flexible flooring material" means asphalt, cork, linoleum, no wax, rubber, seamless vinyl and vinyl composite flooring.

"Floor polish or wax" means a product designed or labeled as a product to polish, wax, condition, protect, temporarily seal or otherwise enhance floor surfaces by leaving a protective finish that is designed or labeled to be periodically replenished.

(1) Floor polish or wax does not include spray buff products, floor wax strippers, products designed or labeled for unfinished wood floors, or coatings subject to architectural coatings regulations.

(2) Floor polish or wax is divided into three categories: products for resilient flooring materials, products for nonresilient flooring materials, and wood floor wax. For the purposes of this section:

(a) "Resilient flooring material" means flexible flooring material, including but not limited to, asphalt, cork, linoleum, no-wax, rubber, seamless vinyl, and vinyl composite flooring.

(b) "Nonresilient flooring material" means flooring of a mineral content that is not flexible, including, but not limited to, terrazzo, marble, slate, granite, brick, stone, ceramic tile, and concrete.

(c) "Wood floor wax" means wax-based products for use solely on wood floors.

"Floor seam sealer" means any product designed and labeled exclusively for bonding, fusing, or sealing (coating) seams between adjoining rolls of installed flexible sheet flooring.

"Floor wax stripper" means a product designed to remove natural or synthetic floor polishes or waxes through breakdown of the polish or wax polymers, or by dissolving or emulsifying the polish or wax but does not include aerosol floor wax strippers or products designed to remove floor wax solely

through abrasion.

"Flying bug insecticide" means any insecticide product that is designed for use against flying insects or other flying arthropods, including but not limited to flies, mosquitoes, moths, or gnats.

(1) Flying bug insecticide does not include wasp and hornet insecticide, products that are designed to be used exclusively on humans or animals, or any moth-proofing product.

(2) For the purposes of this definition only, "moth-proofing product" means a product whose label, packaging, or accompanying literature indicates that the product is designed to protect fabrics from damage by moths, but does not indicate that the product is suitable for use against flying insects or other flying arthropods.

"Fragrance" means a substance or complex mixture of aroma chemicals, natural essential oils, and other functional components with a combined vapor pressure not in excess of two millimeters of mercury (mm Hg) at 20 degrees Celsius, the sole purpose of which is to impart an odor or scent or to counteract a malodor.

"Furniture maintenance product" means a wax, polish, conditioner, or any other product designed for the purpose of polishing, protecting or enhancing finished wood surfaces other than floors but does not include dusting aids, products designed solely for the purpose of cleaning, and products designed to leave a permanent finish such as stains, sanding sealers and lacquers.

"Furniture coating" means any paint designed for application to room furnishings including, but not limited to, cabinets (kitchen, bath and vanity), tables, chairs, beds, and sofas.

"Gel" means a colloid in which the disperse phase has combined with the continuous phase to produce a semisolid material, such as jelly.

"General purpose adhesive" means any non-aerosol adhesive designed for use on a variety of substrates.

(1) General purpose adhesive does not include;

(a) Contact adhesives;

(b) Construction, panel, and floor covering adhesives;

(c) Adhesives designed exclusively for application on one specific category of substrates (i.e., substrates that are composed of similar materials, such as different types of metals, paper products, ceramics, plastics, rubbers, or vinyls); or

(d) Adhesives designed exclusively for use on one specific category of articles (i.e., articles that may be composed of different materials but perform a specific function, such as gaskets, automotive trim, weather-stripping, or carpets).

"General Purpose Cleaner" means a product designed for general all-purpose cleaning, in contrast to cleaning products designed to clean specific substrates in certain situations and includes products designed for general floor cleaning, kitchen or countertop cleaning, and cleaners designed to be used on a variety of hard surfaces and does not include general purpose degreasers and electronic cleaners.

"General purpose degreaser" means any product labeled as a product that removes or dissolves grease, grime, oil and other oil-based contaminants from a variety of substrates, including automotive or miscellaneous metallic parts.

(1) General purpose degreaser does not include engine degreaser, general purpose cleaner, adhesive remover, electronic cleaner, electrical cleaner, metal polish/cleanser, oven or grill cleaner, products used exclusively in solvent cleaning tanks or related equipment, or products that are:

(a) Exclusively sold directly or through distributors to establishments that manufacture or construct goods or commodities; and

(b) Labeled for use in the manufacturing process only.

(2) Solvent cleaning tanks or related equipment includes,

but is not limited to, cold cleaners, vapor degreasers, conveyORIZED degreasers, film cleaning machines, or products designed to clean miscellaneous metallic parts by immersion in a container.

"General-use hand or body cleaner or soap" means a cleaner or soap designed to be used routinely on the skin to clean or remove typical or common dirt and soils.

(1) General-use hand or body cleaner or soap includes, but is not limited to, hand or body washes, dual-purpose shampoo-body cleaners, shower or bath gels, and moisturizing cleaners or soaps.

(2) General-use hand or body cleaner or soap does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent/toner, facial cleaner or soap, hand dishwashing detergent (including antimicrobial), heavy-duty hand cleaner or soap, medicated astringent/medicated toner, or rubbing alcohol.

"Glass cleaner" means a cleaning product designed primarily for cleaning surfaces made of glass but does not include products designed solely for the purpose of cleaning optical materials used in eyeglasses, photographic equipment, scientific equipment and photocopying machines.

"Graffiti remover" means a product labeled to remove spray paint, ink, marker, crayon, lipstick, nail polish, or shoe polish from a variety of non-cloth or non-fabric substrates.

(1) Graffiti remover does not include paint remover or stripper, nail polish remover, or spot remover.

(2) Products labeled for dual use as both a paint stripper and graffiti remover are considered graffiti removers.

"Hair mousse" means a hairstyling foam designed to facilitate styling of a coiffure and provide limited holding power.

"Hair shine" means any product designed for the primary purpose of creating a shine when applied to the hair.

(1) Hair shine includes, but is not limited to, dual-use products designed primarily to impart a sheen to the hair.

(2) Hair shine does not include hair spray, hair mousse, hair styling gel or spray gel, or products whose primary purpose is to condition or hold the hair.

"Hair styling gel" means a high viscosity, often gelatinous, product that contains a resin and is designed for the application to hair to aid in styling and sculpting of the hair coiffure.

"Hair spray" means a consumer product designed primarily for the purpose of dispensing droplets of a resin on and into a hair coiffure which will impart sufficient rigidity to the coiffure to establish or retain the style for a period of time.

"Hair Styling Product" means a consumer product manufactured on or after January 1, 2009, that is designed or labeled as a product for the application to wet, damp or dry hair to aid in defining, shaping, lifting, styling or sculpting of the hair.

(1) Hair styling product includes, but is not limited to, hair balm, clay, cream, curl straightener, gel, liquid, lotion, paste, pomade, putty, root lifter, serum, spray gel, stick, temporary hair straightener, wax, spray products that aid in styling but do not provide finishing of a hairstyle, and leave-in volumizers, detanglers or conditioners that make styling claims.

(2) Hair styling product does not include hair mousse, hair shine, hair spray, or shampoos or conditioners that are rinsed from the hair prior to styling.

"Heavy-duty hand cleaner or soap" means a product designed to clean or remove difficult dirt and soils such as oil, grease, grime, tar, shellac, putty, printer's ink, paint, graphite, cement, carbon, asphalt, or adhesives from the hand with or without the use of water but does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent/toner, facial cleaner or soap, general-use hand or body cleaner or soap, medicated astringent/medicated toner, or rubbing alcohol.



"Herbicide" means a pesticide product designed to kill or retard a plant's growth, but excludes products that are:

- (1) For agricultural use; or
- (2) Restricted materials that require a permit for use and possession.

"High volatility organic compound (HVOC)" means any volatile organic compound that exerts a vapor pressure greater than 80 millimeters of Mercury (mm Hg) when measured at 20 degrees Celsius.

"Household product" means any consumer product that is primarily designed to be used inside or outside of living quarters or residences that are occupied or intended for occupation by individuals, including the immediate surroundings.

"Insecticide" means a pesticide product that is designed for use against insects or other arthropods, but excluding products that are:

- (1) For agricultural use;
- (2) For a use which requires a structural pest control license under applicable state or federal laws or regulations; or
- (3) Restricted materials that require a permit for use and possession.

"Insecticide fogger" means any insecticide product designed to release all or most of its content, as a fog or mist, into indoor areas during a single application.

"Institutional product" or "Industrial and institutional (I and I) product" means a consumer product that is designed for use in the maintenance or operation of an establishment that manufactures, transports, or sells goods or commodities, or provides services for profit or is engaged in the nonprofit promotion of a particular public, educational, or charitable cause.

(1) Establishments include, but are not limited to, government agencies, factories, schools, hospitals, sanitariums, prisons, restaurants, hotels, stores, automobile service and parts centers, health clubs, theaters, or transportation companies.

(2) Institutional product does not include household products and products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

"Label" means any written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon any consumer product or consumer product package, for purposes of branding, identifying, or giving information with respect to the product or to the contents of the package.

"Laundry prewash" means a product that is designed for application to a fabric prior to laundering and that supplements and contributes to the effectiveness of laundry detergents or provides specialized performance.

"Laundry starch product" means a product that is designed for application to a fabric, either during or after laundering, to impart and prolong a crisp, fresh look and may also act to help ease ironing of the fabric and includes, but is not limited to, fabric finish, sizing, and starch.

"Lawn and garden insecticide" means an insecticide product designed primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods.

"Liquid" means a substance or mixture of substances which is capable of a visually detectable flow as determined under ASTM D 4359- 90 but does not include powders or other materials that are composed entirely of solid particles.

"Lubricant" means a product designed to reduce friction, heat, noise, or wear between moving parts or to loosen rusted or immovable parts or mechanisms.

(1) Lubricant does not include automotive power steering fluids; products for use inside power generating motors, engines, and turbines, and their associated power-transfer gearboxes; two cycle oils or other products designed to be added to fuels; products for use on the human body or animals; or products that

are:

(a) Exclusively sold directly or through distributors to establishments that manufacture or construct goods or commodities; and

(b) Labeled for use in the manufacturing process only.

"LVP content" means the total weight, in pounds, of LVP compounds in a product multiplied by 100 and divided by the product's total net weight (in pounds, excluding container and packaging), expressed to the nearest 0.1.

"LVP-VOC" means a chemical compound or mixture that contains at least one carbon atom and meets one of the following:

(1) Has a vapor pressure less than 0.1 mm Hg at 20 degrees Celsius, as determined by CARB Method 310;

(2) Is a chemical compound with more than 12 carbon atoms, or a chemical mixture comprised solely of compounds with more than 12 carbon atoms, and the vapor pressure is unknown;

(3) Is a chemical compound with a boiling point greater than 216 degrees Celsius, as determined by CARB Method 310; or

(4) Is the weight percent of a chemical mixture that boils above 216 degrees Celsius, as determined by CARB Method 310.

(5) For the purposes of the definition of LVP-VOC:

(a) "Chemical compound" means a molecule of definite chemical formula and isomeric structure; and

(b) "Chemical mixture" means a substrate comprised of two or more chemical compounds.

"Manufacturer" means any person who imports, manufactures, assembles, produces, packages, repackages, or re-labels a consumer product.

"Medicated astringent/medicated toner" means any product regulated as a drug by the FDA which is applied to the skin for the purpose of cleaning or tightening pores.

(1) Medicated astringent/medicated toner includes, but is not limited to, clarifiers and substrate-impregnated products.

(2) Medicated astringent/medicated toner does not include hand, face, or body cleaner or soap products, astringent/toner, cold cream, lotion, antiperspirants, or products that must be purchased with a doctor's prescription.

"Medium volatility organic compound (MVOC)" means any volatile organic compound that exerts a vapor pressure greater than two mm Hg and less than or equal to 80 mm Hg when measured at 20 degrees Celsius.

"Metal polish/cleanser" means any product designed primarily to improve the appearance of finished metal, metallic, or metallized surfaces by physical or chemical action.

(1) To improve the appearance means to remove or reduce stains, impurities, or oxidation from surfaces or to make surfaces smooth and shiny.

(2) Metal polish/cleanser includes, but is not limited to, metal polishes used on brass, silver, chrome, copper, stainless steel and other ornamental metals.

(3) Metal polish/cleanser does not include automotive wax, polish, sealant or glaze, wheel cleaner, paint remover or stripper, products designed and labeled exclusively for automotive and marine detailing, or products designed for use in degreasing tanks.

"Mist spray adhesive" means any aerosol which is not a special purpose spray adhesive and which delivers a particle or mist spray, resulting in the formation of fine, discrete particles that yield a generally uniform and smooth application of adhesive to the substrate.

"Multi-purpose dry lubricant" means any lubricant that is:

(1) Designed and labeled to provide lubricity by depositing a thin film of graphite, molybdenum disulfide ("moly"), or polytetrafluoroethylene or closely related fluoropolymer ("teflon") on surfaces; and

(2) Designed for general purpose lubrication, or for use in a wide variety of applications.

"Multi-purpose lubricant" means any lubricant designed for general purpose lubrication or for use in a wide variety of applications but does not include multi-purpose dry lubricants, penetrants, or silicone-based multi-purpose lubricants.

"Multi-purpose solvent" means any liquid product designed or labeled to be used for dispersing, dissolving, or removing contaminants or other organic materials.

(1) Multi-purpose solvent includes:

(a) Products that do not display specific use instructions on the product container or packaging;

(b) Products that do not specify an end-use function or application on the product container or packaging;

(c) Solvents used in institutional facilities, except for laboratory reagents used in analytical, educational, research, scientific or other laboratories;

(d) Paint clean-up products; and

(e) Products labeled to prepare surfaces for painting.

(2) Multi-purpose solvent does not include any product making any representation that the product may be used as, or is suitable for use as, a consumer product that meets another definition in R307-357-3; such products are subject to the most restrictive limit provisions in R307-357-10(4) and R307-357-10(5).

"Nail polish" means any clear or colored coating designed for application to the fingernails or toenails and including but not limited to, lacquers, enamels, acrylics, base coats and top coats.

"Nail polish remover" means a product designed to remove nail polish and coatings from fingernails or toenails.

"Non aerosol product" means any consumer product that is not dispensed by a pressurized spray system.

"Non carbon containing compound" means any compound which does not contain any carbon atoms.

"Non-selective terrestrial herbicide" means a terrestrial herbicide product that is toxic to plants without regard to species.

"Oven or grill cleaner" means a product labeled exclusively as a product to remove baked on grease or deposits from food preparation or cooking surfaces.

"Paint" means any pigmented liquid, liquefiable, or mastic composition designed for application to a substrate in a thin layer which is converted to an opaque solid film after application and is used for protection, decoration or identification, or to serve some functional purpose such as the filling or concealing of surface irregularities or the modification of light and heat radiation characteristics.

"Paint remover or stripper" means any product designed to strip or remove paints or other related coatings, by chemical action, from a substrate without markedly affecting the substrate but does not include "Multi-purpose Solvents", paint brush cleaners, products designed and labeled exclusively to remove graffiti, and hand cleaner products that claim to remove paints and other related coatings from skin.

"Paint thinner" means any liquid product used for reducing the viscosity of coating compositions or components or that prominently displays the term paint thinner, lacquer thinner, thinner, or reducer on the front panel of its packaging.

(1) Paint thinner does not include any of the following products:

(a) Artist's solvent/thinner;

(b) Products that are sold in containers with a capacity of five gallons or more and labeled exclusively for the thinning of industrial maintenance coatings, zinc-rich primers, or high temperature coatings;

(c) Products labeled and used exclusively as an ingredient in a specific coating or coating brand line whereby the coating would not be complete or useable without the specific

ingredient;

(d) Products that meet both of the following criteria:

(i) The principle display panel of the product displays states that the product is used exclusively for the thinning of industrial maintenance coatings, zinc-rich primers, or high temperature coatings; and

(ii) No representation is made anywhere on the product container or packaging or any label or sticker attached thereto that the product is suitable for use or may be used for any other purpose except the thinning of industrial maintenance coatings, zinc-rich primers, or high temperature coatings.

"Penetrant" means a lubricant designed and labeled primarily to loosen metal parts that have bonded together due to rusting, oxidation, or other causes but does not include "Multi-purpose Lubricants" that claim to have penetrating qualities, but are not labeled primarily to loosen bonded parts.

"Pesticide" means and includes any substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling or mitigating any pest, or any substance or mixture of substances labeled, designed, or intended for use as a defoliant, desiccant, or plant regulator, provided that the term "pesticide" will not include any substance, mixture of substances, or device which the United States Environmental Protection Agency does not consider to be a pesticide.

"Principal display panel or panels" means that part, or those parts of a label that are so designed as to most likely be displayed, presented, shown or examined under normal and customary conditions of display or purchase. Whenever a principal display panel appears more than once, all requirements pertaining to the "principal display panel" shall pertain to all such "principal display panels."

"Product category" means the applicable category which best describes the product as listed in Table 1. "Propellant" means a liquefied or compressed gas that is used in whole or in part, such as a cosolvent, to expel a liquid or any other material from the same self-pressurized container or from a separate container.

"Pump spray" means a packaging system in which the product ingredients within the container are not under pressure and in which the product is expelled only while a pumping action is applied to a button, trigger or other actuator.

"Restricted materials" means pesticides established as restricted materials under applicable state or federal laws or regulations.

"Roll on product" means any antiperspirant or deodorant that dispenses active ingredients by rolling a wetted ball or wetted cylinder on the affected area.

"Rubber/vinyl protectant" means any product labeled as a product that protects, preserves or renews vinyl or rubber on vehicles, tires, luggage, furniture, or household products such as vinyl covers, clothing, or accessories. Rubber/vinyl protectant does not include products labeled to clean the wheel rim, such as aluminum or magnesium wheel cleaners, and tire cleaners that do not leave an appearance-enhancing or protective substance on the tire.

"Sanitizer" means a product that is labeled as a sanitizer or labeled as a product to reduce, but not necessary eliminate, microorganisms in the air, on surfaces, or on inanimate objects and whose label is registered as a sanitizer under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA; 7 U.S.C. section 136 et seq.)

(1) Products that are labeled as both a sanitizer and a disinfectant are considered disinfectants.

(2) Sanitizers do not include:

(a) Disinfectants;

(b) Products labeled solely for use on humans or animals;

(c) Products labeled solely for agricultural use;

(d) Products labeled solely for use in swimming pools,

therapeutic tubs, or hot tubs;

(e) products that are labeled to be used on heat sensitive critical or semi-critical medical devices or medical equipment surfaces;

(f) Pre-moistened wipes or towelettes sold exclusively to medical, convalescent or veterinary establishments;

(g) Products that are labeled to be applied to food-contact surfaces and are not required to be rinsed prior to contact with food; or

(h) Bathroom and tile cleaners, glass cleaners, general purpose cleaners, metal polishers or fabric refreshers that may also make sanitizing or anti-microbial claims on the label.

"Rubbing alcohol" means any product containing isopropyl alcohol (also called isopropanol) or denatured ethanol and labeled for topical use, usually to decrease germs in minor cuts and scrapes, to relieve minor muscle aches, as a rubefacient, and for massage.

"Sealant and caulking compound" means any product with adhesive properties that is designed to fill, seal, waterproof, or weatherproof gaps or joints between two surfaces.

(1) Sealant and caulking compound does not include roof cements and roof sealants; insulating foams; removable caulking compounds; clear/paintable/water resistant caulking compounds; floor seam sealers; products designed exclusively for automotive uses; or sealers that are applied as continuous coatings.

(2) Sealant and caulking compound also does not include units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces.

(3) For the purposes of this definition only:

(a) "Removable caulking compounds" means a compound which temporarily seals windows or doors for three to six month time intervals; and

(b) "Clear/paintable/water resistant caulking compounds" means a compound which contains no appreciable level of opaque fillers or pigments; transmits most or all visible light through the caulk when cured; is paintable; and is immediately resistant to precipitation upon application.

"Semisolid" means a product that, at room temperature, will not pour, but will spread or deform easily, including gels, pastes, and greases.

"Shaving cream" means an aerosol product which dispenses a foam lather intended to be used with a blade, cartridge razor, or other wet shaving system in the removal of facial or other bodily hair.

"Shaving Gel" means an aerosol product that dispenses a post-foaming semisolid designed to be used with a blade, cartridge razor, or other shaving system in the removal of facial or other bodily hair.

"Silicone-based multi-purpose lubricant" means any lubricant which is:

(1) Designed and labeled to provide lubricity primarily through the use of silicone compounds including, but not limited to, polydimethylsiloxane; and

(2) Designed and labeled for general purpose lubrication, or for use in a wide variety of applications.

(3) Silicone-based multi-purpose lubricant does not include products designed and labeled exclusively to release manufactured products from molds.

"Single phase aerosol air freshener" means an aerosol air freshener with the liquid contents in a single homogeneous phase and which does not require that the product container be shaken before use.

"Solid" means a substance or mixture of substances which, either whole or subdivided (such as the particles comprising a powder), is not capable of visually detectable flow as determined under ASTM D-4359-90.

"Special purpose spray adhesive" means an aerosol adhesive that meets any of the following definitions:

(1) "Mounting adhesive" means an aerosol adhesive

designed to permanently mount photographs, artwork, and any other drawn or printed media to a backing (paper, board, cloth, etc.) without causing discoloration to the artwork.

(2) "Flexible vinyl adhesive" means an aerosol adhesive designed to bond flexible vinyl to substrates.

(a) "Flexible vinyl" means a nonrigid polyvinyl chloride plastic with at least five percent, by weight, of plasticizer content.

(b) "Plasticizer" means a material such as a high boiling point organic solvent that is incorporated into a plastic to increase its flexibility, workability, or distensibility, and may be determined using ASTM Method E260-91 or from product formulation data.

(3) "Polystyrene foam adhesive" means an aerosol adhesive designed to bond polystyrene foam to substrates.

(4) "Automobile headliner adhesive" means an aerosol adhesive designed to bond together layers in motor vehicle headliners.

(5) "Polyolefin adhesive" means an aerosol adhesive designed to bond polyolefins to substrates.

(6) "Laminate repair/edgebanding adhesive" means an aerosol adhesive designed for:

(a) The touch-up or repair of items laminated with high pressure laminates (e.g., lifted edges, delaminates, etc.); or

(b) The touch-up, repair, or attachment of edgebonding materials, including but not limited to, other laminates, synthetic marble, veneers, wood molding, and decorative metals.

(c) For the purposes of this definition, "high pressure laminate" means sheet materials that consist of paper, fabric, or other core material that have been laminated at temperatures exceeding 265 degrees Fahrenheit, and at pressures between 1,000 and 1,400 psi.

(7) "Automotive engine compartment adhesive" means an aerosol adhesive designed for use in motor vehicle under-the-hood applications which require oil and plasticizer resistance, as well as high shear strength, at temperatures of 200 to 275 degrees Fahrenheit.

"Spot remover" means any product designed to clean localized areas, or remove localized spots or stains on cloth or fabric such as drapes, carpets, upholstery, and clothing, that does not require subsequent laundering to achieve stain removal but does not include dry cleaning fluid, laundry prewash, carpet and upholstery cleaner, or multi-purpose solvent.

"Spray buff product" means a product designed to restore a worn floor finish in conjunction with a floor buffing machine and special pad.

"Stick product" means any antiperspirant or deodorant that contains active ingredients in a solid matrix form, and that dispenses the active ingredients by frictional action on the affected area.

"Structural waterproof adhesive" means an adhesive whose bond lines are resistant to conditions of continuous immersion in fresh or salt water, and that conforms with Federal Specification MMM-A-181 (Type I, Grade A), and MIL-A-4605 (Type A, Grade A and Grade C). This definition is as per the Federal Consumer Products Regulation 40 CFR 59 Subpart C.

"Terrestrial" means to live on or grow from land.

"Temporary hair color" means any product that applies color, glitter, or UV-active pigments to hair, wigs, or fur and is removable when washed.

"Tire sealant and inflation" means any pressurized product that is designed to temporarily inflate and seal a leaking tire.

"Type A propellant" means a compressed gas such as CO<sub>2</sub>, N<sub>2</sub>, N<sub>2</sub>O, or compressed air which is used as a propellant, and is either incorporated with the product or contained in a separate chamber within the product's packaging.

"Type B propellant" means any halocarbon which is used as a propellant including chlorofluorocarbons (CFCs),

hydrochlorofluorocarbons (HCFCs), and hydrofluorocarbons (HFCs).

"Type C propellant" means any propellant which is not a Type A or Type B propellant, including propane, isobutane, n butane, and dimethyl ether (also known as dimethyl oxide).

"Undercoating" means any aerosol product designed to impart a protective, non-paint layer to the undercarriage, trunk interior, or firewall of motor vehicles to prevent the formation of rust or to deaden sound and includes, but is not limited to, rubberized, mastic, or asphaltic products.

"VOC content" means the total weight of VOC in a product expressed as a percentage of the product weight (exclusive of the container or packaging).

"Wasp and hornet insecticide" means any insecticide product that is designed for use against wasps, hornets, yellow jackets or bees by allowing the user to spray from a distance a directed stream or burst at the intended insects, or their hiding place.

"Waterproof" means a product designed and labeled exclusively to repel water from fabric or leather substrates. "Waterproof" does not include "Fabric Protectants".

"Wax" means a material or synthetic thermoplastic substance generally of high molecular weight hydrocarbons or high molecular weight esters of fatty acids or alcohols, except glycerol and high polymers (plastics) and includes, but is not limited to, substances derived from the secretions of plants and animals such as caruba wax and beeswax, substances of a mineral origin such as ozocerite and paraffin, and synthetic polymers such as polyethylene.

"Web spray adhesive" means any aerosol adhesive which is not a mist spray or special purpose spray adhesive.

"Wood cleaner" means a product labeled to clean wooden materials, including but not limited to, decking, fences, flooring, logs, cabinetry, and furniture.

"Wood floor wax" means wax based products for use solely on wood floors.

**R307-357-4. Standards.**

(1) Except as provided in R307-357-6, 7, 8 and 9, no person shall sell, supply, offer for sale, or manufacture for sale any consumer product manufactured on or after the effective date in Table 1 that contains VOCs in excess of the limits specified in Table 1.

TABLE 1  
Table of Standards  
(percent volatile organic compounds by weight)

CATEGORY 9/1/2014	EFFECTIVE BEGINNING
Adhesive Removers:	
Floor and wall covering	5
Gasket or thread locking	50
General purpose	20
Specialty	70
Adhesives:	
Aerosol mist spray	65
Aerosol web spray	55
Special Purpose Spray Adhesives:	
Mounting, automotive Engine compartment, and flexible vinyl	70

Polystyrene foam and automotive headliner	65
Polyolefin and laminate repair/edgebanding	60
Construction, panel, and floor	7
Covering:	
Contact general purpose	55
Contact special purpose	80
General purpose	10
Structural waterproof	15
Air Fresheners:	
Single-phase aerosols	30
Double-phase aerosols	25
Dual-purpose air freshener/disinfectant aerosol	60
Liquids/pump sprays	18
Solids/semisolids	3
Antiperspirants:	
Aerosol	40 HVOC 10 MVOC
Non-aerosol	0 HVOC 0 MVOC
Anti-static product:	
Non-aerosol	11
Aerosol	80
Automotive rubbing or polishing compound	17
Automotive wax, polish, sealant or Glaze:	
Hard paste waxes	45
Instant detailers	3
All other forms	15
Automotive windshield washer fluids	35
Bathroom and Tile Cleaners:	
Aerosols	7
Non-aerosols	1
Brake cleaner	10
Bug and tar remover	40
Carburetor or fuel-injection air intake cleaners	10
Carpet and Upholstery Cleaners:	
Aerosols	7
Non-aerosols (dilutables)	0.1
Non-aerosols (ready-to-use)	3.0
Cooking spray aerosols	18

Disinfectant:		Hair shines	55
Aerosol	70	Hairsprays	55
non-aerosol	1	Hair styling gels	6
Deodorants:		Hair Styling Products:	
Aerosol	0 HVOC 10 MVOC	Aerosol and pump sprays	6
Non-aerosol	0 HVOC 0 MVOC	All other forms	2
Dusting Aids:		Heavy-duty hand cleaners or soaps	8
Aerosols	25	Insecticides:	
All other forms	7	Crawling bug (aerosol)	15
Electrical cleaner	45	Crawling bug (all other forms)	20
Electronic cleaner	75	Flea and tick	25
Engine Degreasers:		Flying bug (aerosol)	25
Aerosol	10	Flying bug (all other forms)	35
Non-aerosol	5	Foggers	45
Fabric protectants	60	Lawn and garden (all other forms)	20
Fabric refresher:		Lawn and garden (non-aerosol)	3
Aerosol	15	Wasp and hornet	40
Non-aerosol	6	Laundry Prewashes:	
Floor Polishes or Waxes:		Aerosols/solids	22
Resilient flooring materials	1	All other forms	5
Nonresilient flooring materials	1	Laundry starch products	4.5
Wood floor wax	90	Metal polishes/ cleansers	30
Footwear or leather care products:		Multi-Purpose lubricants (excluding solid or semi-solid products)	50
Aerosol	75	Nail Polish Removers	1
Solid	55	Non-selective terrestrial herbicides, non-aerosols	3
Other forms	15	Oven or Grill Cleaners:	
Furniture Maintenance Products:		Aerosols/pump sprays	8
Aerosols	17	Non-aerosols	4
Non-aerosol (except solid or paste)	3	Paint remover or strippers	50
General Purpose Cleaners:		Paint Thinner	30
Aerosols	8	Penetrants	50
Non-aerosols	4	Rubber or Vinyl Protectants:	
General Purpose Degreasers:		Non-aerosols	3
Aerosols	10	Sanitizer:	
Non-aerosols	4	Aerosol	70
Glass Cleaners:		Non-aerosols	1
Aerosols	12	Sealants and caulking compounds	4
Non-aerosols	4		
Graffiti Remover:			
Aerosols	50		
Non-aerosols	30		
Hair mousses	6		

Shaving creams	5
Shaving gel	4
Silicone-based multi-purpose lubricants (excluding solid or semi-solid products)	60
Spot Removers:	
Aerosols	25
Non-aerosols	8
Temporary hair color aerosol	55
Tire sealants and inflators	20
Toilet/urinal care:	
Aerosols	10
Non-aerosol	3
Undercoatings, aerosols	40
Wood Cleaner:	
Aerosol	17
Non-Aerosol	4
	EFFECTIVE BEGINNING 1/1/15
Multi-purpose Solvent	3
	EFFECTIVE BEGINNING 1/1/16
Paint Thinner:	3
Rubber or Vinyl Protectant Aerosols:	10

(2) For consumer products for which the label, packaging, or accompanying literature specifically states that the product should be diluted with water or non-VOC solvent prior to use, the limits specified in Table 1 shall apply to the product only after the minimum recommended dilution has taken place. For purposes of this subsection, "minimum recommended dilution" shall not include recommendations for incidental use of a concentrated product to deal with limited special applications such as hard to remove soils or stains.

(3) For consumer products for which the label, packaging, or accompanying literature states that the product should be diluted with any VOC solvent prior to use, the limits specified in Table 1 shall apply to the product only after the maximum recommended dilution has taken place.

(4) Effective September 1, 2016, no person shall sell, supply, offer for sale, or manufacture for use any aerosol adhesive, adhesive removers, and graffiti removers that contain methylene chloride, perchloroethylene, or trichloroethylene.

Sell-through products of aerosol adhesive, adhesive removers, and graffiti removers that contain methylene chloride, perchloroethylene, or trichloroethylene and were manufactured before September 1, 2016, may be sold, supplied, or offered for sale so long as the product container or package displays the date on which the product was manufactured.

(5) No person shall sell, supply, offer for sale, or manufacture any floor wax stripper unless the following requirements are met:

(a) The label of each non-aerosol floor wax stripper shall specify a dilution ratio for light or medium build-up of polish that results in an as-used VOC concentration of 3% by weight or less.

(b) If a non-aerosol floor wax stripper is also intended to be used for removal of heavy build-up of polish, the label of that floor wax stripper shall specify a dilution ratio for heavy build-

up of polish that results in an as-used VOC concentration of 12% by weight or less.

(6) Products containing ozone-depleting compounds. For any consumer product for which standards are specified under R307-357-4, no person shall sell, supply, offer for sale, or manufacture for sale any consumer product that contains any of the following ozone-depleting compounds:

- (a) CFC 11 (trichlorofluoromethane);
- (b) CFC 12 (dichlorodifluoromethane);
- (c) CFC 113 (1,1,1 trichloro 2,2,2 trifluoroethane);
- (d) CFC 114 (1 chloro 1,1 difluoro 2 chloro 2,2 difluoroethane);
- (e) CFC 115 (chloropentafluoroethane);
- (f) Halon 1211 (bromochlorodifluoroethane);
- (g) Halon 1301 (bromotrifluoroethane);
- (h) Halon 2402 (dibromotetrafluoroethane);
- (i) HCFC 22 (chlorodifluoromethane);
- (j) HCFC 123 (2,2 dichloro 1,1,1 trifluoroethane);
- (k) HCFC 124 (2 chloro 1,1,1,2 tetrafluoroethane);
- (l) HCFC 141b (1,1 dichloro 1 fluoroethane);
- (m) HCFC 142b (1 chloro 1,1 difluoroethane);
- (n) 1,1,1 trichloroethane; and
- (o) Carbon tetrachloride.

(7) The requirements of R307-357-4(6) shall not apply to any existing product formulation that complies with Table 1 or any existing product formulation that is reformulated to meet the standards set in Table 1, provided the ozone-depleting compound content of the reformulated product does not increase.

(8) The requirements of R307-357-4(6) shall not apply to any ozone-depleting compounds that may be present as impurities in a consumer product in an amount equal to or less than 0.01% by weight of the product.

**R307-357-5. Charcoal Lighter Material Products.**

No person shall sell, supply, or offer for sale any charcoal lighter material products unless the product has been issued and conforms to the conditions in a currently effective certification issued by the CARB pursuant to the provisions of 17 CCR 94509(h) as of the effective date of R307-357. A copy of the CARB certification decision shall be submitted to the director upon request.

**R307-357-6. Exemptions.**

(1) R307-357 shall not apply to any consumer product manufactured for shipment and use outside of the counties specified in R307-357-2 as long as the manufacturer or distributor can demonstrate both that the consumer product is intended for shipment and use outside of the applicable counties and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the consumer product is not distributed to the applicable counties.

(2) The medium volatility organic compound (MVOC) content standards specified in Table 1 for antiperspirants or deodorants shall not apply to ethanol.

(3) The VOC limits specified in Table 1 shall not apply to fragrances up to a combined level of 2% by weight contained in any consumer product and shall not apply to colorants up to a combined level of 2% by weight contained in any antiperspirant or deodorant.

(4) The requirements in Table 1 for antiperspirants or deodorants shall not apply to those VOCs that contain more than ten carbon atoms per molecule and for which the vapor pressure is unknown, or that have a vapor pressure of two mm Hg or less at 20 degrees Celsius.

(5) The VOC limits specified in Table 1 shall not apply to any LVP-VOC.

(6) The requirements of R307-357-10 shall not apply to consumer products registered under the Federal Insecticide,

Fungicide, and Rodenticide Act, (FIFRA; 7 U.S.C. Section 136/136y).

(7) The VOC limits specified in Table 1 shall not apply to air fresheners that are comprised entirely of fragrance, less compounds, not defined as VOCs or exempted under R307-357-6.

(8) The VOC limits specified in Table 1 shall not apply to air fresheners and insecticides containing at least 98% paradichlorobenzene.

(9) The VOC limits specified in Table 1 shall not apply to adhesives in containers of one fluid ounce or less.

(10) The VOC limits specified in Table 1 shall not apply to bait station insecticides.

#### **R307-357-7. Innovative Products.**

(1) Consumer products that have been granted an innovative products exemption by the CARB under provisions of 17 CCR 94511 as of the effective date of R307-357, shall be exempt from the VOC content limits in listed in Table 1 for the period of time that the innovative product exemption remains in effect.

(2) Any manufacturer claiming such an exemption shall submit to the director upon request, a copy of the CARB exemption decision, including all conditions established by CARB applicable to the exemption before the date that the product is first marketed in the applicable counties.

#### **R307-357-8. Alternate Control Plan (ACP).**

(1) Any manufacturer of consumer products who has been granted an ACP agreement by the CARB under provisions of 17 CCR 94540-94555 as of the effective date of R307-357 shall be exempt from complying with the VOC content limits established in Table 1 for the period of time that the ACP agreement remains in effect.

(2) Any manufacturer claiming an ACP agreement shall submit upon request to the director a copy of the ACP decision, including all conditions applicable to the exemption before the date that the product is first marketed in the applicable counties.

#### **R307-357-9. Variances.**

(1) Consumer products that have been granted a variance by the CARB under the provisions of 17 CCR 94514 as of the effective date of this rule shall be exempt from complying with the VOC content limits established in Table 1 for the period of time that the variance remains in effect.

(2) Any person claiming a variance shall submit a copy of the variance decision to the director upon request, including all conditions applicable to the variance before the date that the product is first marketed in the applicable counties.

#### **R307-357-10. Administrative Requirements.**

(1) Product Dating. Each manufacturer of a consumer product subject to the standards established in Table 1 shall clearly display on each consumer product container or package, the day, month, and year on which the product was manufactured, or a code indicating such date.

(a) A manufacturer who uses the following code to indicate the date of manufacture shall not be subject to the requirements of R307-357-10(3) if the code is represented separately from other codes on the product container so that it is easily recognizable:

YY DDD = year year day day day where:

"YY" = two digits representing the year in which the product was manufactured, and

"DDD" = three digits representing the day of the year on which the product was manufactured, with "001" representing the first day of the year, "002" representing the second day of the year, and so forth (i.e. the "Julian date").

(b) The date information shall be located on the container

or inside the cover or cap so that it is readily observable or obtainable by simply removing the cap or cover without disassembling any part of the container or packaging.

(c) The date information shall be displayed on each consumer product container or package no later than twelve months prior to the effective date of the applicable standard specified in Table 1.

(d) No person shall erase, alter, deface or otherwise remove or make illegible any date from any regulated product container without the express authorization of the manufacturer.

(2) The requirements of this provision shall not apply to products containing no VOCs or to products containing VOCs at 0.10% by weight or less.

(3) If a manufacturer uses a code indicating the date of manufacture, for any consumer product subject to R307-357-4, an explanation of the date portion of the code shall be supplied to the director within 30 day of written request.

(4) Notwithstanding the definition of product category in R-307-357-3, if anywhere on the container or packaging of any consumer product manufactured on or after the effective date specified in Table 1, or one year thereafter for any FIFRA-registered insecticide, or on any sticker or label affixed thereto, any representation is made that the product may be used as, or is suitable for use as, a consumer product for which a lower VOC limit is specified in R307-357-4, then the lowest VOC limit shall apply. This requirement does not apply to general purpose cleaners, antiperspirant/deodorant products or insecticide foggers.

(5) Notwithstanding the provisions of R307-357-10(4), a product that makes ancillary disinfecting, sanitizing, or antimicrobial claims on the label is not subject to the VOC standards for disinfectant or sanitizer if the product is designed and labeled on the principal display panel as a bathroom and tile cleaner, carpet/upholstery cleaner, fabric refresher, general purpose cleaner, glass cleaner, metal polish or cleanser.

#### **R307-357-11. Reporting Requirements.**

(1) Upon 90 days written notice, the director may require any responsible party to report information for any consumer product or products the director may specify including, but not limited to, all or part of the following information:

(a) The name of the responsible party and the party's address, telephone number, and designated contact person;

(b) The product brand name for each consumer product subject to registration and the product label;

(c) The product category to which the consumer product belongs;

(d) The applicable product forms listed separately;

(e) An identification of each product brand name and form as a "household product," "I and I Product," or both;

(f) Separate sales applicable counties in pounds per year, to the nearest pound, and the method used to calculate the sales for each product form;

(g) For registrations submitted by two companies, an identification of the company that is submitting relevant data separate from that submitted by the responsible party;

(h) For each product brand name and form, the net percent by weight of the total product, less container and packaging, comprised of the following, rounded to the nearest one tenth of a percent:

(i) Total non-VOC compounds.

(ii) Total LVP-VOCs that are not fragrances.

(iii) Total all other carbon containing compounds that are not fragrances.

(iv) Total all non-carbon containing compounds.

(v) Total fragrance.

(vi) For products containing greater than two% by weight fragrance:

(A) The percent of fragrance that are LVP-VOCs; and

(B) The percent of fragrance that are all other carbon containing compounds.

(vii) Total paradichlorobenzene.

(i) For each product brand name and form, the identity, including the specific chemical name and associated chemical abstract services (CAVES) number, of the following:

(i) Each non-VOC Compound; and

(ii) Each LVP-VOC that is not a fragrance.

(j) If applicable, the weight percent comprised of propellant for each product;

(k) If applicable, an identification of the type of propellant (Type A, Type B, Type C, or a blend of the different types).

(2) In addition to the requirements of section R307-357-11(1), the responsible party shall report or shall arrange to have reported to the director the net percent by weight of each ozone-depleting compound which is:

(a) Listed in R307-357-4(6); and

(b) Contained in a product subject to registration under R307-357-11(1) in any amount greater than 0.1 percent by weight.

(3) For the purpose of R307-357-11 "product form" means the applicable form which most accurately describes the product's dispensing form as follows:

A = Aerosol Product

S = Solid

P = Pump Spray

L = Liquid

SS = Semisolid

O = Other

**R307-357-12. Special Reporting Requirements for Consumer Products that Contain Perchloroethylene or Methylene Chloride.**

(1) The requirements of R307-357-12 shall apply to all responsible parties for consumer products that are subject to the standards established in Table 1 and contain perchloroethylene or methylene chloride.

(a) For the purposes of this subsection, a product contains perchloroethylene or methylene chloride if the product contains 1.0% or more by weight (exclusive of the container or packaging) of either perchloroethylene or methylene chloride.

(2) For each consumer product that contains perchloroethylene or methylene chloride, upon request from the director, the responsible party shall report the following information for products sold in the applicable counties within 90 days written notice:

(a) The product brand name and a copy of the product label with legible usage instructions;

(b) The product category to which the consumer product belongs;

(c) The applicable product forms (listed separately);

(d) For each product form listed in R307-357-12(2)(c), the total sales in the applicable counties during the calendar year, to the nearest pound (exclusive of the container or packaging), and the method used for calculating the sales; and

(e) The weight percent, to the nearest 0.10 percent, of perchloroethylene and methylene chloride in the consumer product.

**R307-357-13. Test Methods.**

Testing to determine compliance with the requirements of this regulation shall be performed using the CARB Method 310, Determination of Volatile Organic Compounds in Consumer Products, which is herein incorporated by reference.

**R307-357-14. VOC Content Determinations Using Product Formulation and Records.**

(1) Testing to determine compliance with the requirements of R307-357 may also be demonstrated through calculation of

the VOC content from records of the amounts of constituents used to make the product pursuant to the following criteria:

(a) Compliance determinations based on these records may not be used unless the manufacturer of a consumer product keeps accurate records for each day of production of the amount and chemical composition of the individual product constituents, and these records must be kept for at least three years.

(b) For the purposes of R307-357-13, the VOC content shall be calculated according to the following equation:

$$\text{VOC Content} = ((B-C)/A) \times 100$$

where, A = total net weight of unit (excluding container and packaging)

B = total weight of all VOCs, as defined in Table 1, per unit

C = total weight of VOCs exempted under R307-357-6, per unit

(c) If product records appear to demonstrate compliance with the VOC limits, but these records are contradicted by product testing performed using CARB Method 310, the results of CARB Method 310 shall take precedence over the product records and may be used to establish a violation of the requirements of this regulation.

**R307-357-15. Determination of Liquid or Solid.**

Testing to determine whether a product is a liquid or solid shall be performed using ASTM D4359- 90 (2012).

**KEY: air pollution, consumer products**

**May 8, 2014**

**Notice of Continuation March 8, 2018**

**19-2-101**

**19-2-104**



**R307. Environmental Quality, Air Quality.****R307-401. Permit: New and Modified Sources.****R307-401-1. Purpose.**

This rule establishes the application and permitting requirements for new installations and modifications to existing installations throughout the State of Utah. Additional permitting requirements apply to larger installations or installations located in nonattainment or maintenance areas. These additional requirements can be found in R307-403, R307-405, R307-406, R307-420, and R307-421. Modeling requirements in R307-410 may also apply. Each of the permitting rules establishes independent requirements, and the owner or operator must comply with all of the requirements that apply to the installation. Exemptions under R307-401 do not affect applicability of the other permitting rules.

**R307-401-2. Definitions.**

"Actual emissions" (a) means the actual rate of emissions of an air pollutant from an emissions unit, as determined in accordance with R307-401-2(b) through R307-401-2(d).

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the air pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each air pollutant which would be emitted from any proposed stationary source or modification which the director, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60 and 61. If the director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (i.e., which have the same two-digit code) as described

in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any air pollutant.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Indirect source" means a building, structure, facility, or installation which attracts or may attract mobile source activity that results in emission of a pollutant for which there is a national standard.

"Potential to emit" means the maximum capacity of a stationary source to emit an air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Stationary source" means any building, structure, facility, or installation which emits or may emit an air pollutant.

**R307-401-3. Applicability.**

(1) R307-401 applies to any person intending to:

(a) construct a new installation which will or might reasonably be expected to become a source or an indirect source of air pollution, or

(b) make modifications to or relocate an existing installation which will or might reasonably be expected to increase the amount of, or change the effect of, or the character of, air pollutants discharged, so that such installation may be expected to become a source or indirect source of air pollution, or

(c) install a control apparatus or other equipment intended to control emissions of air pollutants.

(2) R307-403, R307-405 and R307-406 may establish additional permitting requirements for new or modified sources.

(a) Exemptions contained in R307-401 do not affect applicability or other requirements under R307-403, R307-405 or R307-406.

(b) Exemptions contained in R307-403, R307-405 or R307-406 do not affect applicability or other requirements under R307-401, unless specifically authorized in this rule.

**R307-401-4. General Requirements.**

The general requirements in R307-401-4(1) through R307-401-4(3) apply to all new and modified installations, including installations that are exempt from the requirement to obtain an approval order.

(1) Any control apparatus installed on an installation shall

be adequately and properly maintained.

(2) If the director determines that an exempted installation is not meeting an approval order or State Implementation Plan limitation, is creating an adverse impact to the environment, or would be injurious to human health or welfare, the director may require the owner or operator to submit a notice of intent and obtain an approval order in accordance with R307-401-5 through R307-401-8. The director will complete an appropriate analysis and evaluation in consultation with the owner or operator before determining that an approval order is required.

(3) Low Oxides of Nitrogen Burner Technology.

(a) Except as provided in R307-401-4(3)(b), whenever existing fuel combustion burners are replaced, the owner or operator shall install low oxides of nitrogen burners or equivalent oxides of nitrogen controls, as determined by the director, unless such equipment is not physically practical or cost effective. The owner or operator shall submit a demonstration that the equipment is not physically practical or cost effective to the director for review and approval prior to beginning construction.

(b) The provisions of (a) above do not apply to non-commercial, residential buildings.

#### **R307-401-5. Notice of Intent.**

(1) Except as provided in R307-401-9 through R307-401-17, any person subject to R307-401 shall submit a notice of intent to the director and receive an approval order prior to initiation of construction, modification or relocation. The notice of intent shall be in a format specified by the director.

(2) The notice of intent shall include the following information:

(a) A description of the nature of the processes involved; the nature, procedures for handling and quantities of raw materials; the type and quantity of fuels employed; and the nature and quantity of finished product.

(b) Expected composition and physical characteristics of effluent stream both before and after treatment by any control apparatus, including emission rates, volume, temperature, air pollutant types, and concentration of air pollutants.

(c) Size, type, and performance characteristics of any control apparatus.

(d) An analysis of best available control technology for the proposed source or modification. When determining best available control technology for a new or modified source in an ozone nonattainment or maintenance area that will emit volatile organic compounds or nitrogen oxides, the owner or operator of the source shall consider EPA Control Technique Guidance (CTG) documents and Alternative Control Technique documents that are applicable to the source. Best available control technology shall be at least as stringent as any published CTG that is applicable to the source.

(e) Location and elevation of the emission point and other factors relating to dispersion and diffusion of the air pollutant in relation to nearby structures and window openings, and other information necessary to appraise the possible effects of the effluent.

(f) The location of planned sampling points and the tests of the completed installation to be made by the owner or operator when necessary to ascertain compliance.

(g) The typical operating schedule.

(h) A schedule for construction.

(i) Any plans, specifications and related information that are in final form at the time of submission of notice of intent.

(j) Any additional information required by:

(i) R307-403, Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas;

(ii) R307-405, Permits: Major Sources in Attainment or Unclassified Areas (PSD);

(iii) R307-406, Visibility;

(iv) R307-410, Permits: Emissions Impact Analysis;

(v) R307-420, Permits: Ozone Offset Requirements in Davis and Salt Lake Counties; or

(vi) R307-421, Permits: PM10 Offset Requirements in Salt Lake County and Utah County.

(k) Any other information necessary to determine if the proposed source or modification will be in compliance with Title R307.

(3) Notwithstanding the exemptions in R307-401-9 through R307-401-16, any person that is subject to R307-403, R307-405, or R307-406 shall submit a notice of intent to the director and receive an approval order prior to initiation of construction, modification, or relocation.

#### **R307-401-6. Review Period.**

(1) Completeness Determination. Within 30 days after receipt of a notice of intent, or any additional information necessary to the review, the director will advise the applicant of any deficiency in the notice of intent or the information submitted.

(2) Within 90 days of receipt of a complete application including all the information described in R307-401-5, the director will

(a) issue an approval order for the proposed construction, installation, modification, relocation, or establishment pursuant to the requirements of R307-401-8, or

(b) issue an order prohibiting the proposed construction, installation, modification, relocation or establishment if it is deemed that any part of the proposal is inadequate to meet the applicable requirements of R307.

(3) The review period under R307-401-6(2) may be extended by up to three 30-day extensions if more time is needed to review the proposal.

#### **R307-401-7. Public Notice.**

(1) Issuing the Notice. Prior to issuing an approval or disapproval order, the director will advertise intent to approve or disapprove in a newspaper of general circulation in the locality of the proposed construction, installation, modification, relocation or establishment.

(2) Opportunity for Review and Comment.

(a) At least one location will be provided where the information submitted by the owner or operator, the director's analysis of the notice of intent proposal, and the proposed approval order conditions will be available for public inspection.

(b) Public Comment.

(i) A 30-day public comment period will be established.

(ii) A request to extend the length of the comment period, up to 30 days, may be submitted to the director within 15 days of the date the notice in R307-401-7(1) is published.

(iii) Public Hearing. A request for a hearing on the proposed approval or disapproval order may be submitted to the director within 15 days of the date the notice in R307-401-7(1) is published.

(iv) The hearing will be held in the area of the proposed construction, installation, modification, relocation or establishment.

(v) The public comment and hearing procedure shall not be required when an order is issued for the purpose of extending the time required by the director to review plans and specifications.

(3) The director will consider all comments received during the public comment period and at the public hearing and, if appropriate, will make changes to the proposal in response to comments before issuing an approval order or disapproval order.

#### **R307-401-8. Approval Order.**

(1) The director will issue an approval order if the following conditions have been met:

(a) The degree of pollution control for emissions, to include fugitive emissions and fugitive dust, is at least best available control technology. When determining best available control technology for a new or modified source in an ozone nonattainment or maintenance area that will emit volatile organic compounds or nitrogen oxides, best available control technology shall be at least as stringent as any Control Technique Guidance document that has been published by EPA that is applicable to the source.

(b) The proposed installation will meet the applicable requirements of:

(i) R307-403, Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas;

(ii) R307-405, Permits: Major Sources in Attainment or Unclassified Areas (PSD);

(iii) R307-406, Visibility;

(iv) R307-410, Permits: Emissions Impact Analysis;

(v) R307-420, Permits: Ozone Offset Requirements in Davis and Salt Lake Counties;

(vi) R307-210, Standards of Performance for New Stationary Sources;

(vii) National Primary and Secondary Ambient Air Quality Standards;

(viii) R307-214, National Emission Standards for Hazardous Air Pollutants;

(ix) R307-110, General Requirements: State Implementation Plan; and

(x) all other provisions of R307.

(2) The approval order will require that all pollution control equipment be adequately and properly maintained.

(3) Receipt of an approval order does not relieve any owner or operator of the responsibility to comply with the provisions of R307 or the State Implementation Plan.

(4) To accommodate staged construction of a large source, the director may issue an order authorizing construction of an initial stage prior to receipt of detailed plans for the entire proposal provided that, through a review of general plans, engineering reports and other information the proposal is determined feasible by the director under the intent of R307. Subsequent detailed plans will then be processed as prescribed in this paragraph. For staged construction projects the previous determination under R307-401-8(1) and (2) will be reviewed and modified as appropriate at the earliest reasonable time prior to commencement of construction of each independent phase of the proposed source or modification.

(5) If the director determines that a proposed stationary source, modification or relocation does not meet the conditions established in (1) above, the director will not issue an approval order.

#### **R307-401-9. Small Source Exemption.**

(1) A small stationary source is exempt from the requirement to obtain an approval order in R307-401-5 through R307-401-8 if the following conditions are met.

(a) its actual emissions are less than 5 tons per year per air pollutant of any of the following air pollutants: sulfur dioxide, carbon monoxide, nitrogen oxides, PM<sub>10</sub>, ozone, or volatile organic compounds;

(b) its actual emissions are less than 500 pounds per year of any hazardous air pollutant and less than 2000 pounds per year of any combination of hazardous air pollutants;

(c) its actual emissions are less than 500 pounds per year of any air pollutant not listed in (a) or (b) above and less than 2000 pounds per year of any combination of air pollutants not listed in (a) or (b) above.

(d) Air pollutants that are drawn from the environment through equipment in intake air and then are released back to the

environment without chemical change, as well as carbon dioxide, nitrogen, oxygen, argon, neon, helium, krypton, xenon should not be included in emission calculations when determining applicability under (a) through (c) above.

(2) The owner or operator of a source that is exempted from the requirement to obtain an approval order under (1) above shall no longer be exempt if actual emissions in any subsequent year exceed the emission thresholds in (1) above. The owner or operator shall submit a notice of intent under R307-401-5 no later than 180 days after the end of the calendar year in which the source exceeded the emission threshold.

(3) Small Source Exemption - Registration. The director will maintain a registry of sources that are claiming an exemption under R307-401-9. The owner or operator of a stationary source that is claiming an exemption under R307-401-9 may submit a written registration notice to the director. The notice shall include the following minimum information:

(a) identifying information, including company name and address, location of source, telephone number, and name of plant site manager or point of contact;

(b) a description of the nature of the processes involved, equipment, anticipated quantities of materials used, the type and quantity of fuel employed and nature and quantity of the finished product;

(c) identification of expected emissions;

(d) estimated annual emission rates;

(e) any control apparatus used; and

(f) typical operating schedule.

(4) An exemption under R307-401-9 does not affect the requirements of R307-401-17, Temporary Relocation.

(5) A stationary source that is not required to obtain a permit under R307-405 for greenhouse gases, as defined in R307-405-3(9)(a), is not required to obtain an approval order for greenhouse gases under R307-401. This exemption does not affect the requirement to obtain an approval order for any other air pollutant emitted by the stationary source.

#### **R307-401-10. Source Category Exemptions.**

The source categories described in R307-401-10 are exempt from the requirement to obtain an approval order found in R307-401-5 through R307-401-8. The general provisions in R307-401-4 shall apply to these sources.

(1) Fuel-burning equipment in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure with a rated capacity of less than five million BTU per hour using no other fuel than natural gas or LPG or other mixed gas that meets the standards of gas distributed by a utility in accordance with the rules of the Public Service Commission of the State of Utah, unless there are emissions other than combustion products.

(2) Comfort heating equipment such as boilers, water heaters, air heaters and steam generators with a rated capacity of less than one million BTU per hour if fueled only by fuel oil numbers 1 - 6,

(3) Emergency heating equipment, using coal or wood for fuel, with a rated capacity less than 50,000 BTU per hour.

(4) Exhaust systems for controlling steam and heat that do not contain combustion products.

(5) A well site as defined in 40 CFR 60.5430a, including centralized tank batteries, that is not a major source as defined in R307-101-2, and is registered with the Division as required by R307-505.

#### **R307-401-11. Replacement-in-Kind Equipment.**

(1) Applicability. Existing process equipment or pollution control equipment that is covered by an existing approval order or State Implementation Plan requirement may be replaced using the procedures in (2) below if:

(a) the potential to emit of the process equipment is the

same or lower;

(b) the number of emission points or emitting units is the same or lower;

(c) no additional types of air pollutants are emitted as a result of the replacement;

(d) the process equipment or pollution control equipment is identical to or functionally equivalent to the replaced equipment;

(e) the replacement does not change the basic design parameters of the process unit or pollution control equipment;

(f) the replaced process equipment or pollution control equipment is permanently removed from the stationary source, otherwise permanently disabled, or permanently barred from operation;

(g) the replacement process equipment or pollution control equipment does not trigger New Source Performance Standards or National Emissions Standards for Hazardous Air Pollutants under 42 U.S.C. 7411 or 7412; and

(h) the replacement of the control apparatus or process equipment does not violate any other provision of Title R307.

(2) Replacement-in-Kind Procedures.

(a) In lieu of filing a notice of intent under R307-401-5, the owner or operator of a stationary source shall submit a written notification to the director before replacing the equipment. The notification shall contain a description of the replacement-in-kind equipment, including the control capability of any control apparatus and a demonstration that the conditions of (1) above are met.

(b) If the replacement-in-kind meets the conditions of (1) above, the director will update the source's approval order and notify the owner or operator. Public review under R307-401-7 is not required for the update to the approval order.

(3) If the replaced process equipment or pollution control equipment is brought back into operation, it shall constitute a new emissions unit.

**R307-401-12. Reduction in Air Pollutants.**

(1) Applicability. The owner or operator of a stationary source of air pollutants that reduces or eliminates air pollutants is exempt from the requirement to submit a notice of intent and obtain an approval order prior to construction if:

(a) the project does not increase the potential to emit of any air pollutant or cause emissions of any new air pollutant, and

(b) the director is notified of the change and the reduction of air pollutants is made enforceable through an approval order in accordance with (2) below.

(2) Notification. The owner or operator shall submit a written description of the project to the director no later than 60 days after the changes are made. The director will update the source's approval order or issue a new approval order to include the project and to make the emission reductions enforceable. Public review under R307-401-7 is not required for the update to the approval order.

**R307-401-13. Plantwide Applicability Limits.**

A plantwide applicability limit under R307-405-21 does not exempt a stationary source from the requirements of R307-401.

**R307-401-14. Used Oil Fuel Burned for Energy Recovery.**

(1) Definitions.

"Boiler" means boiler as defined in R315-1-1(b).

"Used Oil" is defined as any oil that has been refined from crude oil, used, and, as a result of such use contaminated by physical or chemical impurities.

(2) Boilers burning used oil for energy recovery are exempt from the requirement to obtain an approval order in R307-401-5 through R307-401-8 if the following requirements

are met:

(a) the heat input design is less than one million BTU/hr;

(b) contamination levels of all used oil to be burned do not exceed any of the following values:

(i) arsenic - 5 ppm by weight,

(ii) cadmium - 2 ppm by weight,

(iii) chromium - 10 ppm by weight,

(iv) lead - 100 ppm by weight,

(v) total halogens - 1,000 ppm by weight,

(vi) Sulfur - 0.50% by weight; and

(c) the flash point of all used oil to be burned is at least 100 degrees Fahrenheit.

(3) Testing. The owner or operator shall test each load of used oil received or generated as directed by the director to ensure it meets these requirements. Testing may be performed by the owner/operator or documented by test reports from the used fuel oil vendor. The flash point shall be measured using the appropriate ASTM method as required by the director. Records for used oil consumption and test reports are to be kept for all periods when fuel-burning equipment is in operation. The records shall be kept on site and made available to the director or the director's representative upon request. Records must be kept for a three-year period.

**R307-401-15. Air Strippers and Soil Venting Projects.**

(1) The owner or operator of an air stripper or soil venting system that is used to remediate contaminated groundwater or soil is exempt from the notice of intent and approval order requirements of R307-401-5 through R307-401-8 if the following conditions are met:

(a) the estimated total air emissions of volatile organic compounds from a given project are less than the de minimis emissions listed in R307-401-9(1)(a), and

(b) the level of any one hazardous air pollutant or any combination of hazardous air pollutants is below the levels listed in R307-410-5(1)(c)(i)(C).

(2) The owner or operator shall submit documentation that the project meets the exemption requirements in R307-401-15(1) to the director prior to beginning the remediation project.

(3) After beginning the soil remediation project, the owner or operator shall submit emissions information to the director to verify that the emission rates of the volatile organic compounds and hazardous air pollutants in R307-401-15(1) are not exceeded.

(a) Emissions estimates of volatile organic compounds shall be based on test data obtained in accordance with the test method in the EPA document SW-846, Test #8260c or 8261a, or the most recent EPA revision of either test method if approved by the director.

(b) Emissions estimates of hazardous air pollutants shall be based on test data obtained in accordance with the test method in EPA document SW-846, Test #8021B or the most recent EPA revision of the test method if approved by the director.

(c) Results of the test and calculated annual quantity of emissions of volatile organic compounds and hazardous air pollutants shall be submitted to the director within one month of sampling.

(d) The test samples shall be drawn on intervals of no less than twenty-eight days and no more than thirty-one days (i.e., monthly) for the first quarter, quarterly for the first year, and semi-annually thereafter or as determined necessary by the director.

(4) The following control devices do not require a notice of intent or approval order when used in relation to an air stripper or soil venting project exempted under R307-401-15:

(a) thermodestruction unit with a rated input capacity of less than five million BTU per hour using no other auxiliary fuel than natural gas or LPG, or

- (b) carbon adsorption unit.

**R307-401-16. De minimis Emissions From Soil Aeration Projects.**

An owner or operator of a soil remediation project is not subject to the notice of intent and approval order requirements of R307-401-5 through R307-401-8 when soil aeration or land farming is used to conduct a soil remediation, if the owner or operator submits the following information to the director prior to beginning the remediation project:

- (1) documentation that the estimated total air emissions of volatile organic compounds, using an appropriate sampling method, from the project are less than the de minimis emissions listed in R307-401-9(1)(a);
- (2) documentation that the levels of any one hazardous air pollutant or any combination of hazardous air pollutants are less than the levels in R307-410-5(1)(d); and
- (3) the location of the remediation and where the remediated material originated.

**R307-401-17. Temporary Relocation.**

The owner or operator of a stationary source previously approved under R307-401 may temporarily relocate and operate the stationary source at any site for up to 180 working days in any calendar year not to exceed 365 consecutive days, starting from the initial relocation date. The director will evaluate the expected emissions impact at the site and compliance with applicable Title R307 rules as the basis for determining if approval for temporary relocation may be granted. Records of the working days at each site, consecutive days at each site, and actual production rate shall be submitted to the director at the end of each 180 calendar days. These records shall also be kept on site by the owner or operator for the entire project, and be made available for review to the director as requested. R307-401-7, Public Notice, does not apply to temporary relocations under R307-401-17.

**R307-401-18. Eighteen Month Review.**

Approval orders issued by the director in accordance with the provisions of R307-401 will be reviewed eighteen months after the date of issuance to determine the status of construction, installation, modification, relocation or establishment. If a continuous program of construction, installation, modification, relocation or establishment is not proceeding, the director may revoke the approval order.

**R307-401-19. General Approval Order.**

(1) The director may issue a general approval order that would establish conditions for similar new or modified sources of the same type or for specific types of equipment. The general approval order may apply throughout the state or in a specific area.

(a) A major source or major modification as defined in R307-403, R307-405, or R307-420 for each respective area is not eligible for coverage under a general approval order.

(b) A source that is subject to the requirements of R307-403-5 is not eligible for coverage under a general approval order.

(c) A source that is subject to the requirements of R307-410-4 is not eligible for coverage under a general approval order unless a demonstration that meets the requirements of R307-410-4 was conducted.

(d) A source that is subject to the requirements of R307-410-5(1)(c)(ii) is not eligible for coverage under a general approval order unless a demonstration that meets the requirements of R307-410-5(1)(c)(ii) was conducted.

(e) A source that is subject to the requirements of R307-410-5(1)(c)(iii) is not eligible for coverage under a general approval order.

(2) A general approval order shall meet all applicable requirements of R307-401-8.

(3) The public notice requirements in R307-401-7 shall apply to a general approval order except that the director will advertise the notice of intent in a newspaper of statewide circulation.

(4) Application.

(a) After a general approval order has been issued, the owner or operator of a proposed new or modified source may apply to be covered under the conditions of the general approval order.

(b) The owner or operator shall submit the application on forms provided by the director in lieu of the notice of intent requirements in R307-401-5 for all equipment covered by the general approval order.

(c) The owner or operator may request that an existing, individual approval order for the source be revoked, and that it be covered by the general approval order.

(d) The owner or operator that has applied to be covered by a general approval order shall not initiate construction, modification, or relocation until the application has been approved by the director.

(5) Approval.

(a) The director will review the application and approve or deny the request based on criteria specified in the general approval order for that type of source. If approved, the director will issue an authorization to the applicant to operate under the general approval order.

(b) The public notice requirements in R307-401-7 do not apply to the approval of an application to be covered under the general approval order.

(c) The director will maintain a record of all stationary sources that are covered by a specific general approval order and this record will be available for public review.

(6) Exclusions and Revocation.

(a) The director may require any source that has applied for or is authorized by a general approval order to submit a notice of intent and obtain an individual approval order under R307-401-8. Cases where an individual approval order will be required include, but are not limited to, the following:

(i) the director determines that the source does not meet the criteria specified in the general approval order;

(ii) the director determines that the application for the general approval order did not contain all necessary information to evaluate applicability under the general approval order;

(iii) modifications were made to the source that were not authorized by the general approval order or an individual approval order;

(iv) the director determines the source may cause a violation of a national ambient air quality standard; or

(v) the director determines that one is required based on the compliance history and current compliance status of the source or applicant.

(b)(i) Any source authorized by a general approval order may request to be excluded from the coverage of the general approval order by submitting a notice of intent under R307-401-5 and receiving an individual approval order under R307-401-8.

(ii) When the director issues an individual approval order to a source subject to a general approval order, the applicability of the general approval order to the individual source is revoked on the effective date of the individual approval order.

(7) Modification of General Approval Order. The director may modify, replace, or discontinue the general approval order.

(a) Administrative corrections may be made to the existing version of the general approval order. These corrections are to correct typographical errors or similar minor administrative changes.

(b) All other modifications or the discontinuation of a general approval order shall not apply to any source authorized



**R307. Environmental Quality, Air Quality.****R307-504. Oil and Gas Industry: Tank Truck Loading.****R307-504-1. Purpose.**

R307-504 establishes control requirements for the loading of liquids containing volatile organic compounds (VOCs) at oil or gas well sites.

**R307-504-2. Definitions.**

The definitions in 40 CFR 60, Subpart OOOO Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution, incorporated by reference in R307-210, apply to R307-504.

"Bottom Filling" means the filling of a tank through an inlet at or near the bottom of the tank designed to have the opening covered by the liquid after the pipe normally used to withdraw liquid can no longer withdraw any liquid.

"Submerged Fill Pipe" means any fill pipe with a discharge opening which is entirely submerged when the liquid level is six inches above the bottom of the tank and the pipe normally used to withdraw liquid from the tank can no longer withdraw any liquid.

"Vapor Capture Line" means a connection hose, fitted with a valve that can be connected to tanker trucks during truck loading operations. The vapor capture line shall be designed, installed, operated, and maintained to optimize capture efficiency.

"Well Site" means all equipment at a single stationary source directly associated with one or more oil wells or gas wells.

**R307-504-3. Applicability.**

(1) R307-504-4(1) applies to any person who loads or permits the loading of any intermediate hydrocarbon liquid or produced water at a well site after January 1, 2015.

(2) R307-504-4(2) applies to owners and operators that are required to control emissions from storage vessels in accordance with R307-506.

**R307-504-4. Tank Truck Loading Requirements.**

(1) Tanker trucks used for intermediate hydrocarbon liquid or produced water shall be loaded using bottom filling or a submerged fill pipe.

(2) VOC emissions during truck loading operations shall be controlled at all times using a vapor capture line. The vapor capture line shall be connected from the tanker truck to a control device or process, resulting in a minimum 95 percent VOC destruction efficiency.

(a) Well sites in operation on January 1, 2018 shall comply with R307-504-4(2) no later than July 1, 2019.

**KEY: air pollution, oil, gas  
March 5, 2018**

**19-2-104(1)(a)**

**R307. Environmental Quality, Air Quality.****R307-506. Oil and Gas Industry: Storage Vessel.****R307-506-1. Purpose.**

R307-506 establishes requirements to control emissions of volatile organic compounds (VOCs) from storage vessels associated with a well site.

**R307-506-2. Definitions.**

"Centralized Tank Battery" means a separate tank battery surface site collecting crude oil, condensate, intermediate hydrocarbon liquids, or produced water from wells not located at the well site.

"Emergency Relief Storage Vessel" means a storage vessel receiving oil, condensate, or produced water as a result of emergency situations, process upsets, or other equipment malfunctions.

"Modification to a well site" means;

- (1) a new well is drilled at an existing well site,
- (2) a well at an existing well site is hydraulically fractured,

or

- (3) a well at an existing well site is hydraulically refractured.

"Storage Vessel" means storage vessel as defined in 40 CFR 60.5430a, Subpart OOOOa Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution, which is incorporated by reference in R307-210.

"Uncontrolled emissions" means actual emissions or the potential to emit without consideration of controls.

**R307-506-3. Applicability.**

(1) R307-506 applies to each storage vessel located at a well site as defined in 40 CFR 60.5430a, Subpart OOOOa, Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution.

(2) R307-506 shall apply to centralized tank batteries.

(3) R307-506 does not apply to storage vessels that are subject to an approval order issued under R307-401-8.

**R307-506-4. Storage Vessel Requirements.**

(1) Thief hatches on storage vessels shall be kept closed and latched except during vessel unloading or other maintenance activities.

(2) All storage vessels located at a well site that are in operation as of January 1, 2018, with a site-wide throughput of 8,000 barrels or greater of crude oil or 2,000 barrels or greater of condensate per year on a rolling 12-month basis shall comply with R307-506-4(2)(a) unless the exemption in R307-506-4(2)(b) applies.

(a) VOC emissions from storage vessels shall either be routed to a process unit where the emissions are recycled, incorporated into a product and/or recovered, or be routed to a VOC control device that is in compliance with R307-508.

(b) All storage vessels located at a well site shall be exempt from R307-506-4(2)(a) if combined VOC emissions are demonstrated to be less than four tons per year of uncontrolled emissions on a rolling 12-month basis.

(i) VOC working and breathing losses, and flash emissions shall be calculated using direct site-specific sampling data and any software program or calculation methodology in use by industry that is based on AP-42 Chapter 7.

(3) All storage vessels that begin operations on or after January 1, 2018, are required to control VOC emissions in accordance with R307-506-4(2)(a) upon startup of operation for a minimum of one year.

(4) An emergency storage vessel located at a well site shall be exempt from R307-506-4(2)(a), if it meets the following requirements:

(i) The emergency storage vessel shall not be used as an active storage tank.

(ii) The owner or operator shall empty the emergency storage vessel no later than 15 days after receiving fluids.

(iii) The emergency storage vessel shall be equipped with a liquid level gauge or equivalent device.

(5) An owner or operator that is required to control emissions in accordance with R307-506-4(2) and R307-506-4(3) shall inspect at least once a month each closed vent system, including vessel openings, thief hatches, and bypass devices, for defects that can result in air emissions according to 40 CFR 60.5416a(c).

(a) If defects are discovered, the defects shall be corrected or repaired within 15 days of identification.

(6) Modification to a well site shall require a re-evaluation of site-wide throughput and/or emissions in accordance with R307-506-4(2).

(7) After a minimum of one year of operation, controls may be removed if site-wide throughput is less than 8,000 barrels of crude oil or 2,000 barrels of condensate on a rolling 12-month basis or uncontrolled actual emissions are demonstrated to be less than four tons per year.

**R307-506-5. Recordkeeping.**

(1) Records of each closed vent system inspection, including vessel openings, thief hatches, pressure relief devices and bypass device shall be kept for three years.

(a) Records of each closed vent system inspection, including vessel openings, thief hatches, pressure relief devices and bypass device shall include the date of the inspection, the status of each closed vent system, including vessel openings, thief hatches, pressure relief devices and bypass device, and the date of corrective action taken if required.

(2) Records of crude oil throughput shall be kept for three years and shall be determined on a monthly basis using the production data reported to the Utah Division of Oil, Gas, and Mining.

(3) Records of emission calculations, actual emissions, and site-specific sampling data used to determine compliance with R307-506-4(2)(b) shall be kept for a period of three years, post registration.

(4) Records of emergency storage vessel usage shall be kept for a period of three years.

(a) Records of emergency storage vessel usage shall include the date the vessel received fluids or was discovered to have received fluids, the date the overflow tank was emptied, and the volume of fluids emptied in barrels.

**KEY: air pollution, oil, gas  
March 5, 2018**

**19-2-104(1)(a)**



**R307. Environmental Quality, Air Quality.****R307-507. Oil and Gas Industry: Dehydrators.****R307-507-1. Purpose.**

R307-507 establishes requirements to control emissions of volatile organic compounds (VOCs) from dehydrators associated with a well site.

**R307-507-2. Definitions.**

"Dehydrator" means dehydrator as defined in 40 CFR 60.5430a, Subpart OOOOa Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution, which is incorporated by reference in R307-210.

"Uncontrolled emissions" means actual or potential emissions without consideration of controls.

**R307-507-3. Applicability.**

(1) R307-507 applies to each dehydrator located at a well site as defined in 40 CFR 60.5430a, Subpart OOOOa, Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution.

(2) R307-507 shall apply to centralized tank batteries, as defined in R307-506-2.

(3) R307-507 does not apply to a dehydrator that is subject to an approval order issued under R307-401-8.

**R307-507-4. Dehydrator Requirements.**

(1) Dehydrators with VOC emissions of four tons of uncontrolled emissions per year or greater, either individually or combined with VOC emissions from storage vessels, shall either be routed to a process unit where the emissions are recycled, incorporated into a product, and/or recovered, or be routed to a VOC control device that is in compliance with R307-508. Dehydrators in operation before January 1, 2018, shall determine applicability with calculated actual emissions. Dehydrators in operation on or after January 1, 2018, shall determine applicability using potential to emit.

(2) An owner or operator that is required to control emissions in accordance with R307-507-4(1) shall inspect, at least once a month, each closed vent system, including vessel openings, thief hatches, and bypass devices, for defects that can result in air emissions according to 40 CFR 60.5416a(c).

(a) If defects are discovered, the defects shall be corrected or repaired within 15 days of identification.

(3) Modification to a well site shall require a re-evaluation of emissions in accordance with R307-507-4(1).

(4) After a minimum of one year of operation, controls may be removed if uncontrolled actual emissions, individually or combined with VOC emissions from storage vessels, are less than four tons per year on a rolling 12-month basis.

**R307-507-5. Recordkeeping.**

(1) Records of emission calculations shall be kept for all periods the plant is in operation if a control device is not installed on-site.

(2) Records of each closed vent system inspection, including vessel openings, thief hatches, pressure relief devices and bypass devices, shall be kept for three years.

(a) Records of each closed vent system inspection, including vessel openings, thief hatches, pressure relief devices and bypass devices, shall include the date of the inspection, the status of each closed vent system, including vessel openings, thief hatches, pressure relief devices and bypass devices, and the date of corrective action taken, if required.

**KEY: air pollution, oil, gas**  
**March 5, 2018**

**19-2-104(1)(a)**

**R307. Environmental Quality, Air Quality.****R307-508. Oil and Gas Industry: VOC Control Devices.****R307-508-1. Purpose.**

R307-508 establishes requirements for VOC control devices associated with well sites used to control emissions of VOCs.

**R307-508-2. Applicability.**

(1) R307-508 applies to each VOC control device located at a well site as defined in 40 CFR 60.5430a Subpart OOOOa Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution.

(2) R307-508 shall apply to centralized tank batteries, as defined in R307-506-2.

(3) R307-508 does not apply to VOC control devices that are subject to an approval order issued under R307-401-8.

**R307-508-3. VOC Control Device Requirements.**

(1) A VOC control device required by R307-506 or R307-507 must have a control efficiency of 95% or greater.

(a) The VOC control device shall operate with no visible emissions.

(b) The VOC control device must comply with R307-503.

(2) A well site shall demonstrate compliance by meeting the performance test methods and procedures specified in 40 CFR 60.5413.

(3) VOC control devices and all associated equipment shall be inspected monthly by audio, visual, or olfactory (AVO) means to ensure the integrity of the equipment is maintained and is operational. If equipment is not operational, corrective action shall be taken within 15 days of discovery.

**R307-508-4. Recordkeeping.**

(1) The owner or operator shall keep and maintain records of the VOC control device's control efficiency guaranteed by the manufacturer. These records shall be retained for the life of the control equipment on site.

(2) The owner or operator shall keep and maintain records of the manufacturer's written operating and maintenance instructions. These records shall be retained for the life of the control equipment.

(3) The owner or operator shall keep and maintain records of the VOC control device AVO inspections. These shall be retained for a minimum of three years. These records shall include:

(a) the date of the inspection;

(b) the status of the control device and associated equipment; and

(c) date of corrective action taken, if applicable.

**KEY: air pollution, oil, gas**  
**March 5, 2018**

**19-2-104(1)(a)**

**R307. Environmental Quality, Air Quality.****R307-509. Oil and Gas Industry: Leak Detection and Repair Requirements.****R307-509-1. Purpose.**

R307-509 establishes requirements for conducting leak detection and repairs at well sites to control emissions of volatile organic compounds.

**R307-509-2. Definitions.**

"Difficult-to-Monitor" means difficult-to-monitor as defined 40 CFR 60.5397a, which is incorporated by reference in R307-210.

"Fugitive emissions" are considered any visible emissions observed using optical gas imaging or a Method 21 instrument reading of 500 ppm or greater.

"Fugitive emissions component" means any component that has the potential to emit fugitive emissions of VOC, including but not limited to valves, connectors, pressure relief devices, open-ended lines, flanges, covers and closed vent systems, thief hatches or other openings, compressors, instruments, and meters.

"Unsafe-to-Monitor" means unsafe-to-monitor as defined 40 CFR 60.5397a, which is incorporated by reference in R307-210.

**R307-509-3. Applicability.**

(1) R307-509 applies to each fugitive emissions component at a well site as defined in 40 CFR 60.5430a, Subpart OOOOa, Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution and is required to control emissions in accordance with R307-506 and R307-507.

(a) A source meeting the requirements of 40 CFR 60.5397a is meeting the requirements of this rule.

(b) Sources subject to R307-509, are subject until the well is shut in.

(c) R307-509 does not apply to a fugitive emissions component that is subject to an approval order issued under R307-401-8.

**R307-509-4. Leak Detection and Repair Requirements.**

(1) Applicable sources shall comply with the following:

(a) The owner or operator shall develop an emissions monitoring plan that shall be available upon request to review for each individual well site. At a minimum, the plan shall include:

- (i) monitoring frequency;
- (ii) monitoring technique and equipment;
- (iii) procedures and timeframes for identifying and repairing leaks;
- (iv) recordkeeping practices; and
- (v) calibration and maintenance procedures for monitoring equipment.

(b) The plan shall address monitoring for difficult-to-monitor and unsafe-to-monitor components.

(c) The owner or operator shall conduct monitoring surveys on site to observe each fugitive emissions component for fugitive emissions.

(d) Monitoring surveys shall be conducted according to the following schedule:

(i) No later than 365 days after January 1, 2018, or no later than 60 days after startup of production, as defined in 40 CFR 60 Subpart OOOOa Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution, whichever is later.

(ii) Semiannually after the initial monitoring survey. Consecutive semiannual monitoring surveys shall be conducted at least four months apart.

(iii) Annually after the initial monitoring survey for

"difficult-to-monitor" components.

(iv) As required by the owner or operator's monitoring plan for "unsafe-to-monitor" components.

(e) Monitoring surveys shall be conducted using one or both of the following to detect fugitive emissions:

(i) Optical gas imaging (OGI) equipment. OGI equipment shall be capable of imaging gases in the spectral range for the compound of highest concentration in the potential fugitive emissions source.

(ii) Monitoring equipment that meets U.S. EPA Method 21, 40 CFR Part 60, Appendix A.

(f) If fugitive emissions are detected at any time, the owner or operator shall repair the fugitive emissions component as soon as possible but no later than 15 calendar days after detection. If the repair or replacement is technically infeasible, would require a vent blowdown, a well shutdown or well shut-in, or would be unsafe to repair during operation of the unit, the repair or replacement shall be completed during the next well shutdown, well shut-in, after an unscheduled, planned or emergency vent blowdown or within 24 months, whichever is earlier.

(g) The owner or operator shall resurvey the repaired or replaced fugitive emission component no later than 30 calendar days after the fugitive emission component was repaired.

**R307-509-5. Recordkeeping.**

(1) The owner or operator shall maintain records of the emissions monitoring plan. These records shall be retained for the life of the well site.

(2) The owner or operator shall maintain records of the monitoring surveys, repairs, and resurveys. These records shall be retained for a minimum of three years.

**KEY: air pollution, oil, gas  
March 5, 2018**

**19-2-104(1)(a)**

**R307. Environmental Quality, Air Quality.**

**R307-510. Oil and Gas Industry: Natural Gas Engine Requirements.**

**R307-510-1. Purpose.**

R307-510 establishes control requirements for stationary engines associated with well sites.

**R307-510-2. Definitions.**

"Site hp" means the total horse power rating of all engines within the boundaries of the source.

**R307-510-3. Applicability.**

(1) R307-510 applies to each natural gas-fired engine at a well site as defined in 40 CFR 60.5430a, Subpart OOOOa Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution, that began operations, installed new engines, or made modifications to existing engines after January 1, 2016.

(2) R307-506 shall apply to centralized tank batteries, as defined in R307-506-2.

(3) R307-510 does not apply to a natural gas-fired engine that is subject to an approval order issued under R307-401-8.

**R307-510-4. Engine Requirements.**

(1) Regardless of construction, reconstruction, or modification date, each stationary engine at a well site shall comply with the emission standards listed in Table 1 when the engine is installed, relocated, or modified.

Table 1

Maximum Engine hp	Emission Standards in (g/hp-hr)			
	NO <sub>x</sub>	CO	VOC	HC+NO <sub>x</sub>
≥25 hp and < 100 hp	-	4.85	-	2.83
≥100 hp	1.0	2.0	0.7	-

(2) The owner or operator shall either:

(a) purchase a certified stationary internal combustion engine as defined in 40 CFR 60.4248, or

(b) conduct an initial performance test according to 40 CFR 60.4244.

(3) Each engine shall vent exhaust gases vertically unrestricted with the following stack height requirements:

(a) For site hp ratings of 306 or greater, each engine shall have an attached stack height of no less than 10 feet.

(b) For site hp ratings of 151 to 305 hp, each engine shall have an attached stack height of no less than 8 feet.

(c) For site hp ratings of 150 hp or less, there are no stack height requirements on engines.

**R307-510-4. Recordkeeping.**

For each engine on site, the owner or operator shall maintain records of the engine certification or initial performance test for the period of time the engine is on the well site.

**KEY: air pollution, oil, gas  
March 5, 2018**

**19-2-104(1)(a)**

**R307. Environmental Quality, Air Quality.****R307-801. Utah Asbestos Rule.****R307-801-1. Purpose and Authority.**

This rule establishes procedures and requirements for asbestos abatement or renovation projects and training programs, procedures and requirements for the certification of persons and companies engaged in asbestos abatement or renovation projects, and work practice standards for performing such projects. This rule is promulgated under the authority of Utah Code Annotated 19-2-104(1)(d), (3)(a)(iii), (3)(b)(iv)(A), (B), and (C), (3)(b)(v), (6)(a), and (6)(b). Penalties are authorized by Utah Code Annotated 19-2-115. Fees are authorized by Utah Code Annotated 19-1-201(2)(i).

**R307-801-2. Applicability and General Provisions.**

## (1) Applicability.

(a) The following persons are operators and are subject to the requirements of R307-801:

(i) Persons who contract for hire to conduct asbestos abatement, renovation, or demolition projects in regulated facilities;

(ii) Persons who conduct asbestos abatement, renovation, or demolition projects in areas where the general public has unrestrained access;

(iii) Persons who conduct asbestos abatement, renovation, or demolition projects in school buildings subject to AHERA or who conduct asbestos inspections in facilities subject to TSCA Title II; or

(iv) Persons who perform regulated work activities or renovation projects in single or multifamily residential structures where they do not live or intend to live immediately after the regulated work activity or renovation project is complete.

(b) The following persons are subject to certification requirements:

(i) Persons required by TSCA Title II or R307-801 to be accredited as inspectors, management planners, project designers, renovators, asbestos abatement supervisors, or asbestos abatement workers;

(ii) Persons who work on asbestos abatement projects as asbestos abatement workers, asbestos abatement supervisors, inspectors, project designers, or management planners;

(iii) Persons who perform regulated work activities or renovation projects in single or multifamily residential structures where they do not live or intend to live immediately after the regulated work activity or project is complete; or

(iv) Companies that conduct asbestos abatement projects, renovation projects, inspections, create project designs, or prepare management plans in regulated facilities.

(c) Homeowners or condominium owners performing renovation or demolition activities in or on their own residential facilities where they live, that are otherwise not subject to the Asbestos NESHAP, are not subject to the requirements of this rule, however, a condominium complex of more than four units is subject to this rule and may also be subject to the Asbestos NESHAP regulation.

(d) Contractors for hire performing renovation or demolition activities are required to follow the inspection provisions of R307-801-9 and R307-801-10 and the notification provisions of R307-801-11 and R307-801-12.

## (2) General Provisions.

(a) All persons who are required by R307-801 to obtain an approval, certification, determination, or notification from the director shall obtain it in writing.

(b) Persons wishing to deviate from the certification, notification, work practices, or other requirements of R307-801 may do so only after requesting and obtaining the written approval of the director.

**R307-801-3. Definitions.**

The following definitions apply to R307-801:

"Adequately Wet" means to sufficiently mix or penetrate with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material, then that material is not adequately wet. However, the absence of visible emissions is not sufficient evidence of being adequately wet.

"Amended Water" means a mixture of water and a chemical wetting agent that provides control of asbestos fiber release.

"AHERA" means the federal Asbestos Hazard Emergency Response Act of 1986 and the Environmental Protection Agency implementing regulations, 40 CFR Part 763, Subpart E - Asbestos-Containing Materials in Schools.

"AHERA Facility" means any structure subject to the federal AHERA requirements.

"Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, actinolite-tremolite, and Libby amphibole.

"Asbestos Abatement Project" means any activity involving the removal, repair, demolition, salvage, disposal, cleanup, or other disturbance of regulated asbestos-containing material greater than the small scale short duration (SSSD) amount of asbestos-containing material.

"Asbestos Abatement Supervisor" means a person who is certified according to R307-801-6 and is responsible for ensuring work is conducted in accordance with the regulations and best work practices for asbestos abatement or renovation projects.

"Asbestos Abatement Worker" means a person who is certified according to R307-801-6 and performs asbestos abatement or renovation projects.

"Asbestos-Containing Material (ACM)" means any material containing more than 1% asbestos by the method specified in 40 CFR Part 763, Subpart E, Appendix E, Section 1, Polarized Light Microscopy (PLM), or, if the asbestos content is greater than a trace amount of asbestos, but less than 10% asbestos, the asbestos concentration shall be determined by point counting using PLM or any other method acceptable to the director.

"Asbestos-Containing Waste Material (ACWM)" means any waste generated from regulated asbestos-containing material (RACM) that contains any amount of asbestos and is generated by a source subject to the provisions of R307-801. This term includes filters from control devices, friable asbestos-containing waste material, and bags or other similar packaging contaminated with asbestos. As applied to demolition and renovation projects, this term also includes regulated asbestos-containing material waste and materials contaminated with asbestos including disposable equipment and clothing.

"Asbestos Inspection" means any activity undertaken to identify the presence and location, or to assess the condition, of asbestos-containing material or suspected asbestos-containing material, by visual or physical examination, or by collecting samples of the material. This term includes re-inspections of the type described in AHERA, 40 CFR 763.85(b), of known or assumed asbestos-containing material which has been previously identified. The term does not include the following:

(a) Periodic surveillance of the type described in AHERA, 40 CFR 763.92(b), solely for the purpose of recording or reporting a change in the condition of known or assumed asbestos-containing material;

(b) Inspections performed by employees or agents of federal, state, or local government solely for the purpose of regulatory oversight and/or determining compliance with applicable statutes or regulations; or

(c) Visual inspections of the type described in AHERA, 40 CFR 763.90(i), solely for the purpose of determining

completion of response actions.

"Asbestos Inspection Report" means a written report as specified in R307-801-10(6) describing an asbestos inspection performed by a certified asbestos inspector.

"Asbestos NESHAP" means the National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, Subpart M, National Emission Standard for Asbestos.

"Asbestos Removal" means the stripping of friable ACM from regulated facility components or the removal of structural components that contain or are covered with friable ACM from a regulated facility.

"Category I Non-Friable Asbestos-Containing Material" means asbestos-containing packings, gaskets, resilient floor coverings, or asphalt roofing products containing more than 1% asbestos as determined by using the method specified in 40 CFR Part 763, Subpart E, Appendix E, Section 1, Polarized Light Microscopy (PLM).

"Category II Non-Friable Asbestos-Containing Material" means any material, excluding Category I non-friable ACM, containing more than 1% asbestos as determined by using the methods specified in 40 CFR Part 763, Subpart E, Appendix E, Section 1, Polarized Light Microscopy (PLM) that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

"Condominium" means a building or complex of buildings in which units of property are owned by individuals and common parts of the property, such as the grounds, common areas, and building structure, are owned jointly by the condominium unit owners.

"Containerized" means sealed in a leak-tight and durable container.

"Debris" means friable or regulated asbestos-containing material that has been dislodged and has fallen from its original substrate and position or which has fallen while remaining attached to substrate sections or fragments.

"Demolition Project" means the wrecking, salvage, or removal of any load-supporting structural member of a regulated facility together with any related handling operations, or the intentional burning of any regulated facility. This includes the moving of an entire building, but excludes the moving of structures, vehicles, or equipment with permanently attached axles, such as trailers, motor homes, and mobile homes that are specifically designed to be moved.

"Director" means the Director of the Utah Division of Air Quality.

"Disturb" means to disrupt the matrix, crumble, pulverize, or generate visible debris from ACM or RACM.

"Emergency Abatement or Renovation Project" means any asbestos abatement or renovation project which was not planned and results from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden as determined by the director. This term includes operations necessitated by non-routine failure of equipment, natural disasters, fire, or flooding, but does not include situations caused by the lack of planning.

"Encapsulant" means a permanent coating applied to the surface of friable ACM for the purpose of preventing the release of asbestos fibers. The encapsulant creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant).

"Friable Asbestos-Containing Material" means any asbestos-containing material that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

"Glove bag" means an impervious plastic bag-like enclosure, not to exceed 60 x 60 inches, affixed around an asbestos-containing material, with glove-like appendages through which material and tools may be handled.

"General Building Remodeling Activities" means the alteration in any way of one or more regulated structure components, excluding asbestos abatement, renovation, and demolition projects.

"Government Official" means an engineer, building official, or health officer employed by a governmental jurisdiction that has a responsibility for public safety or health in the jurisdiction where the structure is located.

"High-Efficiency Particulate Air (HEPA)" means a filtration system capable of trapping and retaining at least 99.97% of all mono-dispersed particles 0.3 micron in diameter.

"Inaccessible" means in a physically restricted or obstructed area, or covered in such a way that detection or removal is prevented or severely hampered.

"Inspector" means a person who is certified according to R307-801-6, conducts asbestos inspections, or oversees the preparation of asbestos inspection reports.

"Libby Amphibole" means loose-fill vermiculite type insulation material originating in Libby, Montana, or elsewhere, used in regulated facilities subject to this rule and has greater than 1% asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, and actinolite-tremolite, as defined earlier in this section, and winchite, richterite, tremolite, magnesio-riebeckite, magnesio-arfvedsonite, and edenite using United States Environmental Protection Agency Method EPA/600/R93/116 or other method as approved by the director.

"Management Plan" means a document that meets the requirements of AHERA for management plans for asbestos in schools.

"Management Planner" means a person who is certified according to R307-801-6 and oversees the preparation of management plans for school buildings subject to AHERA.

"Model Accreditation Plan (MAP)" means 40 CFR Part 763, Subpart E, Appendix C, Asbestos Model Accreditation Plan.

"NESHAP Amount" means combined amounts in a project that total:

(a) 260 linear feet (80 linear meters) of pipe covered with RACM;

(b) 160 square feet (15 square meters) of RACM used to cover or coat any duct, boiler, tank, reactor, turbine, equipment, structural member, or regulated facility component; or

(c) 35 cubic feet (one cubic meter) of RACM removed from regulated facility structural members or components where the length and area could not be measured previously.

"NESHAP Facility" means any institutional, commercial, public, industrial, or residential structure, installation, or building, (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential co-operative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation, or building that was previously subject to the Asbestos NESHAP is not excluded, regardless of its current use or function.

"NESHAP-Sized Project" means any project that involves at least the NESHAP amount of ACM.

"Non-Friable Asbestos-Containing Material" means any material containing more than 1% asbestos, as determined using the methods specified in 40 CFR Part 763, Subpart E, Appendix E, Section 1, Polarized Light Microscopy (PLM), that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

"Open Top Catch Bag" means either an asbestos waste bag or six mil polyethylene sheeting which is sealed at both ends and used by certified asbestos abatement workers, in a manner

not to disturb the matrix of the asbestos-containing material, to collect preformed RACM pipe insulation in either a crawl space or pipe chase less than six feet high or less than three feet wide.

"Phased Project" means either an asbestos abatement, renovation, or demolition project that contains multiple start and stop dates corresponding to separate operations or areas where the entire asbestos abatement, renovation, or demolition project cannot or will not be performed continuously.

"Preformed RACM Pipe Insulation" means prefabricated asbestos-containing thermal system insulation on pipes formed in sections that can be removed without disturbing the matrix of the asbestos-containing material.

"Project Designer" means a person who is certified according to R307-801-6 and prepares a design for an asbestos abatement project in school buildings subject to AHERA or prepares an asbestos clean-up plan in a regulated facility where an asbestos disturbance greater than the SSSD amount has occurred.

"Regulated Asbestos-Containing Material (RACM)" means friable ACM, Category I non-friable ACM that has become friable, Category I non-friable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or Category II non-friable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation project operations.

"Regulated Facilities" means residential facilities, AHERA facilities, or NESHAP facilities where:

(a) A sample has been identified and analyzed to contain, or is assumed under R307-801-10(5) to contain, greater than 1% asbestos; and

(b) The material from where the sample was collected will be disturbed and rendered friable during the abatement, demolition, or renovation activities.

"Regulated Facility Component" means any part of a regulated facility including equipment.

"Renovation Project" means any activity involving the removal, repair, salvage, disposal, cleanup, or other disturbance of greater than the SSSD amount of RACM, but less than the NESHAP amount of RACM, and the intent of the project is not asbestos abatement or demolition. Renovation Projects can be performed in NESHAP or residential facilities, but cannot be performed in AHERA facilities.

"Renovator" means a person who is certified according to R307-801-6 and is responsible for ensuring work that is conducted on a renovation project is performed in accordance with the regulatory requirements and best work practices for a greater than the SSSD amount of RACM, but less than the NESHAP amount of RACM, where the intent of the project is to perform a renovation project and not to perform an asbestos abatement or demolition project. Renovation projects can be performed in NESHAP or residential facilities but cannot be performed in AHERA facilities.

"Residential Facility" means a building used primarily for residential purposes, has four or fewer units, is otherwise not subject to the Asbestos NESHAP, and is not a residential outbuilding structure of less than 100 square feet.

"Small-Scale, Short-Duration (SSSD)" means a project that removes or disturbs less than three square feet or three linear feet of RACM in a regulated facility.

"Sprayed-on or Painted-on Ceiling Treatment" means a surfacing material or treatment that has been applied to the ceiling regardless of application method. The application of paint that has no added materials is not considered a ceiling treatment.

"Strip" means to take off ACM from any part of a regulated facility or a regulated facility component.

"Structural Member" means any load-supporting member of a regulated facility, such as beams and load-supporting walls

or any non-load supporting member, such as ceilings and non-load supporting walls.

"Suspect or Suspected Asbestos-Containing Material" means all building materials that have the potential to contain asbestos, except building materials made entirely of glass, fiberglass, wood, metal, or rubber.

"Training Hour" means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and hands-on experience.

"TSCA" means the Toxic Substances Control Act.

"TSCA Accreditation" means successful completion of training as an inspector, management planner, project designer, contractor-supervisor, or worker, as specified in the TSCA Title II.

"TSCA Title II" means 15 U.S.C. 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response.

"Unrestrained Access" means without fences, closed doors, personnel, or any other method intended to restrict public entry.

"Waste Generator" means any owner or operator of an asbestos abatement or renovation project covered by R307-801 whose act or process produces ACWM.

"Working Day" means weekdays, Monday through Friday, including holidays.

#### **R307-801-4. Adoption and Incorporation of 40 CFR 763 Subpart E.**

(1) The provisions of 40 CFR 763 Subpart E, including appendices, effective as of the date referenced in R307-101-3, are hereby adopted and incorporated by reference.

(2) Implementation of the provisions of 40 CFR Part 763, Subpart E, except for the Model Accreditation Plan, shall be limited to those provisions for which the EPA has waived its requirements in accordance with 40 CFR 763.98, Waiver; delegation to State, as published at 52 FR 41826, (October 30, 1987).

#### **R307-801-5. Company Certification.**

(1) All persons shall operate under:

(a) An asbestos company certification before contracting for hire, at a regulated facility, to conduct asbestos inspections, create management plans, create project designs, or conduct asbestos abatement projects, or

(b) Either an asbestos renovation company certification or asbestos company certification before contracting for hire to conduct asbestos abatement or renovation projects at a regulated facility.

(2) To obtain an asbestos company certification or an asbestos renovation company certification, all persons shall submit a properly completed application for certification on a form provided by the director and pay the appropriate fee.

(3) Unless revoked or suspended, an asbestos company certification or an asbestos renovation company certification shall remain in effect until the expiration date provided by the director.

#### **R307-801-6. Individual Certification.**

(1) All persons shall have an individual certification to conduct asbestos inspections, create management plans, create project designs, conduct asbestos renovation projects, or conduct asbestos abatement projects at a regulated facility.

(2) To obtain certification as an asbestos abatement worker, asbestos abatement supervisor, inspector, project designer, renovator, or management planner, each person shall:

(a) Provide personal identifying information;

(b) Pay the appropriate fee;

(c) Complete the appropriate form or forms provided by the director;

(d) Provide certificates of initial and current refresher training, if applicable, that demonstrates accreditation in the appropriate discipline. Certificates from courses approved by the director, courses approved in a state that has an accreditation program that meets the TSCA Title II Appendix C Model Accreditation Plan (MAP), or courses that are approved by EPA under TSCA Title II are acceptable unless the director has determined that the course does not meet the requirements of TSCA accreditation training required by R307-801; and

(e) Complete a new initial training course as required by the AHERA MAP, or for the renovator certification, R307-801, if there is a period of more than one year from the previous initial or refresher training certificate expiration date.

(3) Duration and Renewal of Certification.

(a) Unless revoked or suspended, a certification shall remain in effect until the expiration date of the current certificate of TSCA accreditation for the specific discipline.

(b) To renew certification, the individual shall:

(i) Submit a properly completed application for renewal on a form provided by the director;

(ii) Submit a current certificate of TSCA accreditation, or for the renovator certification, a training certificate from a renovator course accredited by the director, for initial or refresher training in the appropriate discipline; and

(iii) Pay the appropriate fee.

**R307-801-7. Denial and Cause for Suspension and Revocation of Company and Individual Certifications.**

(1) An application for certification may be denied if the individual, applicant company, or any principal officer of the applicant company has a documented history of non-compliance with the requirements, procedures, or standards established by R307-801, R307-214-1, which incorporates the Asbestos NESHAP, AHERA, or with the requirements of any other entity regulating asbestos activities and training programs.

(2) The director may revoke or suspend any certification based upon documented violations of any requirement of R307-801, AHERA, or the Asbestos NESHAP, including but not limited to:

(a) Falsifying or knowingly omitting information in any written submittal required by those regulations;

(b) Permitting the duplication or use of a certificate of TSCA accreditation for the purpose of preparing a falsified written submittal; or

(c) Repeated work practice violations.

**R307-801-8. Approval of Training Courses.**

(1) To obtain approval of a training course, the course provider shall provide a written application to the director that includes:

(a) The name, address, telephone number, and institutional affiliation of the person sponsoring the course;

(b) The course curriculum;

(c) A letter that clearly indicates how the course meets the Model Accreditation Plan (MAP) and R307-801 requirements for length of training in hours, amount and type of hands-on training, examinations (including length, format, example of examination or questions, and passing scores), and topics covered in the course;

(d) A copy of all course materials, including student manuals, instructor notebooks, handouts, etc.;

(e) The names and qualifications of all course instructors, including all academic credentials and field experience in asbestos abatement projects, inspections, project designs, management planning, or renovation projects;

(f) An example of numbered certificates issued to students who attend the course and pass the examination. The certificate shall include a unique certificate number; the name of the student; the name of the course completed; the dates of the

course and the examination; an expiration date one year from the date the student completed the course and examination, or for the purposes of the renovator course, a progressive lengthening of the refresher training schedule of one year after the initial training, three years after the first refresher training, and five years after the second refresher training and all subsequent refresher training courses; the name, address, and telephone number of the training provider that issued the certificate; and a statement that the person receiving the certificate has completed the requisite training for TSCA or director accreditation;

(g) A written commitment from the training provider to teach the submitted training course(s) in Utah on a regular basis; and

(h) Payment of the appropriate fee.

(2) To maintain approval of a training course, the course provider shall:

(a) Provide training that meets the requirements of R307-801 and the MAP;

(b) Provide the director with the names, government-issued picture identification card number, and certificate numbers of all persons successfully completing the course within 30 working days of successful completion;

(c) Keep the records specified for training providers in the MAP for three years;

(d) Permit the director or authorized representative to attend, evaluate, and monitor any training course without receiving advance notice from the director and without charge to the director; and

(e) Notify the director of any new course instructor ten working days prior to the day the new instructor presents or teaches any course for Renovator or TSCA Accreditation purposes. The training notification form shall include:

(i) The name and qualifications of each course instructor, including appropriate academic credentials and field experience in asbestos abatement projects, inspections, management plans, project designs, or renovations; and

(ii) A list of the course(s) or specific topics that will be taught by the instructor.

(f) Submit the initial or refresher course materials required by R307-801-8(1) to the director for course re-accreditation in a time period not to exceed four years.

(3) All course providers that provide an AHERA or Renovator training course or refresher course in the state of Utah shall:

(a) Notify the director of the location, date, and time of the course at least ten working days before the first day of the course;

(b) Update the training notification form as soon as possible before, but no later than one day before the original course date if the course is rescheduled or canceled before the course is held; and

(c) Allow the director or authorized representative to conduct an audit of any course provided to determine whether the course provider meets the requirements of the MAP and of R307-801.

(4) Renovator Certification Course. The renovator certification course shall be a minimum of eight training hours, with a minimum of two hours devoted to hands-on training activities, and shall include an examination of at least 25 questions that the student shall pass with a 70% or greater proficiency rate. Instruction in the topics described in R307-801-8(4)(c), (d), and (e) shall be included in the hands-on portion of the course. The minimum curriculum requirements for the renovator certification course shall adequately address the following topics:

(a) The physical characteristics of asbestos and asbestos-containing materials, including identification of asbestos, aerodynamic characteristics, typical uses, physical appearance,



a review of hazard assessment considerations, and a summary of renovation project control options;

(b) Potential health effects related to asbestos exposure, including the nature of asbestos-related diseases, routes of exposure, dose-response relationships and the lack of a safe exposure level, synergism between cigarette smoking and asbestos exposure, and latency period for diseases;

(c) Personal protective equipment, including selection of respirator and personal protective clothing, and handling of non-disposable clothing;

(d) State-of-the-art work practices, including proper work practices for renovation projects, including descriptions of proper construction and maintenance of barriers and decontamination enclosure systems, positioning of warning signs, lock-out of electrical and ventilation systems, proper working techniques for minimizing fiber release, use of wet methods, use of negative pressure exhaust ventilation equipment, use of HEPA vacuums, and proper clean-up and disposal procedures and state-of-the-art work practices for removal, encapsulation, enclosure, and repair of ACM, emergency procedures for unplanned releases, potential exposure situations, transport and disposal procedures, and recommended and prohibited work practices. New renovation project techniques and methodologies may be discussed;

(e) Personal hygiene, including entry and exit procedures for the work area, methods of decontamination, avoidance of eating, drinking, smoking, and chewing (gum or tobacco) in the work area, and methods to limit exposures to family members;

(f) Medical monitoring, including OSHA requirements for physical examinations, including a pulmonary function test, chest x-rays, and a medical history for each employee;

(g) Relevant federal and state regulatory requirements, procedures, and standards, including:

(i) OSHA standards for permissible exposure to airborne concentrations of asbestos fibers and respiratory protection (29 CFR 1910.134);

(ii) OSHA Asbestos Construction Standard (29 CFR 1926.1101); and

(iii) UAC R307-801 Utah Asbestos Rule.

(h) Recordkeeping and notification requirements for renovation projects including records and project notification forms required by state regulations and records recommended for legal and insurance purposes;

(i) Supervisory techniques for renovation projects, including supervisory practices to enforce and reinforce the required work practices and discourage unsafe work practices; and

(j) Course review, including a review of key aspects of the training course.

(5) Renovator Recertification Course. The renovator recertification course shall be a minimum of four hours, shall adequately address changes in the federal regulations, state administrative rules, state-of-the-art developments, appropriate work practices, employee personal protective equipment, recordkeeping, and notification requirements for renovation projects, and shall include a course review.

#### **R307-801-9. Asbestos Abatement, Renovation, and Demolition Projects: Requirement to Inspect.**

(1) Applicability. Contractors are required to have an asbestos inspection performed by a Utah certified asbestos inspector working for a Utah certified asbestos company. The asbestos inspection report shall be on-site and available when regulated work activities are being performed. Owners of residential structures including condominium owners of four units or less, not otherwise subject to the Asbestos NESHAP, are not required to perform asbestos inspections. Owners of a condominium complex of more than four units are subject to R307-801, may also be subject to the Asbestos NESHAP, but

are required to perform asbestos inspections.

(2) Except as described in R307-801-9(1) and 9(3), the owner and operator shall ensure that the regulated facility to be demolished, abated, or renovated is thoroughly inspected for asbestos-containing material by an inspector certified under the provisions of R307-801-6. An asbestos inspection report shall be generated according to the provisions of R307-801-10 and completed prior to the start of the asbestos abatement, renovation, or demolition project if materials required to be identified in R307-801-10(3) will be disturbed during that project. The operator shall make the asbestos inspection report available on-site to all persons who have access to the site for the duration of the renovation, abatement, or demolition project, and to the director or authorized representative upon request.

(3) If the regulated facility has been ordered to be demolished because it is found by a government official to be structurally unsound and in danger of imminent collapse or a public health hazard, the operator may demolish the regulated facility without having the regulated facility inspected for asbestos. If no asbestos inspection is conducted, the operator shall:

(a) Ensure that all resulting demolition project debris is disposed of as asbestos-containing waste material (ACWM) according to R307-801-14; or

(b) reduce the amount of ACWM by segregating the ACWM from non-ACWM debris under the direction of an asbestos inspector certified according to R307-801-6 working for a company certified according to R307-801-5 and clean and encapsulate non-porous debris as non-ACWM by asbestos abatement supervisors or asbestos abatement workers who are certified according to R307-801-6 and working for a company certified according to R307-801-5.

(4) If an asbestos inspection report older than three years will be used for a regulated asbestos renovation, abatement, or demolition activity, the asbestos inspection report shall be reviewed and updated, as necessary, by an inspector who is certified according to R307-801-6 and working for a company certified according to R307-801-5. The report does not need to be reviewed until a time that it will be used for regulatory purposes such as an abatement, renovation, or demolition activity. If the inspection report is still accurate, then the inspector shall provide written documentation stating that the inspection report is still accurate. If the inspection report is not accurate, then the inspector shall provide written documentation, including new sample results, if necessary, such that the inspection report meets all requirements of R307-801.

#### **R307-801-10. Asbestos Abatement, Renovation, and Demolition Projects: Asbestos Inspection Procedures.**

Asbestos inspectors shall use the following procedures when conducting an asbestos inspection of facilities to be abated, demolished, or renovated:

(1) Determine the scope of the abatement, demolition, or renovation project by identifying which parts and how the facility will be abated, demolished, or renovated (e.g. conventional demolition methods, fire training, etc.).

(2) Inspect the affected facility or part of the facility where the abatement, demolition, or renovation project will occur.

(3) Identify all accessible suspect asbestos-containing material (ACM) in the affected facility or part of the facility where the abatement, demolition, or renovation project will occur. Residential facilities built on or after January 1, 1981, are only required to identify all accessible sprayed-on or painted-on ceiling treatment that contained or may contain asbestos fiber, asbestos cement siding or roofing materials, resilient flooring products including vinyl asbestos tile, sheet vinyl products, resilient flooring backing material, whether attached or unattached, and mastic, thermal-system insulation or tape on a duct or furnace, or vermiculite type insulation

materials in the affected facility or part of the facility where the abatement, demolition, or renovation project will occur.

(4) Follow the sampling protocol in 40 CFR 763.86 (Asbestos-Containing Materials in Schools) or a sampling method approved by the director to demonstrate that suspect ACM required to be identified by R307-801-10(3) does not contain asbestos.

(5) Asbestos samples are not required to be collected and analyzed if the certified inspector assumes that all unsampled suspect ACM required to be identified by R307-801-10(3) contains asbestos and is ACM; and

(6) Complete an asbestos inspection report containing all of the following information in a format approved by the director:

(a) A description of the affected area and a description of the scope of activities as described in R307-801-10(1);

(b) A list of all suspect ACM required to be identified by R307-801-10(3) in the affected area. Include a description of the suspect ACM sufficient to be able to identify the material. For each suspect material required to be identified by R307-801-10(3), provide the following information:

(i) The amount of suspect ACM required to be identified by R307-801-10(3) in linear feet, square feet, or cubic feet;

(ii) A clear description of the distribution of the suspect ACM required to be identified by R307-801-10(3) in the affected area;

(iii) A statement of whether the material was assumed to contain asbestos, sampled and demonstrated to contain asbestos, or sampled and demonstrated to not contain asbestos; and

(iv) A written determination or table of whether the material is regulated asbestos-containing material (RACM), Category I non-friable ACM, Category II non-friable ACM that may or will become friable when subjected to the proposed abatement, renovation, or demolition project activities, or other suspect ACM that has either not been tested and assumed to contain asbestos, or has been tested by an accredited asbestos laboratory and found not to contain asbestos greater than 1%.

(c) A list of all asbestos bulk samples required to be identified from suspect ACM by R307-801-10(3) in the affected area, including the following information for each sample:

(i) Which suspect ACM required to be identified by R307-801-10(3) the sample represents;

(ii) A clear description of each sample location;

(iii) The types of analyses performed on the sample;

(iv) The amounts of each type of asbestos in the sample as indicated by the analytical results.

(d) A list of potential locations of suspect ACM required to be identified by R307-801-10(3) that were not accessible to inspect and that may be part of the affected area; and

(e) A list of all the asbestos inspector names, company names, and certification numbers.

(7) Floor plans or architectural drawings and similar representations may be used to identify the location of suspect ACM or samples required to be identified by R307-801-10(3).

(8) Analysis of samples shall be performed by:

(a) Persons or laboratories accredited by a nationally recognized testing program such as the National Voluntary Laboratory Accreditation Program (NVLAP), or

(b) Persons or laboratories that have been rated overall proficient by demonstrating passing scores for at least two of the last three consecutive rounds out of the four annual rounds of the Bulk Asbestos Proficiency Analytical Testing program administered by the American Industrial Hygiene Association (AIHA) or an equivalent nationally-recognized interlaboratory comparison program.

**R307-801-11. Asbestos Abatement, Renovation, and Demolition Projects: Notification and Asbestos Removal Requirements.**

(1) Demolition Projects.

(a) The operator shall submit a properly completed demolition notification form at least ten working days before the start of a demolition project along with payment of the appropriate fee. The operator cannot start the demolition project until all regulated asbestos-containing material (RACM) has been properly removed.

(b) If any regulated facility is to be demolished by intentional burning, the operator, in addition to the demolition notification form specified in R307-801-11(1)(a), shall ensure that all ACM, including Category I non-friable asbestos-containing material (ACM), Category II non-friable ACM, and RACM is removed from the regulated facility before burning.

(c) If the regulated facility has been ordered to be demolished by a government official because it is found to be structurally unsound and in danger of imminent collapse or a public health hazard, the operator shall submit a demolition project notification form, with a copy of the order signed by the appropriate government official, as soon as possible before, but no later than, the next working day after the demolition project begins.

(2) Asbestos Abatement and Renovation Projects.

(a) If the amount of RACM that would be disturbed or rendered inaccessible by the asbestos abatement or renovation project is the SSSD amount, then no additional requirements are necessary prior to general building remodeling activities.

(b) If the amount of RACM that would be disturbed or rendered inaccessible by the asbestos abatement or renovation project is greater than the SSSD amount, but less than the NESHAP amount, then the operator shall:

(i) Submit an asbestos abatement project notification form at least one working day before asbestos removal begins as described in R307-801-12, unless the removal was properly included in an annual asbestos notification form submitted pursuant to R307-801-11(2)(e);

(ii) Remove RACM according to asbestos work practices of R307-801-13, the certification requirements of R307-801-5 and 6, and the disposal requirements of R307-801-14 before performing general building remodeling activities.

(c) If the amount of RACM that would be disturbed or rendered inaccessible by the asbestos abatement project is greater than or equal to the NESHAP amount, then the operator shall:

(i) Submit an asbestos abatement project notification form along with payment of the appropriate fee at least ten working days before asbestos removal begins as described in R307-801-12;

(ii) Remove RACM according to the asbestos work practices of R307-801-13, the certification requirements of R307-801-5 and 6, and the disposal requirements of R307-801-14 before performing general building remodeling activities.

(d) If the asbestos abatement or renovation project is an emergency asbestos abatement or renovation project, then the notification form shall be submitted as soon as possible before, but no later than, the next working day after the emergency asbestos abatement or renovation project begins.

(e) The operator shall submit an annual asbestos notification form along with payment of the appropriate fee according to the requirements of 40 CFR 61.145(a)(4)(iii) no later than ten working days before the first day of January of the year during which the work is to be performed in the following circumstances:

(i) The asbestos abatement projects are unplanned operation and maintenance activities;

(ii) The asbestos abatement projects are less than NESHAP-sized; and

(iii) The total amount of asbestos to be disturbed in a single NESHAP facility during these asbestos abatement projects is expected to exceed the NESHAP amount in a

calendar year.

(3) Owners and operators of general building remodeling activities are not required to submit an asbestos abatement project or renovation notification form to the director that do not disturb suspect asbestos containing materials, do not disturb building materials found to contain RACM by an inspector who is certified according to R307-801-6, or do not disturb materials that will become RACM as part of the general building remodeling activities.

(4) For notification purposes, asbestos abatement, renovation, or demolition projects shall be no longer than one year in duration.

(5) Revise the notification form, as necessary, when any information on the original notification or any subsequent notification forms changes.

**R307-801-12. Asbestos Abatement, Renovation, and Demolition Projects: Notification Procedures and Contents.**

(1) All notification forms required by R307-801-11 shall be submitted in writing on the appropriate form provided by the director and shall be postmarked or received by the director in accordance with R307-801-11, or shall be submitted using the Division of Air Quality electronic notification system and received by the director in accordance with R307-801-11. The type of notification and whether the notification is original or revised shall be indicated.

(2) If the notification is an original demolition project notification form, an original asbestos abatement project notification form for a NESHAP-sized asbestos abatement project, or an original asbestos annual notification form, the written notice shall be sent with an original signature by U.S. Postal Service, commercial delivery service, or hand delivery, or with an electronic signature if submitted using the Division of Air Quality electronic notification system. If the U.S. Postal Service is used, the submission date is the postmark date. If other service or hand delivery is used, the submission date is the date that the document is received by the director. If the Division of Air Quality electronic notification system is used, the submission date is the date that the notification is received by the director.

(3) An original asbestos notification form for a less than NESHAP-sized asbestos abatement or renovation project or any revised notification may be submitted by any of the methods in R307-801-12(2), or by facsimile, by the date specified in R307-801-11. The sender shall ensure that the fax is legible.

(4) All original notification forms shall contain the following information:

(a) The name, address, and telephone number of the owner of the regulated facility, the general contractor, the demolition contractor, and the asbestos renovation or abatement contractor, if applicable;

(b) Whether the operation is an asbestos abatement, demolition, or a renovation project;

(c) A description of the regulated facility that includes the total size of the structure or structures in square feet, including the square footage of all floors in a multilevel or multi-floor structure, the age, the future, present, and prior uses of the facility, including any additional regulated structures affected by the project;

(d) The names and certification numbers of the inspectors and companies;

(e) The procedures, including analytical methods, used to inspect for the presence of asbestos-containing material (ACM);

(f) The location and address, including building number or name and floor or room number, street address, city, county, state, and zip code of each regulated facility being demolished or renovated;

(g) A description of procedures for handling the discovery of unexpected ACM, Category I non-friable ACM, or Category

II non-friable ACM that has or will become friable or regulated;

(h) A description of planned asbestos abatement, demolition, or renovation project work, including the asbestos abatement, demolition, and renovation project techniques to be used and a description of the affected regulated facility components or structural members; and

(i) If the project has phases, then provide the date and times of each phase and the location and address of all regulated facilities to be abated, demolished, or renovated.

(5) In addition to the information in R307-801-12(4), an original demolition project notification form shall contain the following information:

(a) An estimate of the amount of Category I non-friable ACM and non-regulated ACM that will remain in the building during the demolition project;

(b) The start and stop dates of the demolition project;

(c) The days that the demolition project will be conducted; and

(d) If the regulated facility will be demolished under an order of a government official, the name, title, government agency, and authority of the government official ordering the demolition project, the date the order was issued, and the date the demolition project was ordered to commence. A copy of the order shall be attached to the demolition project notification form.

(6) In addition to the information required in R307-801-12(4) and (5), an original demolition project notification form for phased demolition projects shall include:

(a) The start and stop dates for the entire phased project; and

(b) The start and stop dates for each phase of the project.

(7) In addition to the information required in R307-801-12(4), (5), and (6), an original asbestos abatement project notification form shall include:

(a) An estimate of the amount of ACM to be stripped, including which units of measure were used;

(b) The start and stop dates for asbestos abatement project preparation;

(c) The times of day for every day that asbestos abatement project will be conducted;

(d) A description of work practices and engineering controls to be used to prevent emissions of asbestos at the demolition or asbestos abatement project work site;

(e) The name and location of the waste disposal site where the ACWM will be disposed, including the name and telephone number of the waste disposal site contact;

(f) The name, address, contact person, and telephone number of the waste transporters; and

(g) The name, contact person, and telephone number of the waste generator.

(8) If an emergency asbestos abatement or renovation project will be performed, then the notification form shall include the date and hour the emergency occurred, a description of the event and an explanation of how the event has caused unsafe conditions or would cause equipment damage or unreasonable financial burden.

(9) In addition to the information in R307-801-12(4) and (5), an original asbestos abatement project annual notification form shall contain the following information:

(a) An estimate of the approximate amount of ACM to be stripped, including which units of measure were used, if known;

(b) The start and stop dates of asbestos abatement project work covered by the annual notification, if known;

(c) A description of work practices and engineering controls to be used to prevent emissions of asbestos at the asbestos abatement project work site;

(d) The name and location of the waste disposal site where the asbestos-containing waste material (ACWM) will be disposed, including the name and telephone number of the

waste disposal site contact;

(e) The name, address, contact person, and telephone number of the waste transporters; and

(f) The name, contact person, and telephone number of the waste generator.

(10) A revised notification form shall contain the following information:

(a) The name, address, and telephone number of the owner of the regulated facility, and any demolition, renovation, or asbestos abatement project contractor or contractors working on the project;

(b) Whether the operation is an asbestos abatement, a demolition, or a renovation project;

(c) The date that the original notification form was submitted;

(d) The applicable original start and stop dates for the asbestos abatement, renovation, or demolition project;

(e) The revised start and stop dates and working hours, if applicable, for asbestos abatement, renovation, or demolition projects, for the entire project or for any phase of the project;

(f) The changes in the amount of asbestos to be removed during the project if the asbestos removal amount increases or decreases by more than 20%;

(g) If the previously reported area of the building or buildings to be demolished was inaccurate and needs to be changed, then the demolition notification form shall be revised to include the building area change and any additional fee shall be paid to the Utah Division of Air Quality; and

(h) Any changes to the original or subsequently revised notification form or forms. Describe all changes made to the revised notification form in the comments section of that form.

(11) If the asbestos removal amount is increased in the revised notification form, then the appropriate fee shall be paid to the Utah Division of Air Quality.

(12) If any project phase or an entire NESHAP-sized asbestos abatement, renovation, or demolition project that requires a notification form under R307-801-12(4) will commence on a date or work times other than the date and work times submitted in the original or the most recently revised notification form, the director shall be notified of the new start date and work times by the following deadlines:

(a) If the new start date and work times are later than the original start date and work times, then notice by telephone, fax, or electronic means shall be given as soon as possible before the start date and a revised notification form shall be submitted in accordance with R307-801-12(10) as soon as possible before, but no later than, the original start date. If the written notification form is received by the director no later than the day before the original start date and work times, no notice by telephone is required.

(b) If the new start date is earlier than the original start date, submit a written notice in accordance with R307-801-12(10) at least ten working days before beginning the project.

(c) In no event shall an asbestos abatement, renovation, or demolition project covered by R307-801-12 begin on a date other than the new start date submitted in the revised written notice.

### **R307-801-13. Asbestos Abatement and Renovation Project: Work Practices.**

(1) An asbestos abatement supervisor who has been certified under R307-801-6 shall be on-site during asbestos abatement project setup, asbestos removal, stripping, cleaning and dismantling of the project, and other handling of uncontainerized regulated asbestos-containing material (RACM).

(2) All persons handling any amount of uncontainerized RACM during a regulated project shall be certified as an asbestos abatement worker or an asbestos abatement supervisor

certified under R307-801-6.

(3) Persons performing an asbestos abatement or renovation project at a regulated facility shall follow the work practices in R307-801-13. Where the work practices in R307-801-13(3) and (4) are required, wrap and cut, open top catch bags, glove bags, and mini-enclosures may be used in combination with those work practices.

(a) Adequately wet regulated asbestos-containing material (RACM) with amended water before exposing or disturbing it, except when temperatures are continuously below freezing (32 degrees F.), and when all requirements in 40 CFR 61.145(c)(7) are met.

(b) Install barriers and post warning signs to prevent access to the work area. Warning signs shall conform to the specifications of 29 CFR 1926.1101(k)(7).

(c) Keep RACM adequately wet until it is containerized and disposed of in accordance with R307-801-14.

(d) Ensure that RACM that is stripped or removed is promptly containerized.

(e) Prevent visible particulate matter and uncontainerized asbestos-containing debris and waste originating in the work area from being released outside of the negative pressure enclosure or designated work area.

(f) Filter all waste water to five microns before discharging it to a sanitary sewer.

(g) Decontaminate the outside of all persons, equipment, and waste bags so that no visible residue is observed before leaving the work area.

(h) Apply encapsulant to RACM that is exposed but not removed during stripping.

(i) Clean the work area, drop cloths, and other interior surfaces of the enclosure using a high-efficiency particulate air (HEPA) vacuum and wet cleaning techniques until there is no visible residue before dismantling barriers.

(j) After cleaning and before dismantling enclosure barriers, mist all surfaces inside of the enclosure with a penetrating encapsulant designed for that purpose.

(k) Handle and dispose of friable asbestos-containing material (ACM) and RACM according to the disposal provisions of R307-801-14.

(4) All operators of NESHAP-sized asbestos abatement projects shall install a negative pressure enclosure using the following work practices.

(a) All openings to the work area shall be covered with at least one layer of six mil or thicker polyethylene sheeting sealed with duct tape or an equivalent barrier to air flow.

(b) If RACM debris is present in the proposed work area prior to the start of a NESHAP-sized asbestos abatement project, the site shall be prepared by removing the debris using the work practice requirements of R307-801-13 and disposal requirements of R307-801-14. If the total amount of loose visible RACM debris throughout the entire work area is the SSSD amount, then site preparation may begin after the notification form has been submitted and before the end of the ten working day waiting period.

(c) A decontamination unit constructed to the specifications of R307-801-13(4)(h) shall be attached to the containment prior to disturbing RACM or commencing a NESHAP-sized asbestos abatement project, and all persons shall enter and leave the negative pressure enclosure or work area only through the decontamination unit except in a life threatening emergency situation.

(d) All persons subject to R307-801 shall shower before entering the clean-room of the decontamination unit when exiting the enclosure and shall follow all procedures required by 29 CFR 1926.1101(j)(1)(ii).

(e) No materials may be removed from the enclosure or brought into the enclosure through any opening other than a waste load-out or a decontamination unit.

(f) The negative pressure enclosure of the work area shall be constructed with the following specifications:

(i) Apply at least two layers of six mil or thicker polyethylene sheeting or its equivalent to the floor extending at least one foot up every wall and seal in place with duct tape or its equivalent;

(ii) Apply at least two layers of four mil or thicker polyethylene sheeting or its equivalent to the walls without locating seams in wall or floor corners;

(iii) Seal all seams with duct tape or its equivalent;

(iv) Maintain the integrity of all enclosure barriers; and

(v) Where a wall or floor will be removed as part of the NESHAP-sized asbestos abatement project, polyethylene sheeting need not be applied to that regulated facility component or structural member.

(g) View ports shall be installed in the enclosure or barriers where feasible, and view ports shall be:

(i) At least one foot square;

(ii) Made of clear material that is impermeable to the passage of air, such as an acrylic sheet;

(iii) Positioned so as to maximize the view of the inside of the enclosure from a position outside the enclosure; and

(iv) Accessible to a person outside of the enclosure.

(h) A decontamination unit shall be constructed according to the following specifications:

(i) The unit shall be attached to the enclosure or work area;

(ii) The decontamination unit shall consist of at least three chambers and meet all regulatory requirements of 29 CFR 1926.1101(j)(1)(i);

(iii) The clean room, which is the chamber that opens to the outside, shall be no less than three feet wide by three feet long by six feet high, when feasible;

(iv) The shower room, which is the chamber between the clean and dirty rooms, shall have hot and cold or warm running water and be no less than three feet wide by three feet long by six feet high, when feasible;

(v) The dirty room, which is the chamber that opens to the negative pressure enclosure or the designated work area, shall be no less than three feet wide by three feet long by six feet high, when feasible;

(vi) The dirty room shall be provided with an accessible waste bag at any time that asbestos abatement project is being performed.

(i) A separate waste load-out following the specifications below may be attached to the enclosure for removal of decontaminated waste containers and decontaminated or wrapped tools from the enclosure.

(i) The waste load-out shall consist of at least one chamber constructed of six mil or thicker polyethylene walls and six mil or thicker polyethylene flaps or the equivalent on the outside and inside entrances;

(ii) The waste load-out chamber shall be at least three feet long, three feet high, and three feet wide; and

(iii) The waste load-out supplies shall be sufficient to decontaminate bags, and shall include a water supply with a filtered drain, clean rags, disposable rags or wipes, and clean bags.

(j) Negative air pressure and flow shall be established and maintained within the enclosure by:

(i) Maintaining at least four air changes per hour in the enclosure;

(ii) Routing the exhaust from HEPA filtered ventilation units to the outside of the regulated facility whenever possible;

(iii) Maintaining a minimum of 0.02 column inches of water pressure differential relative to outside pressure; and

(iv) Maintaining a monitoring device to measure the negative pressure in the enclosure.

(5) In lieu of two layers of polyethylene on the walls and the floors as required by R307-801-13(4)(f)(i) and (ii), the

following work practices and controls may be used only under the circumstances described below:

(a) When a pipe insulation removal asbestos abatement project is conducted the following may be used:

(i) Drop cloths extending a distance at least equivalent to the height of the RACM around all RACM to be removed, or extended to a wall and attached with duct tape or equivalent;

(ii) Either the glove bag or wrap and cut methods may be used; and

(iii) RACM shall be adequately wet before wrapping.

(b) When the RACM is scattered ACM and is found in small patches, such as isolated pipe fittings, the following procedures may be used:

(i) Glove bags, mini-enclosures as described in R307-801-13(7)(c), or wrap and cut methods with drop cloths large enough to capture all RACM fragments that fall from the work area may be used.

(ii) If all asbestos disturbance is limited to the inside of negative pressure glove bags or a mini-enclosure, then non-glove bag or non-mini-enclosure building openings need not be sealed and negative pressure need not be maintained in the space outside of the glove bags or mini-enclosure during the asbestos removal operation.

(iii) A remote decontamination unit may be used as described in R307-801-13(7)(d) only if an attached decontamination unit is not feasible.

(c) When a preformed RACM pipe insulation asbestos abatement project in a crawl space or pipe chase less than six feet high or less than three feet wide is conducted, the following may be used:

(i) Drop cloths extending a distance at least six feet around all preformed RACM pipe insulation to be removed or extended to a wall and attached with duct tape or equivalent; or

(ii) The open top catch bag method.

(6) During outdoor asbestos abatement projects, the work practices of R307-801-13 shall be followed with the following modifications:

(a) Negative pressure need not be maintained if there is not an enclosure;

(b) Six mil polyethylene drop cloth, or equivalent, large enough to capture all RACM fragments that fall from the work area shall be used; and

(c) A remote decontamination unit as described in R307-801-13(7)(d) may be used.

(7) Special work practices.

(a) If the wrap and cut method is used:

(i) The regulated facility component shall be cut at least six inches from any RACM on that component;

(ii) If asbestos will be removed from the regulated facility component to accommodate cutting, the asbestos removal shall be performed using a single glove bag for each cut, and no RACM shall be disturbed outside of a glove bag;

(iii) The wrapping shall be leak-tight and shall consist of two layers of six mil polyethylene sheeting, each individually sealed with duct tape, and all RACM between the cuts shall be sealed inside wrap; and

(iv) The wrapping shall remain intact and leak-tight throughout the removal and disposal process.

(b) If the open top catch bag method is used:

(i) The material to be removed can only be preformed RACM pipe insulation, and it shall be located in a crawl space or a pipe chase less than six feet high or less than three feet wide;

(ii) Asbestos waste bags that are leak-tight and strong enough to hold contents securely shall be used;

(iii) The bag shall be placed underneath the stripping operation to minimize ACM falling onto the drop cloth;

(iv) All material stripped from the regulated facility component shall be placed in the bag;

(v) One asbestos abatement worker shall hold the bag and another asbestos abatement worker shall strip the ACM into the bag; and

(vi) A drop cloth extending a distance at least six feet around all preformed RACM pipe insulation to be removed, or extended to a wall and attached with duct tape or equivalent shall be used.

(c) If glove bags are used, they shall be under negative pressure, and the procedures required by 29 CFR 1926.1101(g)(5)(iii) shall be followed.

(d) A remote decontamination unit may be used under the conditions set forth in R307-801-13(5)(b) and (6), when there is an area insufficient to construct a connected decontamination unit, or when approved by the director. The remote decontamination unit shall meet all construction standards in R307-801-13(4)(h) and shall include:

(i) Outerwear shall be HEPA vacuumed or removed, and additional clean protective outerwear shall be put on;

(ii) Either polyethylene sheeting shall be placed on the path to the decontamination unit and the path shall be blocked or taped off to prevent public access, or asbestos abatement workers shall be conveyed to the remote decontamination unit in a vehicle that has been lined with two layers of six mil or thicker polyethylene sheeting or its equivalent; and

(iii) The polyethylene path or vehicle liner shall be removed at the end of the project, and disposed of as ACWM.

(e) Mini-enclosures, when used under approved conditions, shall conform to the requirements of 29 CFR 1926.1101(g)(5)(vi).

(8) For asbestos-containing mastic removal projects using mechanical means, such as a power buffer, to loosen or remove mastic from the floor, in lieu of two layers of polyethylene sheeting on the walls, splash guards of six mil or thicker polyethylene sheeting shall be placed from the floor level a minimum of three feet up the walls.

(9) Persons who improperly disturb more than the SSSD amount of asbestos-containing material and contaminate an area with friable asbestos shall:

(a) Have the emergency clean-up portion of the project, including any portions not contained within a regulated facility or in common use areas that cannot be isolated, performed as soon as possible by a company or companies certified according to R307-801-5, and, asbestos abatement supervisor(s), and asbestos abatement worker(s) certified according to R307-801-6.

(b) Have an asbestos clean-up plan designed by a Utah certified asbestos project designer for the non-emergency portion of the project and have the asbestos clean-up plan submitted to the director for approval. An asbestos clean-up plan is not required when the disturbance results from a natural disaster, fire, or flooding.

(c) Submit the project notification form required by R307-801-11 and 12 to the director for acceptance no later than the next working day after the disturbance occurs or is discovered. For fee calculation purposes, the size of the emergency clean-up project is the area that has been contaminated or potentially contaminated by the disturbance and not the amount of asbestos-containing material disturbed.

(d) Notify the director of project completion by telephone, fax, or electronic means by the day of completion and before leaving the site.

(10) For asbestos abatement, renovation, or demolition projects that remove or otherwise disturb loose-fill vermiculite type insulation materials assumed to be regulated asbestos-containing material or found to contain greater than 1% regulated asbestiform fibers, then the material being removed is considered regulated asbestos-containing material and shall meet all the appropriate regulatory requirements of R307-801.

(a) Regulated vermiculite shall be removed to the maximum extent possible, or by following a work practice that

has been established by the director, or by an alternative work practice as approved by the director.

#### **R307-801-14. Disposal and Handling of Asbestos Waste.**

(1) Owners and operators of regulated facilities shall containerize asbestos-containing waste material (ACWM) while adequately wet.

(2) ACWM containers shall be leak-tight and strong enough to hold contents securely and be labeled with an OSHA warning label found in 29 CFR 1926.1101(k)(8).

(3) Containers shall be labeled with the waste generator's and contractor's names, addresses, and telephone numbers before they are removed from the asbestos renovation or abatement work area.

(4) Containerized regulated asbestos-containing material (RACM) shall be disposed of at a landfill which complies with 40 CFR 61.150.

(5) The waste shipment record shall include a list of items and the amount of ACWM being shipped. The waste generator originates and signs this document.

(6) Owners and operators of regulated facilities where an asbestos abatement or renovation project has been performed shall report in writing to the director if a copy of the waste shipment record, signed by the owner or operator of the designated waste disposal site, is not received by the waste generator within 45 working days from the date the waste was accepted by the initial transporter. Include in the report the following information:

(a) A copy of the waste shipment record for which a confirmation of delivery was not received; and

(b) A cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

#### **R307-801-15. Records.**

(1) Certified asbestos abatement or renovation companies shall maintain records of all asbestos abatement or renovation projects that they perform at regulated facilities and shall make these records available to the director or authorized representative upon request. The records shall be retained for at least five years. Maintained records shall include the following:

(a) Names and certification numbers of the asbestos abatement workers, asbestos abatement supervisors, or renovators who performed the asbestos abatement or renovation project;

(b) Location and description of the asbestos abatement or renovation project and amount of friable asbestos-containing material (ACM) removed;

(c) Start and stop dates of the asbestos abatement or renovation project;

(d) Summary of the procedures used to comply with applicable requirements including copies of all notification forms;

(e) Waste shipment records maintained in accordance with 40 CFR Part 61, Subpart M; and

(f) Asbestos inspection reports associated with the asbestos abatement or renovation project.

(2) All persons subject to the inspection requirements of R307-801-9 shall maintain copies of asbestos inspection reports for at least one year after asbestos abatement, renovation, or demolition projects have ceased, and shall make these reports available to the director or authorized representative upon request.

#### **R307-801-16. Certified Renovator Work Practices.**

(1) Certified renovators are responsible for ensuring compliance with R307-801 at all renovation projects at regulated facilities to which they are assigned.

(2) Certified renovators working at regulated facilities

shall:

(a) Perform all of the tasks described in R307-801-13(3) and shall either perform or direct workers who perform all tasks described in R307-801-13(3);

(b) Provide training to workers on the work practices required by R307-801-13(3) that will be used when performing renovation projects;

(c) Be physically present at the work site when all work activities required by R307-801-13(3)(b) are posted, while the work area containment required by R307-801-13(3)(b) is being established, and while the work area cleaning required by R307-801-13(3)(i) is performed;

(d) Be on-site and direct work being performed by other individuals to ensure that the work practices required by R307-801-13(3) are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area;

(e) Have with them at the work site their current Utah Renovator certification card; and

(f) Prepare the records required by R307-801-15.

### **R307-801-17. Asbestos Information Distribution Requirements.**

(1) Utah Abatement/Renovation pamphlet. Utah asbestos abatement and renovation companies shall provide owners and occupants of single and multi-family residential structures with the Utah Abatement/Renovation Pamphlet "Asbestos Hazards During Abatement and Renovation Activities" when those structures will be re-occupied after the regulated activities are completed.

(2) No more than 60 days before beginning an abatement or renovation project in a regulated facility, the company performing the abatement or renovation project shall:

(a) Provide the owner of the regulated facility with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(ii) Obtain a certificate of mailing at least seven working days prior to the abatement or renovation project; and

(b) If the owner does not occupy the regulated facility, provide an adult occupant of the regulated facility with the pamphlet, and comply with one of the following:

(i) Obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet, or certify in writing that a pamphlet has been delivered to the regulated facility and that the company performing the abatement or renovation project has been unsuccessful in obtaining a written acknowledgment from an adult occupant. Such certification shall include the address of the unit undergoing abatement or renovation activities, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of a representative of the company performing the abatement or renovation project, and the date of signature; or

(ii) Obtain a certificate of mailing at least seven working days prior to the abatement or renovation project.

(3) Abatement or renovation projects in common areas. No more than 60 working days before beginning abatement or renovation projects in common areas of a regulated facility, the company performing the abatement or renovation project shall:

(a) Provide the owner with the pamphlet and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(ii) Obtain a certificate of mailing at least seven working days prior to the abatement or renovation project;

(b) Comply with one of the following:

(i) Notify in writing, or ensure written notification of, each

regulated facility and make the pamphlet available upon request prior to the start of abatement or renovation project. Such notification shall be accomplished by distributing written notice to each affected unit in the regulated facility. The notice shall describe the general nature and locations of the planned abatement or renovation project, the expected starting and ending dates, how the occupant can obtain the pamphlet and a copy of the required records at no cost to the occupants; or

(ii) Post informational signs describing the general nature and locations of the abatement or renovation project and the anticipated completion date while the abatement or renovation project is ongoing. These signs shall be posted in areas where they are likely to be seen by the occupants of all of the affected units in the regulated facility. The signs shall be accompanied by a posted copy of the pamphlet or information about how interested occupants can review a copy of the pamphlet or obtain a copy from the abatement or renovation company at no cost to occupants. The signs shall also include information about how interested occupants can review a copy of the required records from the abatement or renovation company at no cost to the occupants;

(c) Prepare, sign, and date a statement describing the steps performed to notify all occupants of the regulated facility of the intended abatement or renovation project and to provide the pamphlet; and

(d) If the scope, locations, or expected starting and ending dates of the planned abatement or renovation project change after the initial notification, and the company provided written initial notification to each affected unit, the company performing the abatement or renovation project shall provide further written notification to the owners and occupants of the regulated facility of the revised information for the ongoing or planned activities. This subsequent notification shall be provided before the company performing the abatement or renovation project initiates work beyond that which was described in the original notice.

(4) Written acknowledgment. The written acknowledgments required by paragraphs R307-801-17(2)(a)(i), (2)(b)(i), and (3)(a)(i) shall:

(a) Include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of abatement or renovation project, or no later than the day after the start of an emergency abatement or renovation project, the address of the regulated facility undergoing an abatement or renovation project, the signature of the owner or occupant as applicable, and the date of signature;

(b) Be either a separate sheet or part of any written contract or service agreement for the abatement or renovation project; and

(c) Be written in the same language as the text of the contract or agreement for the abatement or renovation project or, in the case of a non-owner occupied regulated facility, in the same language as the lease or rental agreement or the pamphlet.

**KEY: air pollution, asbestos, asbestos hazard emergency response, schools**

**May 5, 2016**

**19-2-104(1)(d)**

**Notice of Continuation March 8, 2018-104(3)(r) through (t)**

**40 CFR Part 61, Subpart M**

**40 CFR Part 763, Subpart E**

**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.

Constituent/property	Allowable level
Arsenic	5 ppm maximum
Cadmium	2 ppm maximum
Chromium	10 ppm maximum
Lead	100 ppm maximum
Flash point	100 degrees F minimum
Total halogens	4,000 ppm maximum(2)

(1) The allowable levels in Table 1 do not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste. See R315-15-1.1(b).

(2) Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption described in R315-15-1.1(b)(1). Such used oil is subject to R315-266-100 through 112, rather than R315-15 when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

Note: Applicable standards for the marketing and burning of used oil containing any quantifiable level (2 ppm) of PCBs are found in 40 CFR 761.20(e), 2013 edition, incorporated by reference, and R315-15-18. Prohibition of PCB oil dilution is described in 40 CFR 279.10 and 40 CFR 761.20(e).

1.3 PROHIBITIONS

Except as authorized by the Director, a person may not place, discard, or otherwise dispose of used oil in any of the following manners:

(a) Surface impoundment and waste piles. Used oil shall not be managed in surface impoundments or waste piles unless the units are subject to regulation under R315-264 or R315-265.

(b) Use as a dust suppressant, weed suppressant, or for road oiling. The use of used oil as a dust suppressant, weed suppressant, or for road oiling or other similar use is prohibited. Any disposal of used oil on the ground is prohibited under Utah Code Annotated 19-6-706(1)(a)(iii).

(c) A person may not mix or commingle used oil with the following substances, except as incidental to the normal course of processing, mechanical, or industrial operations:

(1) Solid waste that is to be disposed of in any solid waste treatment, storage, or disposal facility, except as authorized by the Director; or

(2) Any hazardous waste so the resulting mixture may not be recycled or used for other beneficial purpose as authorized under R315-15.

(d) Used oil shall not be disposed in a solid waste treatment, storage, or disposal facility, except for the disposal of hazardous used oil as authorized under R315-261.

(e) Used oil shall not be disposed in sewers, drainage systems, septic tanks, surface or ground waters, watercourses, or any body of water.

1.4 BURNING IN PARTICULAR UNITS

Burning in particular units. Off-specification used oil fuel may be burned for energy recovery only in the devices described in R315-15-6.2(a).

1.5 DISPOSAL OF DE MINIMIS USED OIL

(a) R315-15-1.3 does not apply to release of de minimis quantities of used oil identified under Utah Code Annotated 19-6-706(4)(a) except for the requirements of 19-6-706(i) and (ii).

(b) A person may dispose of an item or substance that contains de minimis amounts of oil in disposal facilities in accordance with Utah Code Annotated 19-6-706 (2) (a) if:

(1) To the extent that all oil has been reasonably removed from the item or substance; and

(2) No free flowing oil remains in the item or substance.

1.6 USED OIL FILTERS

(a) Disposal of Used Oil Filters. A person may dispose of a nonterne plated used oil filter as a non-hazardous solid waste when that filter is gravity hot-drained by one of the methods described in R315-15-1.6(b) and is not mixed with hazardous waste defined in R315-261.

(b) "Gravity hot-drained" means drained for not less than 12 hours near operating temperature but above 60 degrees Fahrenheit. A nonterne used oil filter is a container of used oil and is subject to R315-15 until it is gravity hot-drained by one

TABLE 1  
USED OIL NOT EXCEEDING ANY ALLOWABLE LEVEL IS NOT  
SUBJECT TO R315-15-6 WHEN BURNED FOR ENERGY RECOVERY(1)

of the following methods:

- (1) puncturing the filter anti-drain back valve or the filter dome end and gravity hot-draining;
- (2) gravity hot-draining and crushing;
- (3) dismantling and gravity hot-draining; or
- (4) any other equivalent gravity hot-draining method authorized by the Director that will remove used oil from the filter at least as effectively as the methods listed in R315-15-1.6(b)(1) through (3).

#### 1.7 DEFINITIONS

(a) Definitions of terms used in R315-15 are found in: R315-15-1.7(b) through (h) and R315-260.

(b) The term "de minimis quantities of used oil" defined in Utah Code Annotated 19-6-706(4)(b), and 19-6-708(3)(a) means small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations and does not apply to used oil discarded as a result of abnormal operations resulting in substantial leaks, spills, or other releases. Nor does it apply to accumulations of quantities of used oil that pose a potential threat to human health or the environment.

(c) "Financial responsibility" means the mechanism by which a person who has a financial obligation satisfies that obligation.

(d) "Used oil" means any oil, refined from crude oil or synthetic oil, that has been used and as a result of that use is contaminated by physical or chemical impurities. Used oil includes engine oil, transmission fluid, compressor oils, metalworking oils, hydraulic oil, brake fluid, oils used as buoyants, lubricating greases, electrical insulating, and dielectric oils.

(e) "Polychlorinated biphenyl (PCB)" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance.

(f) "On-specification used oil" means used oil that does not exceed levels of constituents and properties specified in R315-15-1.2.

(g) "Off-specification used oil" means used oil that exceeds levels of constituents and properties specified in R315-15-1.2.

(h) "Parts per million (ppm)" means a weight-per-weight ratio used to describe concentrations. Parts per million (ppm) is the number of units of mass of a contaminant per million units of total mass (e.g., micrograms per gram).

#### 1.8 LABORATORY ANALYSES

Laboratory analyses used to satisfy the requirements of R315-15 shall be performed by a laboratory that holds a current Utah Certification for environmental laboratories issued by the Utah Department of Health, Laboratory Improvement under R444-14 Utah Administrative Code. The laboratory shall be certified for the method(s) and analyte(s) applied to generate the environmental data.

### R315-15-2. 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/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/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 if 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-transporters 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-transporters 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-transporters used oil in accordance with R315-15-13.4(f)(1) and who burns all the collected used oil for energy recovery is deemed to be approved by rule to operate as a used oil transporter for that activity if the following additional conditions are met:

(i) The generator only burns the self-collected used oil for energy recovery at that generator's own central collection facility.

(ii) The generator registers as a used oil fuel marketer in accordance with R315-15-13.7 and complies with R315-15-7.

(3) A generator who self-transportes used oil in accordance with R315-15-13.4(f)(1) and only stores the used oil for subsequent collection by permitted used oil transporters is deemed to be approved by rule to operate as a used oil transporter and transfer facility for that activity if the following additional conditions are met:

(i) The generator arranges for permitted used oil transporters to collect the generator's used oil.

(ii) The self-transported used oil is not stored at the generator's facility longer than 35 days. If the self-transported used oil is stored longer than 35 days, the generator becomes a used oil processor in accordance with R315-15-4.6(a) and shall obtain a used oil processor permit in accordance with R315-15-13.5.

(4) A generator who self-transportes used oil in accordance with R315-15-13.4(f)(1), and who both burns their collected used oil for energy recovery and arranges for permitted 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 re-refining 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 re-refining 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/re-refining and the manner in which the used oil is processed/re-refined, 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 re-refined 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 statutes 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; and

(b) Curbside used oil collection programs, including costs of retrofitting trucks, curbside containers, and other costs of collection programs.

#### **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 Package, published by the Director, shall be completed and submitted to the Director for consideration.

#### **16.3 LIMITATIONS.**

(a) The grantee must 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.

### **R315-15-17. Wording of Financial Assurance Mechanisms.**

#### **17.1 APPLICABILITY**

R315-15-17 presents the standard wording forms to be used for the financial assurance mechanisms found in R315-15-12. The following forms are hereby incorporated by reference and are available at the Division of Waste Management and Radiation Control located at 195 North 1950 West, Salt Lake City, Utah, during normal business hours or on the Division's web site, <http://www.hazardouswaste.utah.gov/>.

(a) The Division requires that the forms described in R315-15-17.2 through R315-15-17.14 shall be used for all financial assurance filings and shall be signed in duplicate original documents. The wording of the forms shall be identical to the wording specified in R315-15-17.2 through R315-15-17.14.

(b) The Director may substitute new wording for the wording found in any of the financial assurance mechanism forms when such language changes are necessary to conform to applicable financial industry changes, when industry-wide consensus language changes are submitted to the Director.

#### **17.2 TRUST AGREEMENTS**

The trust agreement for a trust fund must be worded as found in the Trust Agreement Form approved by the Director.

#### **17.3 SURETY BOND GUARANTEEING PAYMENT INTO A STANDBY TRUST AGREEMENT TRUST FUND**

The surety bond guaranteeing payment into a standby trust agreement trust fund must be worded as found in the Surety Bond Guaranteeing Payment into a Standby Trust Agreement

Trust Fund Form approved by the Director.

#### **17.4 IRREVOCABLE STANDBY LETTER OF CREDIT WITH STANDBY TRUST AGREEMENT**

The letter of credit must be worded as found in the Irrevocable Standby Letter of Credit with Standby Trust Agreement Form approved by the Director.

#### **17.5 UTAH USED OIL POLLUTION INSURANCE ENDORSEMENT FOR CLEANUP AND CLOSURE**

The insurance endorsement of cleanup and closure must be worded as found in the Utah Used Oil Pollution 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: hazardous waste, used oil**

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**19-6-704**

**R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.**

**R315-262. Hazardous Waste Generator Requirements.**

**R315-262-1. General -- Terms Used in this Part.**

(a) As used in Rule R315-262:

(1) "Condition for exemption" means any requirement in Sections R315-262-14, R315-262-15, R315-262-16, R315-262-17, R315-262-70, or Sections R315-262-200 through R315-262-216 or Sections R315-262-230 through R315-262-233 that states an event, action, or standard that shall occur or be met in order to obtain an exemption from any applicable requirement in Rule R315-124, R315-264 through R315-268, and R315-270, or from any requirement for notification under section 3010 of RCRA.

(2) "Independent requirement" means a requirement of Rule R315-262 that states an event, action, or standard that shall occur or be met; and that applies without relation to, or irrespective of, the purpose of obtaining a conditional exemption from storage facility permit, interim status, and operating requirements under Sections R315-262-14, R315-262-15, R315-262-16, R315-262-17, or Sections R315-262-200 through R315-262-216 or Sections R315-262-230 through R315-262-233.

**R315-262-10. General -- Purpose, Scope, and Applicability.**

(a) The regulations in Rule R315-262 establish standards for generators of hazardous waste as defined by Section R315-260-10.

(1) A person who generates a hazardous waste as defined by Rule R315-261 is subject to all the applicable independent requirements in the sections listed below:

(i) Independent requirements of a very small quantity generator.

(A) Subsections R315-262-11(a) through (d) Hazardous waste determination and recordkeeping; and

(B) Section R315-262-13 Generator category determination.

(ii) Independent requirements of a small quantity generator.

(A) Section R315-262-11 Hazardous waste determination and recordkeeping;

(B) Section R315-262-13 Generator category determination;

(C) Section R315-262-18 EPA identification numbers and re-notification for small quantity generators and large quantity generators;

(D) Sections R315-262-20 through R315-262-27-- Manifest requirements applicable to small and large quantity generators;

(E) Sections R315-262-30 through R315-262-34-- Pre-transport requirements applicable to small and large quantity generators;

(F) Section R315-262-40 Recordkeeping;

(G) Section R315-262-44 Recordkeeping for small quantity generators; and

(H) Sections R315-262-80 through R315-262-89-- Transboundary movements of hazardous waste for recovery or disposal.

(iii) Independent requirements of a large quantity generator.

(A) Section R315-262-11 Hazardous waste determination and recordkeeping;

(B) Section R315-262-13 Generator category determination;

(C) Section R315-262-18 EPA identification numbers and re-notification for small quantity generators and large quantity generators;

(D) Sections R315-262-20 through R315-262-27-- Manifest requirements applicable to small and large quantity

generators;

(E) Sections R315-262-30 through R315-262-34-- Pre-transport requirements applicable to small and large quantity generators;

(F) Sections R315-262-40 through R315-262-44-- Recordkeeping and reporting applicable to small and large quantity generators, except Section R315-262-44; and

(G) Sections R315-262-80 through R315-262-89-- Transboundary movements of hazardous waste for recovery or disposal.

(2) A generator that accumulates hazardous waste on site is a person that stores hazardous waste; such generator is subject to the applicable requirements of Rule R315-124, R315-264 through R315-266, R315-270 and section 3010 of RCRA, unless it is one of the following:

(i) A very small quantity generator that meets the conditions for exemption in Section R315-262-14;

(ii) A small quantity generator that meets the conditions for exemption in Sections R315-262-15 and R315-262-16; or

(iii) A large quantity generator that meets the conditions for exemption in Sections R315-262-15 and R315-262-17.

(3) A generator shall not transport, offer its hazardous waste for transport, or otherwise cause its hazardous waste to be sent to a facility that is not a designated facility, as defined in Section R315-260-10, or not otherwise authorized to receive the generator's hazardous waste.

(b) Determining generator category. A generator shall use Section R315-262-13 to determine which provisions of Rule R315-262 are applicable to the generator based on the quantity of hazardous waste generated per calendar month.

(c) Reserved.

(d) Any person who exports or imports hazardous wastes shall comply with Section R315-262-18 and Sections R315-262-80 through R315-262-89.

(e) Any person who imports hazardous waste into the United States shall comply with the standards applicable to generators established in Rule R315-262.

(f) A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of Section R315-262-70 is not required to comply with other standards in Rule R315-262 or Rules R315-270, 264, 265, or 268 with respect to such pesticides.

(1) A generator's violation of an independent requirement is subject to penalty and injunctive relief under Sections 19-6-112 and 19-6-113.

(2) A generator's noncompliance with a condition for exemption in Rule R315-262 is not subject to penalty or injunctive relief under Sections 19-6-112 and 19-6-113 as a violation of a Rule R315-262 condition for exemption. Noncompliance by any generator with an applicable condition for exemption from storage permit and operations requirements means that the facility is a storage facility operating without an exemption from the permit, interim status, and operations requirements in Rules R315-124, R315-264 through R315-266, and R315-270, and the notification requirements of section 3010 of RCRA. Without an exemption, any violations of such storage requirements are subject to penalty and injunctive relief under Sections 19-6-112 and 19-6-113.

(h) An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility shall comply with the generator standards established in Rule R315-262.

Note 1: The provisions of Section R315-262-34 are applicable to the on-site accumulation of hazardous waste by generators. Therefore, the provisions of Section R315-262-34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

Note 2: A generator who treats, stores, or disposes of hazardous waste on-site shall comply with the applicable

standards and permit requirements set forth in Rules R315-264, 265, 266, 268, and 270.

- (i) Reserved.
- (j) Reserved.
- (k) Reserved.

(l) The laboratories owned by an eligible academic entity that chooses to be subject to the requirements of Sections R315-262-200 through R315-262-216 are not subject to, for purposes of Subsection R315-262-10(l), the terms "laboratory" and "eligible academic entity" shall have the meaning as defined in Section R315-262-200:

(1) The independent requirements of Section R315-262-11 or the regulations in Section R315-262-15 for large quantity generators and small quantity generators, except as provided in Sections R315-262-200 through R315-262-216, and

(2) The conditions of Section R315-262-14, for very small quantity generators, except as provided in Sections R315-262-200 through R315-262-216.

(m) Generators of lamps, as defined in Section R315-273-9, using a drum-top crusher, as defined in Section R315-273-9, shall meet the requirements of Subsection R315-273-13(d)(3), except for the registration requirement; and Subsections R315-273-13(d)(4) and (5).

Note: A generator who treats, stores, or disposes of hazardous waste on-site shall comply with the applicable standards and permit requirements set forth in Rules R315-264, R315-265, R315-266, R315-268, and R315-270.

### **R315-262-11. General -- Hazardous Waste Determination and Recordkeeping.**

A person who generates a solid waste, as defined in Section R315-261-2, shall make an accurate determination as to whether that waste is a hazardous waste in order to ensure wastes are properly managed according to applicable regulations. A hazardous waste determination is made using the following steps:

(a) The hazardous waste determination for each solid waste shall be made at the point of waste generation, before any dilution, mixing, or other alteration of the waste occurs, and at any time in the course of its management that it has, or may have, changed its properties as a result of exposure to the environment or other factors that may change the properties of the waste such that the hazardous classification of the waste may change.

(b) A person shall determine whether the solid waste is excluded from regulation under Section R315-261-4.

(c) If the waste is not excluded under Section R315-261-4, the person shall then use knowledge of the waste to determine whether the waste meets any of the listing descriptions under Sections R315-261-30 through R315-261-35. Acceptable knowledge that may be used in making an accurate determination as to whether the waste is listed may include waste origin, composition, the process producing the waste, feedstock, and other reliable and relevant information. If the waste is listed, the person may file a delisting petition under Sections R315-260-20 and R315-260-22 to demonstrate to the Director that the waste from this particular site or operation is not a hazardous waste.

(d) The person then shall also determine whether the waste exhibits one or more hazardous characteristics as identified in Sections R315-261-20 through R315-261-24 by following the procedures in Subsections R315-262-11(d)(1) or (2), or a combination of both.

(1) The person shall apply knowledge of the hazard characteristic of the waste in light of the materials or the processes used to generate the waste. Acceptable knowledge may include process knowledge, for example, information about chemical feedstocks and other inputs to the production process; knowledge of products, by-products, and intermediates

produced by the manufacturing process; chemical or physical characterization of wastes; information on the chemical and physical properties of the chemicals used or produced by the process or otherwise contained in the waste; testing that illustrates the properties of the waste; or other reliable and relevant information about the properties of the waste or its constituents. A test other than a test method set forth in Sections R315-261-20 through R315-261-24, or an equivalent test method approved by the Director under Section R315-260-21, may be used as part of a person's knowledge to determine whether a solid waste exhibits a characteristic of hazardous waste. However, such tests do not, by themselves, provide definitive results. Persons testing their waste shall obtain a representative sample of the waste for the testing, as defined at Section R315-260-10.

(2) When available knowledge is inadequate to make an accurate determination, the person shall test the waste according to the applicable methods set forth in Sections R315-261-20 through R315-261-24 or according to an equivalent method approved by the Director under Section R315-260-21 and in accordance with the following:

(i) Persons testing their waste shall obtain a representative sample of the waste for the testing, as defined at Section R315-260-10.

(ii) Where a test method is specified in Sections R315-261-20 through R315-261-24, the results of the regulatory test, when properly performed, are definitive for determining the regulatory status of the waste.

(e) If the waste is determined to be hazardous, the generator shall refer to Rules R315-261, R315-264, R315-265, R315-266, R315-268, and R315-273 for other possible exclusions or restrictions pertaining to management of the specific waste.

(f) Recordkeeping for small and large quantity generators. A small or large quantity generator shall maintain records supporting its hazardous waste determinations, including records that identify whether a solid waste is a hazardous waste, as defined by Section R315-261-3. Records shall be maintained for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal. These records shall comprise the generator's knowledge of the waste and support the generator's determination, as described at Subsections R315-262-11(c) and (d). The records shall include, but are not limited to, the following types of information: The results of any tests, sampling, waste analyses, or other determinations made in accordance with this section; records documenting the tests, sampling, and analytical methods used to demonstrate the validity and relevance of such tests; records consulted in order to determine the process by which the waste was generated, the composition of the waste, and the properties of the waste; and records which explain the knowledge basis for the generator's determination, as described at Subsection R315-262-11(d)(1). The periods of record retention referred to in Subsection R315-262-11(2)(f) are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Director.

(g) Identifying hazardous waste numbers for small and large quantity generators. If the waste is determined to be hazardous, small quantity generators and large quantity generators shall identify all applicable EPA hazardous waste numbers, EPA hazardous waste codes, in Sections R315-261-20 through R315-261-24 and R315-261-30 through R315-261-35. Prior to shipping the waste off site, the generator also shall mark its containers with all applicable EPA hazardous waste numbers, EPA hazardous waste codes, according to Section R315-262-32.

### **R315-262-13. General -- Generator Category Determination.**

A generator shall determine its generator category. A

generator's category is based on the amount of hazardous waste generated each month and may change from month to month. This section sets forth procedures to determine whether a generator is a very small quantity generator, a small quantity generator, or a large quantity generator for a particular month, as defined in Section R315-260-10.

(a) Generators of either acute hazardous waste or non-acute hazardous waste. A generator who either generates acute hazardous waste or non-acute hazardous waste in a calendar month shall determine its generator category for that month by doing the following:

(1) Counting the total amount of hazardous waste generated in the calendar month;

(2) Subtracting from the total any amounts of waste exempt from counting as described in Subsections R315-262-13(c) and (d); and

(3) Determining the resulting generator category for the hazardous waste generated using Table 1 below.

(b) Generators of both acute and non-acute hazardous wastes. A generator who generates both acute hazardous waste and non-acute hazardous waste in the same calendar month shall determine its generator category for that month by doing the following:

(1) Counting separately the total amount of acute hazardous waste and the total amount of non-acute hazardous waste generated in the calendar month;

(2) Subtracting from each total any amounts of waste exempt from counting as described in Subsections R315-262-13(c) and (d);

(3) Determining separately the resulting generator categories for the quantities of acute and non-acute hazardous waste generated using Table 1 below; and

(4) Comparing the resulting generator categories from Subsection R315-262-13(b)(3) and applying the more stringent generator category to the accumulation and management of both non-acute hazardous waste and acute hazardous waste generated for that month.

TABLE 1 to Section R315-262-13

Generator Categories Based on Quantity of Waste Generated in a Calendar Month			
Quantity of acute hazardous waste generated in a calendar month	Quantity of non-acute hazardous waste generated in a calendar month	Quantity of residues from a cleanup of acute hazardous waste generated in a calendar month	Generator category
>1kg	Any amount	Any amount	Large quantity generator
Any amount	> or = 1,000kg	Any amount	Large quantity generator
Any amount	Any Amount	>100kg	Large quantity generator
< or = 1 kg	>100 kg and < 1,000 kg	< or = 100 kg	Small quantity Generator
< or = 1 kg	< or = 100 kg	< or = 100 kg	Very small quantity generator

(c) When making the monthly quantity-based determinations required by Rule R315-262, the generator shall include all hazardous waste that it generates, except hazardous waste that:

(1) Is exempt from regulation under Subsections R315-261-4(c) through (f), 261-6(a)(3), R315-261-7(a)(1), or Section R315-261-8;

(2) Is managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in Section R315-260-10;

(3) Is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under Subsection R315-261-6(c)(2);

(4) Is used oil managed under the requirements of Subsection R315-261-6(a)(4) and R315-15;

(5) Is spent lead-acid batteries managed under the requirements of Section R315-266-80;

(6) Is universal waste managed under Section R315-261-9 and Rule R315-273;

(7) Is a hazardous waste that is an unused commercial chemical product, listed in Sections R315-261-30 through R315-261-35 or exhibiting one or more characteristics in Sections R315-261-20 through R315-261-24, that is generated solely as a result of a laboratory clean-out conducted at an eligible academic entity pursuant to Section R315-262-213. For purposes of this provision, the term eligible academic entity shall have the meaning as defined in Section R315-262-200; or

(8) Is managed as part of an episodic event in compliance with the conditions of Sections R315-262-230 through R315-262-233.

(d) In determining the quantity of hazardous waste generated in a calendar month, a generator need not include:

(1) Hazardous waste when it is removed from on-site accumulation, so long as the hazardous waste was previously counted once;

(2) Hazardous waste generated by on-site treatment (including reclamation) of the generator's hazardous waste, so long as the hazardous waste that is treated was previously counted once; and

(3) Hazardous waste spent materials that are generated, reclaimed, and subsequently reused on site, so long as such spent materials have been previously counted once.

(e) Based on the generator category as determined under Section R315-262-13, the generator shall meet the applicable independent requirements listed in Section R315-262-10. A generator's category also determines which of the provisions of Sections R315-262-14, R315-262-15, R315-262-16 or R315-262-17 shall be met to obtain an exemption from the storage facility permit, interim status, and operating requirements when accumulating hazardous waste.

(f) Mixing hazardous wastes with solid wastes

(1) Very small quantity generator wastes.

(i) Hazardous wastes generated by a very small quantity generator may be mixed with solid wastes. Very small quantity generators may mix a portion or all of its hazardous waste with solid waste and remain subject to Section R315-262-14 even though the resultant mixture exceeds the quantity limits identified in the definition of very small quantity generator at Section R315-260-10, unless the mixture exhibits one or more of the characteristics of hazardous waste identified in Sections R315-261-20 through R315-261-24.

(ii) If the resulting mixture exhibits a characteristic of hazardous waste, this resultant mixture is a newly-generated hazardous waste. The very small quantity generator shall count both the resultant mixture amount plus the other hazardous waste generated in the calendar month to determine whether the total quantity exceeds the very small quantity generator calendar month quantity limits identified in the definition of generator categories found in Section R315-260-10. If so, to remain exempt from the permitting, interim status, and operating standards, the very small quantity generator shall meet the conditions for exemption applicable to either a small quantity generator or a large quantity generator. The very small quantity generator shall also comply with the applicable independent requirements for either a small quantity generator or a large quantity generator.

(iii) If a very small quantity generator's wastes are mixed with used oil, the mixture is subject to Rule R315-15. Any material produced from such a mixture by processing, blending,

or other treatment is also regulated under Rule R315-15.

(2) Small quantity generator and large quantity generator wastes.

(i) Hazardous wastes generated by a small quantity generator or large quantity generator may be mixed with solid waste. These mixtures are subject to the following: the mixture rule in Subsections R315-261-3(a)(2)(iv), (b)(2) and (3), and (g)(2)(i); the prohibition of dilution rule at Subsection R315-268-3(a); the land disposal restriction requirements of Section R315-268-40 if a characteristic hazardous waste is mixed with a solid waste so that it no longer exhibits the hazardous characteristic; and the hazardous waste determination requirement at Section R315-262-11.

(ii) If the resulting mixture is found to be a hazardous waste, this resultant mixture is a newly-generated hazardous waste. A small quantity generator shall count both the resultant mixture amount plus the other hazardous waste generated in the calendar month to determine whether the total quantity exceeds the small quantity generator calendar monthly quantity limits identified in the definition of generator categories found in Section R315-260-10. If so, to remain exempt from the permitting, interim status, and operating standards, the small quantity generator shall meet the conditions for exemption applicable to a large quantity generator. The small quantity generator shall also comply with the applicable independent requirements for a large quantity generator.

**R315-262-14. General -- Conditions For Exemption for a Very Small Quantity Generator.**

(a) Provided that the very small quantity generator meets all the conditions for exemption listed in Section R315-262-14, hazardous waste generated by the very small quantity generator is not subject to the requirements of Rules R315-124, 262 (except Sections R315-262-10 through R315-262-14) through R315-268, and R315-270, and the notification requirements of section 3010 of RCRA and the very small quantity generator may accumulate hazardous waste on site without complying with such requirements. The conditions for exemption are as follows:

(1) In a calendar month the very small quantity generator generates less than or equal to the amounts specified in the definition of "very small quantity generator" in Section R315-260-10;

(2) The very small quantity generator complies with Subsections R315-262-11(a) through (d);

(3) If the very small quantity generator accumulates at any time greater than 1 kilogram (2.2 lbs) of acute hazardous waste or 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e), all quantities of that acute hazardous waste are subject to the following additional conditions for exemption:

(i) Such waste is held on site for no more than 90 days beginning on the date when the accumulated wastes exceed the amounts provided in Subsection R315-262-14(a)(3); and

(ii) The conditions for exemption in Subsections R315-262-17(a) through (g).

(4) If the very small quantity generator accumulates at any time 1,000 kilograms (2,200 lbs) or greater of non-acute hazardous waste, all quantities of that hazardous waste are subject to the following additional conditions for exemption:

(i) Such waste is held on site for no more than 180 days, or 270 days, if applicable, beginning on the date when the accumulated waste exceed the amounts provided in Subsection R315-262-14(a)(4);

(ii) The quantity of waste accumulated on site never exceeds 6,000 kilograms (13,200 lbs); and

(iii) The conditions for exemption in Subsections R315-

262-16(b)(2) through (f).

(5) A very small quantity generator that accumulates hazardous waste in amounts less than or equal to the limits in Subsections R315-262-14(a)(3) and (4) shall either treat or dispose of its hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the U.S., is:

(i) Permitted under Rule R315-270;

(ii) In interim status under Rules R315-265 and 270;

(iii) Authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR 271;

(iv) Permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to Rules R315-301 through R315-320;

(v) Permitted, licensed, or registered by a state to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit, is subject to the requirements in Rules R315-301 through R315-320 or 40 CFR 257.5 through 257.30;

(vi) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation;

(vii) For universal waste managed under Rule R315-273, a universal waste handler or destination facility subject to the requirements of Rule R315-273;

(viii) A large quantity generator under the control of the same person as the very small quantity generator, provided the following conditions are met:

(A) The very small quantity generator and the large quantity generator are under the control of the same person as defined in Section R315-260-10. "Control," for the purposes of Subsection R315-262-14(a)(5)(viii), means the power to direct the policies of the generator, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator facilities on behalf of a different person as defined in Section R315-260-10 shall not be deemed to "control" such generators.

(B) The very small quantity generator marks its container(s) of hazardous waste with:

(1) The words "Hazardous Waste" and

(2) An indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704.

(b) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

(c) A very small quantity generator experiencing an episodic event may generate and accumulate hazardous waste in accordance with Sections R315-262-230 through 233 in lieu of Sections R315-262-15, 16, and 17.

**R315-262-15. General -- Satellite Accumulation Area Regulations for Small and Large Quantity Generators.**

(a) A generator may accumulate as much as 55 gallons of non-acute hazardous waste and/or either one quart of liquid acute hazardous waste listed in Section R315-261-31 or

Subsection R315-261-33(e) or 1 kg (2.2 lbs) of solid acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e) in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with the requirements of Rules R315-124, R315-264 through R315-266, and R315-270, provided that all of the conditions for exemption in Section R315-262-15 are met. A generator may comply with the conditions for exemption in Section R315-262-15 instead of complying with the conditions for exemption in Subsection R315-262-16(b) or 17(a), except as required in Subsections R315-262-15(a)(7) and (8). The conditions for exemption for satellite accumulation are:

(1) If a container holding hazardous waste is not in good condition, or if it begins to leak, the generator shall immediately transfer the hazardous waste from this container to a container that is in good condition and does not leak, or immediately transfer and manage the waste in a central accumulation area operated in compliance with Subsections R315-262-16(b) or 17(a).

(2) The generator shall use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be accumulated, so that the ability of the container to contain the waste is not impaired.

(3) Special standards for incompatible wastes.

(i) Incompatible wastes, or incompatible wastes and materials, (see appendix V of 40 CFR 265 for examples) shall not be placed in the same container, unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(ii) Hazardous waste shall not be placed in an unwashed container that previously held an incompatible waste or material (see appendix V of 40 CFR 265 for examples), unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(iii) A container holding a hazardous waste that is incompatible with any waste or other materials accumulated nearby in other containers shall be separated from the other materials or protected from them by any practical means.

(4) A container holding hazardous waste shall be closed at all times during accumulation, except:

(i) When adding, removing, or consolidating waste; or

(ii) When temporary venting of a container is necessary:

(A) For the proper operation of equipment, or

(B) To prevent dangerous situations, such as build-up of extreme pressure.

(5) A generator shall mark or label its container with the following:

(i) The words "Hazardous Waste" and

(ii) An indication of the hazards of the contents, examples include, but are not limited to:

(A) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(B) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(C) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(D) a chemical hazard label consistent with the National Fire Protection Association code 704.

(6) A generator who accumulates either acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e) or non-acute hazardous waste in excess of the amounts listed in Subsection R315-262-15(a) at or near any point of generation shall do the following:

(i) Comply within three consecutive calendar days with the applicable central accumulation area regulations in Subsection

R315-262-16(b) or 17(a), or

(ii) Remove the excess from the satellite accumulation area within three consecutive calendar days to either:

(A) A central accumulation area operated in accordance with the applicable regulations in Subsection R315-262-16(b) or 17(a);

(B) An on-site interim status or permitted treatment, storage, or disposal facility, or

(C) An off-site designated facility; and

(iii) During the three-consecutive-calendar-day period the generator shall continue to comply with Subsections R315-262-15(a)(1) through (5). The generator shall mark or label the container(s) holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

(7) All satellite accumulation areas operated by a small quantity generator shall meet the preparedness and prevention regulations of Subsection R315-262-16(b)(8) and emergency procedures at Subsection R315-262-16(b)(9).

(8) All satellite accumulation areas operated by a large quantity generator shall meet the Preparedness, Prevention and Emergency Procedures in Sections R315-262-250 through R315-262-265.

(b) Reserved.

#### **R315-262-16. General -- Conditions for Exemption for a Small Quantity Generator that Accumulates Hazardous Waste.**

A small quantity generator may accumulate hazardous waste on site without a permit or interim status, and without complying with the requirements of Rules R315-124, R315-264 through R315-266, and R315-270, or the notification requirements of section 3010 of RCRA, provided that all the conditions for exemption listed in Section R315-262-16 are met:

(a) Generation. The generator generates in a calendar month no more than the amounts specified in the definition of "small quantity generator" in Section R315-260-10.

(b) Accumulation. The generator accumulates hazardous waste on site for no more than 180 days, unless in compliance with the conditions for exemption for longer accumulation in Subsections R315-262-16(d) and (e). The following accumulation conditions also apply:

(1) Accumulation limit. The quantity of hazardous waste accumulated on site never exceeds 6,000 kilograms (13,200 pounds);

(2) Accumulation of hazardous waste in containers.

(i) Condition of containers. If a container holding hazardous waste is not in good condition, or if it begins to leak, the small quantity generator shall immediately transfer the hazardous waste from this container to a container that is in good condition, or immediately manage the waste in some other way that complies with the conditions for exemption of Section R315-262-16.

(ii) Compatibility of waste with container. The small quantity generator shall use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be accumulated, so that the ability of the container to contain the waste is not impaired.

(iii) Management of containers.

(A) A container holding hazardous waste shall always be closed during accumulation, except when it is necessary to add or remove waste.

(B) A container holding hazardous waste shall not be opened, handled, or accumulated in a manner that may rupture the container or cause it to leak.

(iv) Inspections. At least weekly, the small quantity generator shall inspect central accumulation areas. The small quantity generator shall look for leaking containers and for deterioration of containers caused by corrosion or other factors. See Subsection R315-262-16(b)(2)(i) for remedial action

required if deterioration or leaks are detected.

(v) Special conditions for accumulation of incompatible wastes.

(A) Incompatible wastes, or incompatible wastes and materials, (see appendix V of 40 CFR 265 for examples) shall not be placed in the same container, unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(B) Hazardous waste shall not be placed in an unwashed container that previously held an incompatible waste or material (see appendix V of 40 CFR 265 for examples), unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(C) A container accumulating hazardous waste that is incompatible with any waste or other materials accumulated or stored nearby in other containers, piles, open tanks, or surface impoundments shall be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

(3) Accumulation of hazardous waste in tanks.

(i) Reserved.

(ii) A small quantity generator of hazardous waste shall comply with the following general operating conditions:

(A) Treatment or accumulation of hazardous waste in tanks shall comply with 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1.

(B) Hazardous wastes or treatment reagents shall not be placed in a tank if they could cause the tank or its inner liner to rupture, leak, corrode, or otherwise fail before the end of its intended life.

(C) Uncovered tanks shall be operated to ensure at least 60 centimeters (2 feet) of freeboard, unless the tank is equipped with a containment structure (e.g., dike or trench), a drainage control system, or a diversion structure (e.g., standby tank) with a capacity that equals or exceeds the volume of the top 60 centimeters (2 feet) of the tank.

(D) Where hazardous waste is continuously fed into a tank, the tank shall be equipped with a means to stop this inflow (e.g., waste feed cutoff system or by-pass system to a stand-by tank).

(iii) Except as noted in Subsection R315-262-16(b)(3)(iv), a small quantity generator that accumulates hazardous waste in tanks shall inspect, where present:

(A) Discharge control equipment (e.g., waste feed cutoff systems, by-pass systems, and drainage systems) at least once each operating day, to ensure that it is in good working order;

(B) Data gathered from monitoring equipment (e.g., pressure and temperature gauges) at least once each operating day to ensure that the tank is being operated according to its design;

(C) The level of waste in the tank at least once each operating day to ensure compliance with Subsection R315-262-16(b)(3)(ii)(C);

(D) The construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and

(E) The construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes) at least weekly to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation). The generator shall remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action shall be taken immediately.

(iv) A small quantity generator accumulating hazardous waste in tanks or tank systems that have full secondary containment and that either use leak detection equipment to alert personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, shall inspect at least weekly, where applicable, the areas identified in Subsections

R315-262-16(b)(3)(iii)(A) through (E). Use of the alternate inspection schedule shall be documented in the generator's operating record. This documentation shall include a description of the established workplace practices at the generator.

(v) Reserved.

(vi) A small quantity generator accumulating hazardous waste in tanks shall, upon closure of the facility, remove all hazardous waste from tanks, discharge control equipment, and discharge confinement structures. At closure, as throughout the operating period, unless the small quantity generator can demonstrate, in accordance with Subsection R315-261-3(c) or (d), that any solid waste removed from its tank is not a hazardous waste, then it shall manage such waste in accordance with all applicable provisions of Rules R315-262, R315-263, R315-265, and R315-268.

(vii) A small quantity generator shall comply with the following special conditions for accumulation of ignitable or reactive waste:

(A) Ignitable or reactive waste shall not be placed in a tank, unless:

(I) The waste is treated, rendered, or mixed before or immediately after placement in a tank so that the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under Section R315-261-21 or R315-261-23 and 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with; or

(II) The waste is accumulated or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(III) The tank is used solely for emergencies.

(B) A small quantity generator which treats or accumulates ignitable or reactive waste in covered tanks shall comply with the buffer zone requirements for tanks contained in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code" (1977 or 1981), incorporated by reference, see Section R315-260-11.

(C) A small quantity generator shall comply with the following special conditions for incompatible wastes:

(I) Incompatible wastes, or incompatible wastes and materials, (see 40 CFR 265 appendix V for examples) shall not be placed in the same tank, unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(II) Hazardous waste shall not be placed in an unwashed tank that previously held an incompatible waste or material, unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(4) Accumulation of hazardous waste on drip pads. If the waste is placed on drip pads, the small quantity generator shall comply with the following:

(i) 40 CFR 265.440 through 265.445, which is incorporated by reference in Section R315-265-1, except 265.445(c);

(ii) The small quantity generator shall remove all wastes from the drip pad at least once every 90 days. Any hazardous wastes that are removed from the drip pad at least once every 90 days are then subject to the 180-day accumulation limit in Subsections R315-262-16(b) and Section R315-262-15 if hazardous wastes are being managed in satellite accumulation areas prior to being moved to the central accumulation area; and

(iii) The small quantity generator shall maintain on site at the facility the following records readily available for inspection:

(A) A written description of procedures that are followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(B) Documentation of each waste removal, including the



quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

(5) Accumulation of hazardous waste in containment buildings. If the waste is placed in containment buildings, the small quantity generator shall comply with 40 CFR 265.1100 through 265.1102, which is incorporated by reference in Section R315-265-1. The generator shall label its containment buildings with the words "Hazardous Waste" in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers, or other persons on site and also in a conspicuous place provide an indication of the hazards of the contents, examples include, but are not limited to, the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic; hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding; a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704. The generator shall also maintain:

(i) The professional engineer certification that the building complies with the design standards specified in 40 CFR 265.1101, which is incorporated by reference in Section R315-265-1. This certification shall be in the generator's files prior to operation of the unit; and

(ii) The following records by use of inventory logs, monitoring equipment, or any other effective means:

(A) A written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that the generator is consistent with maintaining the 90 day limit, and documentation that the procedures are complied with; or

(B) Documentation that the unit is emptied at least once every 90 days.

(C) Inventory logs or records with the above information shall be maintained on site and readily available for inspection.

(6) Labeling and marking of containers and tanks.

(i) Containers. A small quantity generator shall mark or label its containers with the following:

(A) The words "Hazardous Waste";

(B) An indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704; and

(C) The date upon which each period of accumulation begins clearly visible for inspection on each container.

(ii) Tanks. A small quantity generator accumulating hazardous waste in tanks shall do the following:

(A) Mark or label its tanks with the words "Hazardous Waste";

(B) Mark or label its tanks with an indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard

Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704;

(C) Use inventory logs, monitoring equipment, or other records to demonstrate that hazardous waste has been emptied within 180 days of first entering the tank if using a batch process, or in the case of a tank with a continuous flow process, demonstrate that estimated volumes of hazardous waste entering the tank daily exit the tank within 180 days of first entering; and

(D) Keep inventory logs or records with the above information on site and readily available for inspection.

(7) Land disposal restrictions. A small quantity generator shall comply with all the applicable requirements under Rule R315-268.

(8) Preparedness and prevention.

(i) Maintenance and operation of facility. A small quantity generator shall maintain and operate its facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

(ii) Required equipment. All areas where hazardous waste is either generated or accumulated shall be equipped with the items in Subsections R315-262-16(b)(8)(ii)(A) through (D), unless none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below or the actual waste generation or accumulation area does not lend itself for safety reasons to have a particular kind of equipment specified below. A small quantity generator may determine the most appropriate locations to locate equipment necessary to prepare for and respond to emergencies.

(A) An internal communications or alarm system capable of providing immediate emergency instruction, voice or signal, to facility personnel;

(B) A device, such as a telephone, immediately available at the scene of operations, or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

(C) Portable fire extinguishers, fire control equipment, including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals, spill control equipment, and decontamination equipment; and

(D) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(iii) Testing and maintenance of equipment. All communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of emergency.

(iv) Access to communications or alarm system.

(A) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation shall have immediate access, e.g., direct or unimpeded access, to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required under Subsection R315-262-16(a)(8)(ii).

(B) In the event there is just one employee on the premises while the facility is operating, the employee shall have immediate access, e.g., direct or unimpeded access, to a device, such as a telephone, immediately available at the scene of operation, or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required under Subsection R315-262-16(a)(8)(ii).

(v) Required aisle space. The small quantity generator shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment,

and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

(vi) Arrangements with local authorities.

(A) The small quantity generator shall attempt to make arrangements with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals, taking into account the types and quantities of hazardous wastes handled at the facility. Arrangements may be made with the Local Emergency Planning Committee, if it is determined to be the appropriate organization with which to make arrangements.

(I) A small quantity generator attempting to make arrangements with its local fire department shall determine the potential need for the services of the local police department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals.

(II) As part of this coordination, the small quantity generator shall attempt to make arrangements, as necessary, to familiarize the above organizations with the layout of the facility, the properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes as well as the types of injuries or illnesses that could result from fires, explosions, or releases at the facility.

(III) Where more than one police or fire department might respond to an emergency, the small quantity generator shall attempt to make arrangements designating primary emergency authority to a specific fire or police department, and arrangements with any others to provide support to the primary emergency authority.

(B) A small quantity generator shall maintain records documenting the arrangements with the local fire department as well as any other organization necessary to respond to an emergency. This documentation shall include documentation in the operating record that either confirms such arrangements actively exist or, in cases where no arrangements exist, confirms that attempts to make such arrangements were made.

(C) A facility possessing 24-hour response capabilities may seek a waiver from the authority having jurisdiction (AHJ) over the fire code within the facility's state or locality as far as needing to make arrangements with the local fire department as well as any other organization necessary to respond to an emergency, provided that the waiver is documented in the operating record.

(9) Emergency procedures. The small quantity generator complies with the following conditions for those areas of the generator facility where hazardous waste is generated and accumulated:

(i) At all times there shall be at least one employee either on the premises or on call, i.e., available to respond to an emergency by reaching the facility within a short period of time, with the responsibility for coordinating all emergency response measures specified in Subsection R315-262-16(b)(9)(iv). This employee is the emergency coordinator.

(ii) The small quantity generator shall post the following information next to telephones or in areas directly involved in the generation and accumulation of hazardous waste:

(A) The name and emergency telephone number of the emergency coordinator;

(B) Location of fire extinguishers and spill control material, and, if present, fire alarm; and

(C) The telephone number of the fire department, unless the facility has a direct alarm.

(iii) The small quantity generator shall ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

(iv) The emergency coordinator or his designee shall respond to any emergencies that arise. The applicable responses are as follows:

(A) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(B) In the event of a spill, the small quantity generator is responsible for containing the flow of hazardous waste to the extent possible, and as soon as is practicable, cleaning up the hazardous waste and any contaminated materials or soil. Such containment and cleanup can be conducted either by the small quantity generator or by a contractor on behalf of the small quantity generator;

(C) In the event of a fire, explosion, or other release that could threaten human health outside the facility or when the small quantity generator has knowledge that a spill has reached surface water, the small quantity generator shall immediately notify the National Response Center, using their 24-hour toll free number 800/424-8802 and the state environmental incident reporting program at 801/536-0200 or after hours at 801/536-4123. The report shall include the following information:

(I) The name, address, and U.S. EPA identification number of the small quantity generator;

(II) Date, time, and type of incident, e.g., spill or fire;

(III) Quantity and type of hazardous waste involved in the incident;

(IV) Extent of injuries, if any; and

(V) Estimated quantity and disposition of recovered materials, if any.

(c) Transporting over 200 miles. A small quantity generator who shall transport its waste, or offer its waste for transportation, over a distance of 200 miles or more for off-site treatment, storage or disposal may accumulate hazardous waste on site for 270 days or less without a permit or without having interim status provided that the generator complies with the conditions of Subsection R315-262-16(b).

(d) Accumulation time limit extension. A small quantity generator who accumulates hazardous waste for more than 180 days (or for more than 270 days if it shall transport its waste, or offer its waste for transportation, over a distance of 200 miles or more) is subject to the requirements of Rules R315-264, R315-265, R315-268, and R315-270 unless it has been granted an extension to the 180-day (or 270-day if applicable) period. Such extension may be granted by the Director if hazardous wastes shall remain on site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Director on a case-by-case basis.

(e) Rejected load. A small quantity generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of Section R315-264-72 or 40 CFR 265.72, which is incorporated by reference in R315-265-1, may accumulate the returned waste on site in accordance with Subsections R315-262-16(a)-(d). Upon receipt of the returned shipment, the generator shall:

(1) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

(2) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

(f) A small quantity generator experiencing an episodic event may accumulate hazardous waste in accordance with Sections R315-262-230 through R315-262-233 in lieu of Section R315-262-17.

**R315-262-17. General -- Conditions for Exemption for a Large Quantity Generator that Accumulates Hazardous Waste.**

A large quantity generator may accumulate hazardous waste on site without a permit or interim status, and without complying with the requirements of Rules R315-124, R315-264 through R315-266, and R315-270, or the notification requirements of section 3010 of RCRA, provided that all of the following conditions for exemption are met:

(a) Accumulation. A large quantity generator accumulates hazardous waste on site for no more than 90 days, unless in compliance with the accumulation time limit extension or F006 accumulation conditions for exemption in Subsections R315-262-17(b) through (e). The following accumulation conditions also apply:

(1) Accumulation of hazardous waste in containers. If the hazardous waste is placed in containers, the large quantity generator shall comply with the following:

(i) Air emission standards. The applicable requirements of 40 CFR 265.1030 through 265.1035, 265.1050 through 265.1064, and 265.1080 through 265.1090, which are incorporated by reference in Section R315-265-1;

(ii) Condition of containers. If a container holding hazardous waste is not in good condition, or if it begins to leak, the large quantity generator shall immediately transfer the hazardous waste from this container to a container that is in good condition, or immediately manage the waste in some other way that complies with the conditions for exemption of this section;

(iii) Compatibility of waste with container. The large quantity generator shall use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired;

(iv) Management of containers.

(A) A container holding hazardous waste shall always be closed during accumulation, except when it is necessary to add or remove waste.

(B) A container holding hazardous waste shall not be opened, handled, or stored in a manner that may rupture the container or cause it to leak.

(v) Inspections. At least weekly, the large quantity generator shall inspect central accumulation areas. The large quantity generator shall look for leaking containers and for deterioration of containers caused by corrosion or other factors. See Subsection R315-262-17(a)(1)(ii) for remedial action required if deterioration or leaks are detected.

(vi) Special conditions for accumulation of ignitable and reactive wastes.

(A) Containers holding ignitable or reactive waste shall be located at least 15 meters (50 feet) from the facility's property line unless a written approval is obtained from the authority having jurisdiction over the local fire code allowing hazardous waste accumulation to occur within this restricted area. A record of the written approval shall be maintained as long as ignitable or reactive hazardous waste is accumulated in this area.

(B) The large quantity generator shall take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste shall be separated and protected from sources of ignition or reaction including but not limited to the following: Open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition, e.g., from heat-producing chemical reactions, and radiant heat. While ignitable or reactive waste is being handled, the large quantity generator shall confine smoking and open flame to specially designated locations. "No Smoking" signs shall be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(vii) Special conditions for accumulation of incompatible wastes.

(A) Incompatible wastes, or incompatible wastes and materials, see appendix V of 40 CFR 265 for examples, shall not

be placed in the same container, unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(B) Hazardous waste shall not be placed in an unwashed container that previously held an incompatible waste or material, see appendix V of 40 CFR 265 for examples, unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(C) A container holding a hazardous waste that is incompatible with any waste or other materials accumulated or stored nearby in other containers, piles, open tanks, or surface impoundments shall be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

(2) Accumulation of hazardous waste in tanks. If the waste is placed in tanks, the large quantity generator shall comply with the applicable requirements of 40 CFR 265.190 through 265.202, except 265.197(c) of Closure and post-closure care and 265.200, Waste analysis and trial tests, as well as the applicable requirements of 265.1030 through 265.1035, 265.1050 through 265.1064, and 265.1080 through 265.1090, which are incorporated by reference in Section R315-265-1.

(3) Accumulation of hazardous waste on drip pads. If the hazardous waste is placed on drip pads, the large quantity generator shall comply with the following:

(i) 40 CFR 265.440 through 265.445, which are incorporated by reference in Section R315-265-1;

(ii) The large quantity generator shall remove all wastes from the drip pad at least once every 90 days. Any hazardous wastes that are removed from the drip pad are then subject to the 90-day accumulation limit in Subsection R315-262-17(a) and Section R315-262-15, if the hazardous wastes are being managed in satellite accumulation areas prior to being moved to a central accumulation area; and

(iii) The large quantity generator shall maintain on site at the facility the following records readily available for inspection:

(A) A written description of procedures that are followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(B) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

(4) Accumulation of hazardous waste in containment buildings. If the waste is placed in containment buildings, the large quantity generator shall comply with 40 CFR 265.1100 through 265.1102, which are incorporated by reference in Section R315-265-1. The generator shall label its containment building with the words "Hazardous Waste" in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers, or other persons on site, and also in a conspicuous place provide an indication of the hazards of the contents, examples include, but are not limited to, the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic; hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding; a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704. The generator shall also maintain:

(i) The professional engineer certification that the building complies with the design standards specified in 40 CFR 265.1101, which is incorporated by reference in Section R315-265-1. This certification shall be in the generator's files prior to operation of the unit; and

(ii) The following records by use of inventory logs, monitoring equipment, or any other effective means:

(A) A written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that the generator is consistent with respecting the 90 day limit, and documentation that the procedures are complied with; or

(B) Documentation that the unit is emptied at least once every 90 days.

(C) Inventory logs or records with the above information shall be maintained on site and readily available for inspection.

(5) Labeling and marking of containers and tanks.

(i) Containers. A large quantity generator shall mark or label its containers with the following:

(A) The words "Hazardous Waste";

(B) An indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704; and

(C) The date upon which each period of accumulation begins clearly visible for inspection on each container.

(ii) Tanks. A large quantity generator accumulating hazardous waste in tanks shall do the following:

(A) Mark or label its tanks with the words "Hazardous Waste";

(B) Mark or label its tanks with an indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704;

(C) Use inventory logs, monitoring equipment or other records to demonstrate that hazardous waste has been emptied within 90 days of first entering the tank if using a batch process, or in the case of a tank with a continuous flow process, demonstrate that estimated volumes of hazardous waste entering the tank daily exit the tank within 90 days of first entering; and

(D) Keep inventory logs or records with the above information on site and readily available for inspection.

(6) Emergency procedures. The large quantity generator complies with the standards in Section R315-262-250 through R315-262-265, Preparedness, Prevention and Emergency Procedures for Large Quantity Generators.

(7) Personnel training.

(i)(A) Facility personnel shall successfully complete a program of classroom instruction, online training, e.g., computer-based or electronic, or on-the-job training that teaches them to perform their duties in a way that ensures compliance with this part. The large quantity generator shall ensure that this program includes all the elements described in the document required under Subsection R315-262-17(a)(7)(iv).

(B) This program shall be directed by a person trained in hazardous waste management procedures, and shall include instruction which teaches facility personnel hazardous waste management procedures, including contingency plan implementation, relevant to the positions in which they are

employed.

(C) At a minimum, the training program shall be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including where applicable:

(I) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;

(II) Key parameters for automatic waste feed cut-off systems;

(III) Communications or alarm systems;

(IV) Response to fires or explosions;

(V) Response to ground-water contamination incidents; and

(VI) Shutdown of operations.

(D) For facility employees that receive emergency response training pursuant to Occupational Safety and Health Administration regulations 29 CFR 1910.120(p)(8) and 1910.120(q), the large quantity generator is not required to provide separate emergency response training pursuant to Section R315-262-17, provided that the overall facility training meets all the conditions of exemption in Section R315-262-17.

(ii) Facility personnel shall successfully complete the program required in Subsection R315-262-17(a)(7)(i) within six months after the date of their employment or assignment to the facility, or to a new position at the facility, whichever is later. Employees shall not work in unsupervised positions until they have completed the training standards of Subsection R315-262-17(a)(7)(i).

(iii) Facility personnel shall take part in an annual review of the initial training required in Subsection R315-262-17(a)(7)(i).

(iv) The large quantity generator shall maintain the following documents and records at the facility:

(A) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(B) A written job description for each position listed under Subsection R315-262-17(a)(7)(iv)(A). This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but shall include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position;

(C) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under Subsection R315-262-17(a)(7)(iv)(A);

(D) Records that document that the training or job experience, required under Subsections R315-262-17(a)(7)(i), (ii), and (iii), has been given to, and completed by, facility personnel.

(v) Training records on current personnel shall be kept until closure of the facility. Training records on former employees shall be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

(8) Closure. A large quantity generator accumulating hazardous wastes in containers, tanks, drip pads, and containment buildings, prior to closing a unit at the facility, or prior to closing the facility, shall meet the following conditions:

(i) Notification for closure of a waste accumulation unit. A large quantity generator shall perform one of the following when closing a waste accumulation unit:

(A) Place a notice in the operating record within 30 days after closure identifying the location of the unit within the facility; or

(B) Meet the closure performance standards of Subsection R315-262-17(a)(8)(iii) for container, tank, and containment

building waste accumulation units or Subsection R315-262-17(a)(8)(iv) for drip pads and notify the Director following the procedures in Subsection R315-262-17(a)(8)(ii)(B) for the waste accumulation unit. If the waste accumulation unit is subsequently reopened, the generator may remove the notice from the operating record.

(ii) Notification for closure of the facility.

(A) Notify the Director using EPA form 8700-12 no later than 30 days prior to closing the facility.

(B) Notify EPA using EPA form 8700-12 within 90 days after closing the facility that it has complied with the closure performance standards of Subsection R315-262-17(a)(8)(iii) or (iv). If the facility cannot meet the closure performance standards of Subsection R315-262-17(a)(8)(iii) or (iv), notify the Director using EPA form 8700-12 that it will close as a landfill under 40 CFR 265.310, which is incorporated by reference in Section R315-265-1, in the case of a container, tank or containment building unit(s), or for a facility with drip pads, notify using EPA form 8700-12 that it will close under the standards of 40 CFR 265.445(b), which is incorporated by reference in Section R315-265-1.

(C) A large quantity generator may request additional time to clean close, but it shall notify the Director using EPA form 8700-12 within 75 days after the date provided in Subsection R315-262-17(a)(8)(ii)(A) to request an extension and provide an explanation as to why the additional time is required.

(iii) Closure performance standards for container, tank systems, and containment building waste accumulation units.

(A) At closure, the generator shall close the waste accumulation unit or facility in a manner that:

(I) Minimizes the need for further maintenance by controlling, minimizing, or eliminating, to the extent necessary to protect human health and the environment, the post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere,

(II) Removes or decontaminates all contaminated equipment, structures and soil and any remaining hazardous waste residues from waste accumulation units including containment system components (pads, liners, etc.), contaminated soils and subsoils, bases, and structures and equipment contaminated with waste, unless Subsection R315-261-3(d) applies.

(III) Any hazardous waste generated in the process of closing either the generator's facility or unit(s) accumulating hazardous waste shall be managed in accordance with all applicable standards of Rules R315-262, R315-263, R315-265 and R315-268, including removing any hazardous waste contained in these units within 90 days of generating it and managing these wastes in a hazardous waste permitted treatment, storage and disposal facility or interim status facility.

(IV) If the generator demonstrates that any contaminated soils and wastes cannot be practicably removed or decontaminated as required in Subsection R315-262-17(a)(8)(ii)(A)(II), then the waste accumulation unit is considered to be a landfill and the generator shall close the waste accumulation unit and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (40 CFR 265.310, which is incorporated by reference in Section R315-265-1). In addition, for the purposes of closure, post-closure, and financial responsibility, such a waste accumulation unit is then considered to be a landfill, and the generator shall meet all of the requirements for landfills specified in 40 CFR 265.110 through 265.121 and 265.140 through 265.148, which are incorporated by reference in Section R315-265-1.

(iv) Closure performance standards for drip pad waste accumulation units. At closure, the generator shall comply with the closure requirements of Subsections R315-262-17(a)(8)(ii)

and (a)(8)(iii)(A)(I) and (III), and 40 CFR 265.445(a) and (b), which are incorporated by reference in Section R315-265-1.

(v) The closure requirements of Subsection R315-262-17(a)(8) do not apply to satellite accumulation areas.

(9) Land disposal restrictions. The large quantity generator complies with all applicable requirements under Rule R315-268.

(b) Accumulation time limit extension. A large quantity generator who accumulates hazardous waste for more than 90 days is subject to the requirements of Rules R315-124, R315-264 through R315-266, R315-268, and R315-270 and the notification requirements of section 3010 of RCRA, unless it has been granted an extension to the 90-day period. Such extension may be granted by the Director if hazardous wastes shall remain on site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Director on a case-by-case basis.

(c) Accumulation of F006. A large quantity generator who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the EPA hazardous waste number F006, may accumulate F006 waste on site for more than 90 days, but not more than 180 days without being subject to Rules R315-124, R315-264 through R315-266 and R315-270, and the notification requirements of section 3010 of RCRA, provided that it complies with all of the following additional conditions for exemption:

(1) The large quantity generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants entering F006 or otherwise released to the environment prior to its recycling;

(2) The F006 waste is legitimately recycled through metals recovery;

(3) No more than 20,000 kilograms of F006 waste is accumulated on site at any one time; and

(4) The F006 waste is managed in accordance with the following:

(i)(A) If the F006 waste is placed in containers, the large quantity generator shall comply with the applicable conditions for exemption in Subsection R315-262-17(a)(1); and/or

(B) If the F006 is placed in tanks, the large quantity generator shall comply with the applicable conditions for exemption of Subsection R315-262-17(a)(2); and/or

(C) If the F006 is placed in containment buildings, the large quantity generator shall comply with 40 CFR 265.1100 through 265.1102, which are incorporated by reference in Section R315-265-1, and has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR 265.1101, which is incorporated by reference in Section R315-265-1, in the facility's files prior to operation of the unit. The large quantity generator shall maintain the following records:

(I) A written description of procedures to ensure that the F006 waste remains in the unit for no more than 180 days, a written description of the waste generation and management practices for the facility showing that they are consistent with the 180-day limit, and documentation that the large quantity generator is complying with the procedures; or

(II) Documentation that the unit is emptied at least once every 180 days.

(ii) The large quantity generator is exempt from all the requirements in 40 CFR 265.110 through 265.121 and 265.140 through 265.148, which are incorporated by reference in Section R315-265-1, except for those referenced in Subsection R315-262-17(a)(8).

(iii) The date upon which each period of accumulation begins is clearly marked and shall be clearly visible for inspection on each container;

(iv) While being accumulated on site, each container and

tank is labeled or marked clearly with:

(A) The words "Hazardous Waste"; and  
 (B) An indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704.

(v) The large quantity generator complies with the requirements in Subsection R315-262-17(a)(6) and (7).

(d) F006 transported over 200 miles. A large quantity generator who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the EPA hazardous waste number F006, and who shall transport this waste, or offer this waste for transportation, over a distance of 200 miles or more for off-site metals recovery, may accumulate F006 waste on site for more than 90 days, but not more than 270 days without being subject to Rules R315-124, R315-264 through R315-266, R315-270, and the notification requirements of section 3010 of RCRA, if the large quantity generator complies with all of the conditions for exemption of Subsections R315-262-17(c)(1) through (4).

(e) F006 accumulation time extension. A large quantity generator accumulating F006 in accordance with Subsections R315-262-17(c) and (d) who accumulates F006 waste on site for more than 180 days, or for more than 270 days if the generator shall transport this waste, or offer this waste for transportation, over a distance of 200 miles or more, or who accumulates more than 20,000 kilograms of F006 waste on site is an operator of a storage facility and is subject to the requirements of Rules R315-124, R315-264, R315-265, and R315-270, and the notification requirements of section 3010 of RCRA, unless the generator has been granted an extension to the 180-day, or 270-day if applicable, period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by the Director if F006 waste shall remain on site for longer than 180 days (or 270 days if applicable) or if more than 20,000 kilograms of F006 waste shall remain on site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the Director on a case-by-case basis.

(f) Consolidation of hazardous waste received from very small quantity generators. Large quantity generators may accumulate on site hazardous waste received from very small quantity generators under control of the same person, as defined in Section R315-260-10, without a storage permit or interim status and without complying with the requirements of Rules R315-124, R315-264 through R315-266, R315-268, and R315-270, and the notification requirements of section 3010 of RCRA, provided that they comply with the following conditions. "Control," for the purposes of this section, means the power to direct the policies of the generator, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator facilities on behalf of a different person shall not be deemed to "control" such generators.

(1) The large quantity generator notifies the Director at least thirty (30) days prior to receiving the first shipment from a very small quantity generator(s) using EPA Form 8700-12; and

(i) Identifies on the form the name(s) and site address(es) for the very small quantity generator(s) as well as the name and

business telephone number for a contact person for the very small quantity generator(s); and

(ii) Submits an updated Site ID form (EPA Form 8700-12) within 30 days after a change in the name or site address for the very small quantity generator.

(2) The large quantity generator maintains records of shipments for three years from the date the hazardous waste was received from the very small quantity generator. These records shall identify the name, site address, and contact information for the very small quantity generator and include a description of the hazardous waste received, including the quantity and the date the waste was received.

(3) The large quantity generator complies with the independent requirements identified in Subsection R315-262-10(a)(1)(iii) and the conditions for exemption in Subsection R315-262-17(f) for all hazardous waste received from a very small quantity generator. For purposes of the labeling and marking regulations in Subsection R315-262-17(a)(5), the large quantity generator shall label the container or unit with the date accumulation started, i.e., the date the hazardous waste was received from the very small quantity generator. If the large quantity generator is consolidating incoming hazardous waste from a very small quantity generator with either its own hazardous waste or with hazardous waste from other very small quantity generators, the large quantity generator shall label each container or unit with the earliest date any hazardous waste in the container was accumulated on site.

(g) Rejected load. A large quantity generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of Sections R315-264-72 or 40 CFR 265.72, which is incorporated by reference in Section R315-265-1, may accumulate the returned waste on site in accordance with Subsections R315-262-17(a) and (b). Upon receipt of the returned shipment, the generator shall:

(1) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

(2) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

#### **R315-262-18. General -- EPA Identification Numbers and Re-Notification for Small Quantity Generators and Large Quantity Generators.**

(a) A generator shall not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Director.

(b) A generator who has not received an EPA identification number shall obtain one by applying to the Director using EPA Form 8700-12. Upon receiving the request the Director will assign an EPA identification number to the generator.

(c) A generator shall not offer its hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number.

(d) Re-notification.

(1) A small quantity generator shall re-notify the Director starting in 2021 and every four years thereafter using EPA Form 8700-12. This re-notification shall be submitted by September 1st of each year in which re-notifications are required.

(2) A large quantity generator shall re-notify the Director by March 1 of each even-numbered year thereafter using EPA Form 8700-12. A large quantity generator may submit this re-notification as part of its Biennial Report required under Section R315-262-41.

(e) A recognized trader shall not arrange for import or export of hazardous waste without having received an EPA identification number from the Director.

**R315-262-20. Manifest Requirements Applicable to Small and Large Quantity Generators -- General Requirements.**

(a)(1) A generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, shall prepare a Manifest (OMB Control number 2050-0039) on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A, according to the instructions included in the appendix to Rule R315-262.

(2) Reserved.

(3) Electronic manifest. In lieu of using the manifest form specified in Subsection R315-262-20(a)(1), a person required to prepare a manifest under Subsection R315-262-20(a)(1) may prepare and use an electronic manifest, provided that the person:

(i) Complies with the requirements in Section R315-262-24 for use of electronic manifests, and

(ii) Complies with the requirements of 40 CFR 3.10 for the reporting of electronic documents to EPA.

(b) A generator shall designate on the manifest one facility which is permitted to handle the waste described on the manifest.

(c) A generator may also designate on the manifest one alternate facility which is permitted to handle his waste in the event an emergency prevents delivery of the waste to the primary designated facility.

(d) If the transporter is unable to deliver the hazardous waste to the designated facility or the alternate facility, the generator shall either designate another facility or instruct the transporter to return the waste.

(e) The requirements of Section R315-262-20 through 27 do not apply to hazardous waste produced by generators of greater than 100 kg but less than 1000 kg in a calendar month where:

(1) The waste is reclaimed under a contractual agreement pursuant to which:

(i) The type of waste and frequency of shipments are specified in the agreement;

(ii) The vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator is owned and operated by the reclaimer of the waste; and

(2) The generator maintains a copy of the reclamation agreement in his files for a period of at least three years after termination or expiration of the agreement.

(f) The requirements of Sections R315-262-20 through 27 and Subsection R315-262-32(b) do not apply to the transport of hazardous wastes on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. Notwithstanding Subsection R315-263-10(a), the generator or transporter shall comply with the requirements for transporters set forth in Sections R315-263-30 and 31 in the event of a discharge of hazardous waste on a public or private right-of-way.

**R315-262-21. Manifest Requirements Applicable to Small and Large Quantity Generators -- Manifest Tracking Numbers, Manifest Printing, and Obtaining Manifests.**

(a)(1) A registrant may not print, or have printed, the manifest for use of distribution unless it has received approval from the EPA Director of the Office of Resource Conservation and Recovery to do so under Subsection R315-262-21(c) and (e).

(2) The approved registrant is responsible for ensuring that the organizations identified in its application are in compliance with the procedures of its approved application and the requirements of Section R315-262-21. The registrant is responsible for assigning manifest tracking numbers to its manifests.

(b) A registrant shall submit an initial application to the

EPA Director of the Office of Resource Conservation and Recovery that contains the following information:

(1) Name and mailing address of registrant;

(2) Name, telephone number and email address of contact person;

(3) Brief description of registrant's government or business activity;

(4) EPA identification number of the registrant, if applicable;

(5) Description of the scope of the operations that the registrant plans to undertake in printing, distributing, and using its manifests, including:

(i) A description of the printing operation. The description should include an explanation of whether the registrant intends to print its manifests in-house, i.e., using its own printing establishments, or through a separate, i.e., unaffiliated, printing company. If the registrant intends to use a separate printing company to print the manifest on its behalf, the application shall identify this printing company and discuss how the registrant will oversee the company. If this includes the use of intermediaries, e.g., prime and subcontractor relationships, the role of each shall be discussed. The application shall provide the name and mailing address of each company. It also shall provide the name and telephone number of the contact person at each company.

(ii) A description of how the registrant will ensure that its organization and unaffiliated companies, if any, comply with the requirements of Section R315-262-21. The application shall discuss how the registrant will ensure that a unique manifest tracking number will be pre-printed on each manifest. The application shall describe the internal control procedures to be followed by the registrant and unaffiliated companies to ensure that numbers are tightly controlled and remain unique. In particular, the application shall describe how the registrant will assign manifest tracking numbers to its manifests. If computer systems or other infrastructure will be used to maintain, track, or assign numbers, these should be indicated. The application shall also indicate how the printer will pre-print a unique number on each form, e.g., crash or press numbering. The application also shall explain the other quality procedures to be followed by each establishment and printing company to ensure that all required print specifications are consistently achieved and that printing violations are identified and corrected at the earliest practicable time.

(iii) An indication of whether the registrant intends to use the manifests for its own business operations or to distribute the manifests to a separate company or to the general public, e.g., for purchase.

(6) A brief description of the qualifications of the company that will print the manifest. The registrant may use readily available information to do so, e.g., corporate brochures, product samples, customer references, documentation of ISO certification, so long as such information pertains to the establishments or company being proposed to print the manifest.

(7) Proposed unique three-letter manifest tracking number suffix. If the registrant is approved to print the manifest, the registrant shall use this suffix to pre-print a unique manifest tracking number on each manifest.

(8) A signed certification by a duly authorized employee of the registrant that the organizations and companies in its application will comply with the procedures of its approved application and the requirements of Section R315-262-21 and that it will notify the EPA Director of the Office of Resource Conservation and Recovery of any duplicated manifest tracking numbers on manifests that have been used or distributed to other parties as soon as this becomes known.

(c) EPA shall review the application submitted under Subsection R315-262-21(b) and either approve it or request additional information or modification before approving it.

(d)(1) Upon EPA approval of the application under Subsection R315-262-21(c), EPA shall provide the registrant an electronic file of the manifest, continuation sheet, and manifest instructions and ask the registrant to submit three fully assembled manifests and continuation sheet samples, except as noted in Subsection R315-262-21(d)(3). The registrant's samples shall meet all of the specifications in Subsection R315-262-21(f) and be printed by the company that will print the manifest as identified in the application approved under Subsection R315-262-21(c).

(2) The registrant shall submit a description of the manifest samples as follows:

(i) Paper type, i.e., manufacturer and grade of the manifest paper;

(ii) Paper weight of each copy;

(iii) Ink color of the manifest's instructions. If screening of the ink was used, the registrant shall indicate the extent of the screening; and

(iv) Method of binding the copies.

(3) The registrant need not submit samples of the continuation sheet if it will print its continuation sheet using the same paper type, paper weight of each copy, ink color of the instructions, and binding method as its manifest form samples.

(e) EPA shall evaluate the forms and either approve the registrant to print them as proposed or request additional information or modification to them before approval. EPA shall notify the registrant of its decision by mail. The registrant cannot use or distribute its forms until EPA approves them. An approved registrant shall print the manifest and continuation sheet according to its application approved under Subsection R315-262-21(c) and the manifest specifications in Subsection R315-262-21(f). It also shall print the forms according to the paper type, paper weight, ink color of the manifest instructions and binding method of its approved forms.

(f) Paper manifests and continuation sheets shall be printed according to the following specifications:

(1) The manifest and continuation sheet shall be printed with the exact format and appearance as EPA Forms 8700-22 and 8700-22A, respectively. However, information required to complete the manifest may be pre-printed on the manifest form.

(2) A unique manifest tracking number assigned in accordance with a numbering system approved by EPA shall be pre-printed in Item 4 of the manifest. The tracking number shall consist of a unique three-letter suffix following nine digits.

(3) The manifest and continuation sheet shall be printed on 8 1/2 x 11-inch white paper, excluding common stubs, e.g., top- or side-bound stubs. The paper shall be durable enough to withstand normal use.

(4) The manifest and continuation sheet shall be printed in black ink that can be legibly photocopied, scanned, or faxed, except that the marginal words indicating copy distribution shall be printed with a distinct ink color or with another method; e.g., white text against black background in text box, or, black text against grey background in text box; that clearly distinguishes the copy distribution notations from the other text and data entries on the form.

(5) The manifest and continuation sheet shall be printed as six-copy forms. Copy-to-copy registration shall be exact within 1/32 nd of an inch. Handwritten and typed impressions on the form shall be legible on all six copies. Copies shall be bound together by one or more common stubs that reasonably ensure that they will not become detached inadvertently during normal use.

(6) Each copy of the manifest and continuation sheet shall indicate how the copy shall be distributed, as follows:

(i) Page 1, top copy: "Designated facility to destination State, if required".

(ii) Page 2: "Designated facility to generator State, if required".

(iii) Page 3: "Designated facility to generator".

(iv) Page 4: "Designated facility's copy".

(v) Page 5: "Transporter's copy".

(vi) Page 6 (bottom copy): "Generator's initial copy".

(7) The instructions in the appendix to Rule R315-262 shall appear legibly on the back of the copies of the manifest and continuation sheet as provided in Subsection R315-262-21(f). The instructions shall not be visible through the front of the copies when photocopied or faxed.

(i) Manifest EPA Form 8700-22.

(A) The "Instructions for Generators" on Copy 6;

(B) The "Instructions for International Shipment Block" and "Instructions for Transporters" on Copy 5; and

(C) The "Instructions for Treatment, Storage, and Disposal Facilities" on Copy 4.

(ii) Manifest EPA Form 8700-22A.

(A) The "Instructions for Generators" on Copy 6;

(B) The "Instructions for Transporters" on Copy 5; and

(C) The "Instructions for Treatment, Storage, and Disposal Facilities" on Copy 4.

(g)(1) A generator may use manifests printed by any source so long as the source of the printed form has received approval from EPA to print the manifest under Subsections R315-262-21(c) and (e). A registered source may be a:

(i) State agency;

(ii) Commercial printer;

(iii) Hazardous waste generator, transporter or TSDF; or

(iv) Hazardous waste broker or other preparer who prepares or arranges shipments of hazardous waste for transportation.

(2) A generator shall determine whether the generator state or the consignment state for a shipment regulates any additional wastes, beyond those regulated Federally, as hazardous wastes under these states' authorized programs. Generators also shall determine whether the consignment state or generator state requires the generator to submit any copies of the manifest to these states. In cases where the generator shall supply copies to either the generator's state or the consignment state, the generator is responsible for supplying legible photocopies of the manifest to these states.

(h)(1) If an approved registrant would like to update any of the information provided in its application approved under Subsection R315-262-21(c), e.g., to update a company phone number or name of contact person, the registrant shall revise the application and submit it to the EPA Director of the Office of Resource Conservation and Recovery, along with an indication or explanation of the update, as soon as practicable after the change occurs. The Agency either shall approve or deny the revision. If the Agency denies the revision, it shall explain the reasons for the denial, and it shall contact the registrant and request further modification before approval.

(2) If the registrant would like a new tracking number suffix, the registrant shall submit a proposed suffix to the EPA Director of the Office of Resource Conservation and Recovery, along with the reason for requesting it. The Agency shall either approve the suffix or deny the suffix and provide an explanation why it is not acceptable.

(3) If a registrant would like to change the paper type, paper weight, ink color of the manifest instructions, or binding method of its manifest or continuation sheet subsequent to approval under Subsection R315-262-21(e), then the registrant shall submit three samples of the revised form for EPA review and approval. If the approved registrant would like to use a new printer, the registrant shall submit three manifest samples printed by the new printer, along with a brief description of the printer's qualifications to print the manifest. EPA shall evaluate the manifests and either approve the registrant to print the forms as proposed or request additional information or modification to them before approval. EPA shall notify the registrant of its



decision by mail. The registrant cannot use or distribute its revised forms until EPA approves them.

(i) If, subsequent to its approval under Subsection R315-262-21(e), a registrant typesets its manifest or continuation sheet instead of using the electronic file of the forms provided by EPA, it shall submit three samples of the manifest or continuation sheet to the registry for approval. EPA shall evaluate the manifests or continuation sheets and either approve the registrant to print them as proposed or request additional information or modification to them before approval. EPA shall notify the registrant of its decision by mail. The registrant cannot use or distribute its typeset forms until EPA approves them.

(j) EPA may exempt a registrant from the requirement to submit form samples under Subsection R315-262-21(d) or (h)(3) if the Agency is persuaded that a separate review of the registrant's forms would serve little purpose in informing an approval decision; e.g., a registrant certifies that it will print the manifest using the same paper type, paper weight, ink color of the instructions and binding method of the form samples approved for some other registrant. A registrant may request an exemption from EPA by indicating why an exemption is warranted.

(k) An approved registrant shall notify EPA by phone or email as soon as it becomes aware that it has duplicated tracking numbers on any manifests that have been used or distributed to other parties.

(l) If, subsequent to approval of a registrant under Subsection R315-262-21(e), EPA becomes aware that the approved paper type, paper weight, ink color of the instructions, or binding method of the registrant's form is unsatisfactory, EPA shall contact the registrant and require modifications to the form.

(m)(1) EPA may suspend and, if necessary, revoke printing privileges if we find that the registrant:

(i) Has used or distributed forms that deviate from its approved form samples in regard to paper weight, paper type, ink color of the instructions, or binding method; or

(ii) Exhibits a continuing pattern of behavior in using or distributing manifests that contain duplicate manifest tracking numbers.

(2) EPA shall send a warning letter to the registrant that specifies the date by which it shall come into compliance with the requirements. If the registrant does not come in compliance by the specified date, EPA shall send a second letter notifying the registrant that EPA has suspended or revoked its printing privileges. An approved registrant shall provide information on its printing activities to EPA if requested.

#### **R315-262-22. Manifest Requirements Applicable to Small and Large Quantity Generators -- Number of Copies.**

The manifest consists of at least the number of copies which will provide the generator, each transporter, and the owner or operator of the designated facility with one copy each for their records and another copy to be returned to the generator.

#### **R315-262-23. Manifest Requirements Applicable to Small and Large Quantity Generators -- Use of the Manifest.**

(a) The generator shall:

(1) Sign the manifest certification by hand; and

(2) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and

(3) Retain one copy, in accordance with Subsection R315-262-40(a).

(b) The generator shall give the transporter the remaining copies of the manifest.

(c) For shipments of hazardous waste within Utah solely by water, bulk shipments only, the generator shall send three

copies of the manifest dated and signed in accordance with Section R315-262-23 to the owner or operator of the designated facility or the last water, bulk shipment, transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

(d) For rail shipments of hazardous waste within Utah which originate at the site of generation, the generator shall send at least three copies of the manifest dated and signed in accordance with Section R315-262-23 to:

(1) The next non-rail transporter, if any; or

(2) The designated facility if transported solely by rail; or

(3) The last rail transporter to handle the waste in the United States if exported by rail.

(e) For shipments of hazardous waste to a designated facility in an authorized State which has not yet obtained federal authorization to regulate that particular waste as hazardous, the generator shall assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility.

Note: See Subsections R315-263-20(e) and (f) for special provisions for rail or water, bulk shipment, transporters.

(f) For rejected shipments of hazardous waste or container residues contained in non-empty containers that are returned to the generator by the designated facility, following the procedures of Subsections R315-264-72(f) or 40 CFR 265.72(f), which is adopted by reference in Section R315-265-1; the generator shall:

(1) Sign either:

(i) Item 20 of the new manifest if a new manifest is used for the returned shipment; or

(ii) Item 18c of the original manifest if the original manifest is used for the returned shipment;

(2) Provide the transporter a copy of the manifest;

(3) Within 30 days of delivery of the rejected shipment or container residues contained in non-empty containers, send a copy of the manifest to the designated facility that returned the shipment to the generator; and

(4) Retain at the generator's site a copy of each manifest for at least three years from the date of delivery.

#### **R315-262-24. Manifest Requirements Applicable to Small and Large Quantity Generators -- Use of the Electronic Manifest.**

(a) Legal equivalence to paper manifests. Electronic manifests that are obtained, completed, and transmitted in accordance with Subsection R315-262-20(a)(3), and used in accordance with Section R315-262-24 in lieu of EPA Forms 8700-22 and 8700-22A are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

(1) Any requirement in these regulations to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of Section R315-262-25.

(2) Any requirement in these regulations to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when an electronic manifest is transmitted to the other person by submission to the system.

(3) Any requirement in these regulations for a generator to keep or retain a copy of each manifest is satisfied by retention of a signed electronic manifest in the generator's account on the national e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or Utah inspector.

(4) No generator may be held liable for the inability to produce an electronic manifest for inspection under Section

R315-262-24 if the generator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the generator bears no responsibility.

(b) A generator may participate in the electronic manifest system either by accessing the electronic manifest system from its own electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the generator's site by the transporter who accepts the hazardous waste shipment from the generator for off-site transportation.

(c) Restriction on use of electronic manifests. A generator may prepare an electronic manifest for the tracking of hazardous waste shipments involving any RCRA hazardous waste only if it is known at the time the manifest is originated that all waste handlers named on the manifest participate in the electronic manifest system.

(d) Requirement for one printed copy. To the extent the Hazardous Materials regulation on shipping papers for carriage by public highway requires shippers of hazardous materials to supply a paper document for compliance with 49 CFR 177.817, a generator originating an electronic manifest shall also provide the initial transporter with one printed copy of the electronic manifest.

(e) Special procedures when electronic manifest is unavailable. If a generator has prepared an electronic manifest for a hazardous waste shipment, but the electronic manifest system becomes unavailable for any reason prior to the time that the initial transporter has signed electronically to acknowledge the receipt of the hazardous waste from the generator, then the generator shall obtain and complete a paper manifest and if necessary, a continuation sheet (EPA Forms 8700-22 and 8700-22A) in accordance with the manifest instructions in the appendix to Rule R315-262, and use these paper forms from this point forward in accordance with the requirements of Section R315-262-23.

(f) Special procedures for electronic signature methods undergoing tests. If a generator has prepared an electronic manifest for a hazardous waste shipment, and signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the generator shall also sign with an ink signature the generator/officer certification on the printed copy of the manifest provided under Subsection R315-262-24(d).

(g) Imposition of user fee. A generator who is a user of the electronic manifest may be assessed a user fee by EPA for the origination of each electronic manifest. EPA shall maintain and update from time-to-time the current schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to Rule R315-262.

**R315-262-25. Manifest Requirements Applicable to Small and Large Quantity Generators -- Electronic Manifest Signatures.**

Electronic signature methods for the e-Manifest system shall:

(a) Be a legally valid and enforceable signature under applicable EPA and other Federal requirements pertaining to electronic signatures; and

(b) Be a method that is designed and implemented in a manner that EPA considers to be as cost-effective and practical as possible for the users of the manifest.

**R315-262-27. Manifest Requirements Applicable to Small and Large Quantity Generators -- Waste Minimization Certification.**

A generator who initiates a shipment of hazardous waste

shall certify to one of the following statements in Item 15 of the uniform hazardous waste manifest:

(a) "I am a large quantity generator. I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment;" or

(b) "I am a small quantity generator. I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford."

**R315-262-30. Pre-Transport Requirements Applicable to Small and Large Quantity Generators -- Packaging.**

Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall package the waste in accordance with the applicable Department of Transportation regulations on packaging under 49 CFR parts 173, 178, and 179.

**R315-262-31. Pre-Transport Requirements Applicable to Small and Large Quantity Generators -- Labeling.**

Before transporting or offering hazardous waste for transportation off-site, a generator shall label each package in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR part 172.

**R315-262-32. Pre-Transport Requirements Applicable to Small and Large Quantity Generators -- Marking.**

(a) Before transporting or offering hazardous waste for transportation off-site, a generator shall mark each package of hazardous waste in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR part 172;

(b) Before transporting hazardous waste or offering hazardous waste for transportation off site, a generator shall mark each container of 119 gallons or less used in such transportation with the following words and information in accordance with the requirements of 49 CFR 172.304:

(1) HAZARDOUS WASTE-Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

(2) Generator's Name and Address \_\_\_\_\_.

(3) Generator's EPA Identification Number \_\_\_\_\_.

(4) Manifest Tracking Number \_\_\_\_\_.

(5) EPA Hazardous Waste Number(s) \_\_\_\_\_.

(c) A generator may use a nationally recognized electronic system, such as bar coding, to identify the EPA Hazardous Waste Number(s), as required by Subsection R315-262-32(b)(5) or paragraph (d).

(d) Lab packs that will be incinerated in compliance with Subsection R315-268-42(c) are not required to be marked with EPA Hazardous Waste Number(s), except D004, D005, D006, D007, D008, D010, and D011, where applicable.

**R315-262-33. Pre-Transport Requirements Applicable to Small and Large Quantity Generators -- Placarding.**

Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall placard or offer the initial transporter the appropriate placards according to Department of Transportation regulations for hazardous materials under 49 CFR part 172, subpart F.

**R315-262-35. Pre-Transport Requirements Applicable to Small and Large Quantity Generators -- Liquids in Landfills Prohibition.**

The placement of bulk or non-containerized liquid

hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited. Prior to disposal in a hazardous waste landfill, liquids shall meet additional requirements as specified in Sections R315-264-314 and 40 CFR 265.314, which is incorporated by reference in Section R315-265-1.

**R315-262-40. Recordkeeping and Reporting Applicable to Small and Large Quantity Generators -- Recordkeeping.**

(a) A generator shall keep a copy of each manifest signed in accordance with Subsection R315-262-23(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy shall be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

(b) A generator shall keep a copy of each Biennial Report and Exception Report for a period of at least three years from the due date of the report.

(c) A generator shall follow Subsection R315-262-11(f) for recordkeeping requirements for documenting hazardous waste determinations.

(d) The periods or retention referred to in Section R315-262-40 are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Director.

(e) Records maintained in accordance with Section R315-262-40 and any other records which the Director deems necessary to determine quantities and disposition of hazardous waste or other determinations, test results, or waste analyses made in accordance with R315-262-11 shall be available for inspection by any duly authorized officer, employee or representative of the Department or the Director as provided in R315-260-5 for a period of at least three years from the date the waste was last sent to on-site or off-site treatment, storage, or disposal facilities.

**R315-262-41. Recordkeeping and Reporting Applicable to Small and Large Quantity Generators -- Biennial Report for Large Quantity Generators.**

(a) A generator who is a large quantity generator for at least one month of an odd-numbered year, reporting year, who ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States shall complete and submit EPA Form 8700-13 A/B to the Director by March 1 of the following even-numbered year and shall cover generator activities during the previous year.

(b) Any generator who is a large quantity generator for at least one month of an odd-numbered year (reporting year) who treats, stores, or disposes of hazardous waste on site shall complete and submit EPA Form 8700-13 A/B to the Director by March 1 of the following even-numbered year covering those wastes in accordance with the provisions of Rules R315-264, R315-265, R315-266, and R315-270. This requirement also applies to large quantity generators that receive hazardous waste from very small quantity generators pursuant to Subsection R315-262-17(f).

(c) Exports of hazardous waste to foreign countries are not required to be reported on the Biennial Report form. A separate annual report requirement is set forth at Subsection R315-262-83(g) for hazardous waste exporters.

**R315-262-42. Recordkeeping and Reporting Applicable to Small and Large Quantity Generators -- Exception Reporting.**

(a)(1) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e) in a calendar month, who does not receive a copy of the manifest with the handwritten signature of

the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter shall contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.

(2) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e) in a calendar month, shall submit an Exception Report to the Director if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The Exception Report shall include:

(i) A legible copy of the manifest for which the generator does not have confirmation of delivery;

(ii) A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

(b) A generator of greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 60 days of the date the waste was accepted by the initial transporter shall submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the Director.

Note: The submission to the Director need only be a handwritten or typed note on the manifest itself, or on an attached sheet of paper, stating that the return copy was not received.

(c) For rejected shipments of hazardous waste or container residues contained in non-empty containers that are forwarded to an alternate facility by a designated facility using a new manifest, following the procedures of Subsections R315-264-72(e)(1) through (6) or 40 CFR 265.72(e)(1) through (6), which are adopted by reference; the generator shall comply with the requirements of Subsections R315-262-42(a) or (b), as applicable, for the shipment forwarding the material from the designated facility to the alternate facility instead of for the shipment from the generator to the designated facility. For purposes of Subsection R315-262-42(a) or (b) for a shipment forwarding such waste to an alternate facility by a designated facility:

(1) The copy of the manifest received by the generator shall have the handwritten signature of the owner or operator of the alternate facility in place of the signature of the owner or operator of the designated facility, and

(2) The 35/45/60-day timeframes begin the date the waste was accepted by the initial transporter forwarding the hazardous waste shipment from the designated facility to the alternate facility.

**R315-262-43. Recordkeeping and Reporting Applicable to Small and Large Quantity Generators -- Additional Reporting.**

The Director, as he deems necessary, may require generators to furnish additional reports concerning the quantities and disposition of wastes identified or listed in Rule R315-261.

**R315-262-44. Recordkeeping and Reporting Applicable to Small and Large Quantity Generators -- Recordkeeping for Small Quantity Generators.**

A small quantity generator is subject only to the following independent requirements in Sections R315-262-40 through R315-262-43:

(a) Subsection R315-262-40(a), (c), and (d), recordkeeping;

- (b) Subsection R315-262-42(b), exception reporting; and
- (c) Section R315-262-43, additional reporting.

**R315-262-50. Exports of Hazardous Waste -- Applicability.**

Sections R315-262-50 through 58 establish requirements applicable to exports of hazardous waste. Except to the extent Section R315-262-58 provides otherwise, a primary exporter of hazardous waste shall comply with the special requirements of Sections R315-262-50 through 58 and a transporter transporting hazardous waste for export shall comply with applicable requirements of Rule R315-263. Section R315-262-58 sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, treatment, storage and disposal of hazardous waste for shipments between the United States and those countries.

**R315-262-51. Exports of Hazardous Waste -- Definitions.**

In addition to the definitions set forth at Section R315-260-10, the following definitions apply to Sections R315-262-50 through 58:

Consignee means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste will be sent.

EPA Acknowledgement of Consent means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment. Primary Exporter means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Sections R315-262-20 through 25 and 27 which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

Receiving country means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal, except short-term storage incidental to transportation. Transit country means any foreign country, other than a receiving country, through which a hazardous waste is transported.

**R315-262-52. Exports of Hazardous Waste -- General Requirements.**

Exports of hazardous waste are prohibited except in compliance with the applicable requirements of Sections R315-262-50 through 58 and Rule R315-263. Exports of hazardous waste are prohibited unless:

- (a) Notification in accordance with Section R315-262-53 has been provided;
- (b) The receiving country has consented to accept the hazardous waste;
- (c) A copy of the EPA Acknowledgment of Consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest; or shipping paper for exports by water, bulk shipment.
- (d) The hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the EPA Acknowledgment of Consent.

**R315-262-53. Exports of Hazardous Waste -- Notification of Intent to Export.**

(a) A primary exporter of hazardous waste shall notify EPA of an intended export before such waste is scheduled to leave the United States. A complete notification should be submitted sixty days before the initial shipment is intended to be shipped off site. This notification may cover export activities extending over a twelve month or lesser period. The notification

shall be in writing, signed by the primary exporter, and include the following information:

- (1) Name, mailing address, telephone number and EPA ID number of the primary exporter;
- (2) By consignee, for each hazardous waste type:
  - (i) A description of the hazardous waste and the EPA hazardous waste number, from Sections R315-261-20 through 24, and R315-261-30 through 35, U.S. DOT proper shipping name, hazard class and ID number (UN/NA) for each hazardous waste as identified in 49 CFR parts 171 through 177;
  - (ii) The estimated frequency or rate at which such waste is to be exported and the period of time over which such waste is to be exported.
  - (iii) The estimated total quantity of the hazardous waste in units as specified in the instructions to the Uniform Hazardous Waste Manifest Form (8700-22);
  - (iv) All points of entry to and departure from each foreign country through which the hazardous waste will pass;
  - (v) A description of the means by which each shipment of the hazardous waste will be transported; e.g., mode of transportation vehicle, air, highway, rail, water, etc.; type(s) of container, drums, boxes, tanks, etc.;
  - (vi) A description of the manner in which the hazardous waste will be treated, stored or disposed of in the receiving country, e.g., land or ocean incineration, other land disposal, ocean dumping, recycling;
  - (vii) The name and site address of the consignee and any alternate consignee; and
  - (viii) The name of any transit countries through which the hazardous waste will be sent and a description of the approximate length of time the hazardous waste will remain in such country and the nature of its handling while there;

(b) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 12th St. and Pennsylvania Ave., NW., Washington, DC 20004. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export."

(c) Except for changes to the telephone number in Subsection R315-262-53(a)(1), changes to Subsection R315-262-53(a)(2)(v) and decreases in the quantity indicated pursuant to Subsection R315-262-53(a)(2)(iii) when the conditions specified in the original notification change, including any exceedance of the estimate of the quantity of hazardous waste specified in the original notification, the primary exporter shall provide EPA with a written renotification of the change. The shipment cannot take place until consent of the receiving country to the changes, except for changes to Subsection R315-262-53(a)(2)(viii) and in the ports of entry to and departure from transit countries pursuant to Subsection R315-262-53(a)(2)(iv), has been obtained and the primary exporter receives an EPA Acknowledgment of Consent reflecting the receiving country's consent to the changes.

(d) Upon request by EPA, a primary exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(e) In conjunction with the Department of State, EPA shall provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of Subsection R315-262-53(a). Where a claim of confidentiality is asserted with respect to any notification

information required by Subsection R315-262-53(a), EPA may find the notification not complete until any such claim is resolved in accordance with Section R315-260-2.

(f) Where the receiving country consents to the receipt of the hazardous waste, EPA shall forward an EPA Acknowledgment of Consent to the primary exporter for purposes of Subsection R315-262-54(h). Where the receiving country objects to receipt of the hazardous waste or withdraws a prior consent, EPA shall notify the primary exporter in writing. EPA shall also notify the primary exporter of any responses from transit countries.

#### **R315-262-54. Exports of Hazardous Waste -- Special Manifest Requirements.**

A primary exporter shall comply with the manifest requirements of Sections R315-262-20 through 23 except that:

(a) In lieu of the name, site address and EPA ID number of the designated permitted facility, the primary exporter shall enter the name and site address of the consignee;

(b) In lieu of the name, site address and EPA ID number of a permitted alternate facility, the primary exporter may enter the name and site address of any alternate consignee.

(c) In the International Shipments block, the primary exporter shall check the export box and enter the point of exit, city and State, from the United States.

(d) The following statement shall be added to the end of the first sentence of the certification set forth in Item 16 of the Uniform Hazardous Waste Manifest Form: "and conforms to the terms of the attached EPA Acknowledgment of Consent";

(e) The primary exporter may obtain the manifest from any source that is registered with the U.S. EPA as a supplier of manifests (e.g., states, waste handlers, and/or commercial forms printers).

(f) The primary exporter shall require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies, as defined in Subsection R315-264-72(a), between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste.

(g) In lieu of the requirements of Subsection R315-262-20(d), where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter shall:

(1) Renotify EPA of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with Subsection R315-262-53(c) and obtain an EPA Acknowledgment of Consent prior to delivery; or

(2) Instruct the transporter to return the waste to the primary exporter in the United States or designate another facility within the United States; and

(3) Instruct the transporter to revise the manifest in accordance with the primary exporter's instructions.

(h) The primary exporter shall attach a copy of the EPA Acknowledgment of Consent to the shipment to the manifest which shall accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter shall provide the transporter with an EPA Acknowledgment of Consent which shall accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter shall attach the copy of the EPA Acknowledgment of Consent to the shipping paper.

(i) The primary exporter shall provide the transporter with an additional copy of the manifest for delivery to the U.S. Customs official at the point the hazardous waste leaves the United States in accordance with Subsection R315-263-20(g)(4).

#### **R315-262-55. Exports of Hazardous Waste -- Exception Reports.**

In lieu of the requirements of Section R315-262-42, a

primary exporter shall file an exception report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, if any of the following occurs:

(a) He has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within forty-five days from the date it was accepted by the initial transporter;

(b) Within ninety days from the date the waste was accepted by the initial transporter, the primary exporter has not received written confirmation from the consignee that the hazardous waste was received;

(c) The waste is returned to the United States.

#### **R315-262-56. Exports of Hazardous Waste -- Annual Reports.**

(a) Primary exporters of hazardous waste shall file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous calendar year. Such reports shall include the following:

(1) The EPA identification number, name, and mailing and site address of the exporter;

(2) The calendar year covered by the report;

(3) The name and site address of each consignee;

(4) By consignee, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number, from Sections R315-261-20 through 24 and R315-261-30 through 35, DOT hazard class, the name and US EPA ID number, where applicable, for each transporter used, the total amount of waste shipped and number of shipments pursuant to each notification;

(5) Except for hazardous waste produced by exporters of greater than 100 kg but less than 1000 kg in a calendar month, unless provided pursuant to Section R315-262-41, in even numbered years:

(i) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

(ii) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.

(6) A certification signed by the primary exporter which states: I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.

(b) Annual reports submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered reports should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 12th St. and Pennsylvania Ave., NW., Washington, DC 20004.

#### **R315-262-57. Exports of Hazardous Waste -- Recordkeeping.**

(a) For all exports a primary exporter shall:

(1) Keep a copy of each notification of intent to export for

a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(2) Keep a copy of each EPA Acknowledgment of Consent for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(3) Keep a copy of each confirmation of delivery of the hazardous waste from the consignee for at least three years from the date the hazardous waste was accepted by the initial transporter; and

(4) Keep a copy of each annual report for a period of at least three years from the due date of the report.

(b) The periods of retention referred to in Section R315-262-57 are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

#### **R315-262-58. Exports of Hazardous Waste -- International Agreements.**

(a) Any person who exports or imports wastes that are considered hazardous under U.S. national procedures to or from designated Member countries of the Organization for Economic Cooperation and Development (OECD) as defined in Subsection R315-262-58(a)(1) for purposes of recovery is subject to Sections R315-262-80 through 89. The requirements of Sections R315-262-50 through 58 and R315-262-60 do not apply to such exports and imports. A waste is considered hazardous under U.S. national procedures if the waste meets the Federal definition of hazardous waste in Section R315-261-3 and is subject to either the manifesting requirements Sections R315-262-20 through 25 and 27, the universal waste management standards of Rule R315-273, the export requirements in the spent lead-acid battery management standards of Section R315-266-80.

(1) For the purposes of Sections R315-262-80 through 89, the designated OECD Member countries consist of Australia, Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, the Republic of Korea, the Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

(2) For the purposes of Sections R315-262-80 through 89, Canada and Mexico are considered OECD Member countries only for the purpose of transit.

(b) Any person who exports hazardous waste to or imports hazardous waste from: A designated OECD Member country for purposes other than recovery; e.g., incineration, disposal; Mexico, for any purpose; or Canada, for any purpose, remains subject to the requirements of Sections R315-262-50 through 58 and 60, and is not subject to the requirements of Sections R315-262-80 through 89.

#### **R315-262-60. Imports of Hazardous Waste.**

(a) Any person who imports hazardous waste from a foreign country into the United States shall comply with the requirements of Rule R315-262.

(b) When importing hazardous waste, a person shall meet all the requirements of Section R315-262-20 for the manifest except that:

(1) In place of the generator's name, address and EPA identification number, the name and address of the foreign generator and the importer's name, address and EPA identification number shall be used.

(2) In place of the generator's signature on the certification statement, the U.S. importer or his agent shall sign and date the certification and obtain the signature of the initial transporter.

(c) A person who imports hazardous waste may obtain the manifest form from any source that is registered with the U.S. EPA as a supplier of manifests; e.g., states, waste handlers,

and/or commercial forms printers.

(d) In the International Shipments block, the importer shall check the import box and enter the point of entry, city and State, into the United States.

(e) The importer shall provide the transporter with an additional copy of the manifest to be submitted by the receiving facility to U.S. EPA in accordance with Subsections R315-264-71(a)(3) and 40 CFR 265.71(a)(3), which is adopted by reference.

#### **R315-262-70. Farmers.**

A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in Rule R315-262 or other standards in Rules R315-264, R315-265, R315-268, or R315-270 for those wastes provided he triple rinses each emptied pesticide container in accordance with Subsection R315-261-7(b)(3) and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

#### **R315-262-80. Transboundary Movements of Hazardous Waste for Recovery or Disposal -- Applicability.**

(a) The requirements of Sections R315-262-80 through 89 apply to imports and exports of wastes that are considered hazardous under U.S. national procedures and are destined for recovery operations in the countries listed in Subsection R315-262-58(a)(1). A waste is considered hazardous under U.S. national procedures if the waste:

(1) Meets the Federal definition of hazardous waste in Section R315-261-3; and

(2) Is subject to either the manifesting requirements Sections R315-262-20 through 25 and 27, the universal waste management standards of Rule R315-273, the export requirements in the spent lead-acid battery management standards of Section R315-266-80.

(b) Any person; exporter, importer, or recovery facility operator; who mixes two or more wastes, including hazardous and non-hazardous wastes, or otherwise subjects two or more wastes, including hazardous and non-hazardous wastes, to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under RCRA and any exporter duties, if applicable, under Sections R315-262-80 through 89.

#### **R315-262-81. Transboundary Movements of Hazardous Waste for Recovery or Disposal -- Definitions.**

The following definitions apply to Sections R315-262-80 through 89.

Competent authority means the regulatory authority or authorities of concerned countries having jurisdiction over transboundary movements of wastes destined for recovery operations.

Countries concerned means the OECD Member countries of export or import and any OECD Member countries of transit.

Country of export means any designated OECD Member country listed in Subsection R315-262-58(a)(1) from which a transboundary movement of hazardous wastes is planned to be initiated or is initiated.

Country of import means any designated OECD Member country listed in Subsection R315-262-58(a)(1) to which a transboundary movement of hazardous wastes is planned or takes place for the purpose of submitting the wastes to recovery operations therein.

Country of transit means any designated OECD Member country listed in Subsections R315-262-58(a)(1) and (a)(2) other than the country of export or country of import across which a transboundary movement of hazardous wastes is planned or takes place.

Exporter means the person under the jurisdiction of the country of export who has, or will have at the time the planned transboundary movement commences, possession or other forms of legal control of the wastes and who proposes transboundary movement of the hazardous wastes for the ultimate purpose of submitting them to recovery operations. When the United States (U.S.) is the country of export, exporter is interpreted to mean a person domiciled in the United States.

Importer means the person to whom possession or other form of legal control of the waste is assigned at the time the waste is received in the country of import.

OECD area means all land or marine areas under the national jurisdiction of any OECD Member country listed in Section R315-262-58. When the regulations refer to shipments to or from an OECD Member country, this means OECD area.

OECD means the Organization for Economic Cooperation and Development.

Recognized trader means a person who, with appropriate authorization of countries concerned, acts in the role of principal to purchase and subsequently sell wastes; this person has legal control of such wastes from time of purchase to time of sale; such a person may act to arrange and facilitate transboundary movements of wastes destined for recovery operations.

Recovery facility means a facility which, under applicable domestic law, is operating or is authorized to operate in the country of import to receive wastes and to perform recovery operations on them.

Recovery operations means activities leading to resource recovery, recycling, reclamation, direct re-use or alternative uses, which include:

R1 Use as a fuel (other than in direct incineration) or other means to generate energy.

R2 Solvent reclamation/regeneration.

R3 Recycling/reclamation of organic substances which are not used as solvents.

R4 Recycling/reclamation of metals and metal compounds.

R5 Recycling/reclamation of other inorganic materials.

R6 Regeneration of acids or bases.

R7 Recovery of components used for pollution abatement.

R8 Recovery of components used from catalysts.

R9 Used oil re-refining or other reuses of previously used oil.

R10 Land treatment resulting in benefit to agriculture or ecological improvement.

R11 Uses of residual materials obtained from any of the operations numbered R1-R10.

R12 Exchange of wastes for submission to any of the operations numbered R1-R11.

R13 Accumulation of material intended for any operation numbered R1-R12.

Transboundary movement means any movement of wastes from an area under the national jurisdiction of one OECD Member country to an area under the national jurisdiction of another OECD Member country.

### **R315-262-82. Transboundary Movements of Hazardous Waste for Recovery or Disposal -- General Conditions.**

(a) Scope. The level of control for exports and imports of waste is indicated by assignment of the waste to either a list of wastes subject to the Green control procedures or a list of wastes subject to the Amber control procedures and by the national procedures of the United States, as defined in Subsection R315-262-80(a). The OECD Green and Amber lists are incorporated by reference in Subsection R315-262-89(d).

(1) Listed wastes subject to the Green control procedures.

(i) Green wastes that are not considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a) are subject to existing controls normally applied to commercial transactions.

(ii) Green wastes that are considered hazardous under U.S. national procedures as defined in Section R315-262-80(a) are subject to the Amber control procedures set forth in Sections R315-262-80 through 89.

(2) Listed wastes subject to the Amber control procedures.

(i) Amber wastes that are considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a) are subject to the Amber control procedures set forth in Sections R315-262-80 through 89.

(ii) Amber wastes that are considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a), are subject to the Amber control procedures in the United States, even if they are imported to or exported from a designated OECD Member country listed in Subsection R315-262-58(a)(1) that does not consider the waste to be hazardous. In such an event, the responsibilities of the Amber control procedures shift as provided:

(A) For U.S. exports, the United States shall issue an acknowledgement of receipt and assume other responsibilities of the competent authority of the country of import.

(B) For U.S. imports, the U.S. recovery facility/importer and the United States shall assume the obligations associated with the Amber control procedures that normally apply to the exporter and country of export, respectively.

(iii) Amber wastes that are not considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a), but are considered hazardous by an OECD Member country are subject to the Amber control procedures in the OECD Member country that considers the waste hazardous. All responsibilities of the U.S. importer/exporter shift to the importer/exporter of the OECD Member country that considers the waste hazardous unless the parties make other arrangements through contracts. Note to Subsection R315-262-82(a)(2): Some wastes subject to the Amber control procedures are not listed or otherwise identified as hazardous under RCRA, and therefore are not subject to the Amber control procedures of Sections R315-262-80 through 89. Regardless of the status of the waste under RCRA, however, other Federal environmental statutes, e.g., the Toxic Substances Control Act, restrict certain waste imports or exports. Such restrictions continue to apply with regard to Sections R315-262-80 through 89.

(3) Procedures for mixtures of wastes.

(i) A Green waste that is mixed with one or more other Green wastes such that the resulting mixture is not considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a) shall be subject to the Green control procedures, provided the composition of this mixture does not impair its environmentally sound recovery. Note to Subsection R315-262-82(a)(3)(i): The regulated community should note that some OECD Member countries may require, by domestic law, that mixtures of different Green wastes be subject to the Amber control procedures.

(ii) A Green waste that is mixed with one or more Amber wastes, in any amount, de minimis or otherwise, or a mixture of two or more Amber wastes, such that the resulting waste mixture is considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a) are subject to the Amber control procedures, provided the composition of this mixture does not impair its environmentally sound recovery. Note to Subsection R315-262-82(a)(3)(ii): The regulated community should note that some OECD Member countries may require, by domestic law, that a mixture of a Green waste and more than a de minimis amount of an Amber waste or a mixture of two or more Amber wastes be subject to the Amber control procedures.

(4) Wastes not yet assigned to an OECD waste list are eligible for transboundary movements, as follows:

(i) If such wastes are considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a),

such wastes are subject to the Amber control procedures.

(ii) If such wastes are not considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a), such wastes are subject to the Green control procedures.

(b) General conditions applicable to transboundary movements of hazardous waste:

(1) The waste shall be destined for recovery operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the importing country;

(2) The transboundary movement shall be in compliance with applicable international transport agreements; and

Note to Subsection R315-262-82(b)(2): These international agreements include, but are not limited to, the Chicago Convention (1944), ADR (1957), ADN (1970), MARPOL Convention (1973/1978), SOLAS Convention (1974), IMDG Code (1985), COTIF (1985), and RID (1985).

(3) Any transit of waste through a non-OECD Member country shall be conducted in compliance with all applicable international and national laws and regulations.

(c) Provisions relating to re-export for recovery to a third country:

(1) Re-export of wastes subject to the Amber control procedures from the United States, as the country of import, to a third country listed in Subsection R315-262-58(a)(1) may occur only after an exporter in the United States provides notification to and obtains consent from the competent authorities in the third country, the original country of export, and any transit countries. The notification shall comply with the notice and consent procedures in Section R315-262-83 for all countries concerned and the original country of export. The competent authorities of the original country of export, as well as the competent authorities of all other countries concerned have thirty days to object to the proposed movement.

(i) The thirty day period begins once the competent authorities of both the initial country of export and new country of import issue Acknowledgements of Receipt of the notification.

(ii) The transboundary movement may commence if no objection has been lodged after the thirty day period has passed or immediately after written consent is received from all relevant OECD importing and transit countries.

(2) In the case of re-export of Amber wastes to a country other than those listed in Subsection R315-262-58(a)(1), notification to and consent of the competent authorities of the original OECD Member country of export and any OECD Member countries of transit is required as specified in Subsection R315-262-82(c)(1), in addition to compliance with all international agreements and arrangements to which the first importing OECD Member country is a party and all applicable regulatory requirements for exports from the first country of import.

(d) Duty to return or re-export wastes subject to the Amber control procedures. When a transboundary movement of wastes subject to the Amber control procedures cannot be completed in accordance with the terms of the contract or the consent(s) and alternative arrangements cannot be made to recover the waste in an environmentally sound manner in the country of import, the waste shall be returned to the country of export or re-exported to a third country. The provisions of Subsection R315-262-82(c) apply to any shipments to be re-exported to a third country. The following provisions apply to shipments to be returned to the country of export as appropriate:

(1) Return from the United States to the country of export: The U.S. importer shall inform EPA at the specified address in Subsection R315-262-83(b)(1)(i) of the need to return the shipment. EPA shall then inform the competent authorities of the countries of export and transit, citing the reason(s) for returning the waste. The U.S. importer shall complete the return within ninety days from the time EPA informs the country of

export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned Member countries. If the return shipment will cross any transit country, the return shipment may only occur after EPA provides notification to and obtains consent from the competent authority of the country of transit, and provides a copy of that consent to the U.S. importer.

(2) Return from the country of import to the United States: The U.S. exporter shall provide for the return of the hazardous waste shipment within ninety days from the time the country of import informs EPA of the need to return the waste or such other period of time as the concerned Member countries agree. The U.S. exporter shall submit an exception report to EPA in accordance with Subsection R315-262-87(b).

(e) Duty to return wastes subject to the Amber control procedures from a country of transit. When a transboundary movement of wastes subject to the Amber control procedures does not comply with the requirements of the notification and movement documents or otherwise constitutes illegal shipment, and if alternative arrangements cannot be made to recover these wastes in an environmentally sound manner, the waste shall be returned to the country of export. The following provisions apply as appropriate:

(1) Return from the United States, as country of transit, to the country of export: The U.S. transporter shall inform EPA at the specified address in Subsection R315-262-83(b)(1)(i) of the need to return the shipment. EPA shall then inform the competent authority of the country of export, citing the reason(s) for returning the waste. The U.S. transporter shall complete the return within ninety days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned Member countries.

(2) Return from the country of transit to the United States, as country of export: The U.S. exporter shall provide for the return of the hazardous waste shipment within ninety days from the time the competent authority of the country of transit informs EPA of the need to return the waste or such other period of time as the concerned Member countries agree. The U.S. exporter shall submit an exception report to EPA in accordance with Subsection R315-262-87(b).

(f) Requirements for wastes destined for and received by R12 and R13 facilities. The transboundary movement of wastes destined for R12 and R13 operations shall comply with all Amber control procedures for notification and consent as set forth in Section R315-262-83 and for the movement document as set forth in Section R315-262-84. Additional responsibilities of R12/R13 facilities include:

(1) Indicating in the notification document the foreseen recovery facility or facilities where the subsequent R1-R11 recovery operation takes place or may take place.

(2) Within three days of the receipt of the wastes by the R12/R13 recovery facility or facilities, the facility(ies) shall return a signed copy of the movement document to the exporter and to the competent authorities of the countries of export and import. The facility(ies) shall retain the original of the movement document for three years.

(3) As soon as possible, but no later than thirty (30) days after the completion of the R12/R13 recovery operation and no later than one calendar year following the receipt of the waste, the R12 or R13 facility(ies) shall send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by mail, e-mail without digital signature followed by mail, or fax followed by mail.

(4) When an R12/R13 recovery facility delivers wastes for



recovery to an R1-R11 recovery facility located in the country of import, it shall obtain as soon as possible, but no later than one calendar year following delivery of the waste, a certification from the R1-R11 facility that recovery of the wastes at that facility has been completed. The R12/R13 facility shall promptly transmit the applicable certification to the competent authorities of the countries of import and export, identifying the transboundary movements to which the certification pertain.

(5) When an R12/R13 recovery facility delivers wastes for recovery to an R1-R11 recovery facility located:

(i) In the initial country of export, Amber control procedures apply, including a new notification;

(ii) In a third country other than the initial country of export, Amber control procedures apply, with the additional provision that the competent authority of the initial country of export shall also be notified of the transboundary movement.

(g) Laboratory analysis exemption. The transboundary movement of an Amber waste is exempt from the Amber control procedures if it is in certain quantities and destined for laboratory analysis to assess its physical or chemical characteristics, or to determine its suitability for recovery operations. The quantity of such waste shall be determined by the minimum quantity reasonably needed to perform the analysis in each particular case adequately, but in no case exceed twenty-five kilograms. Waste destined for laboratory analysis shall still be appropriately packaged and labeled.

### **R315-262-83. Transboundary Movements of Hazardous Waste for Recovery or Disposal -- Notification and Consent.**

(a) Applicability. Consent shall be obtained from the competent authorities of the relevant OECD countries of import and transit prior to exporting hazardous waste destined for recovery operations subject to Sections R315-262-80 through 89. Hazardous wastes subject to the Amber control procedures are subject to the requirements of Subsection R315-262-83(b); and wastes not identified on any list are subject to the requirements of Subsection R315-262-83(c).

(b) Amber wastes. Exports of hazardous wastes from the United States as described in Subsection R315-262-80(a) that are subject to the Amber control procedures are prohibited unless the notification and consent requirements of Subsections R315-262-83(b)(1) or (b)(2) are met.

(1) Transactions requiring specific consent:

(i) Notification. At least forty-five days prior to commencement of each transboundary movement, the exporter shall provide written notification in English of the proposed transboundary movement to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, with the words "Attention: OECD Export Notification" prominently displayed on the envelope. This notification shall include all of the information identified in Subsection R315-262-83(d). In cases where wastes having similar physical and chemical characteristics, the same United Nations classification, the same RCRA waste codes, and are to be sent periodically to the same recovery facility by the same exporter, the exporter may submit one general notification of intent to export these wastes in multiple shipments during a period of up to one year. Even when a general notification is used for multiple shipments, each shipment still shall be accompanied by its own movement document pursuant to Section R315-262-84.

(ii) Tacit consent. If no objection has been lodged by any countries concerned; i.e., exporting, importing, or transit; to a notification provided pursuant to Subsection R315-262-83(b)(1)(i) within thirty days after the date of issuance of the Acknowledgement of Receipt of notification by the competent authority of the country of import, the transboundary movement

may commence. Tacit consent expires one calendar year after the close of the thirty day period; renotification and renewal of all consents is required for exports after that date.

(iii) Written consent. If the competent authorities of all the relevant OECD importing and transit countries provide written consent in a period less than thirty days, the transboundary movement may commence immediately after all necessary consents are received. Written consent expires for each relevant OECD importing and transit country one calendar year after the date of that country's consent unless otherwise specified; renotification and renewal of each expired consent is required for exports after that date.

(2) Transboundary movements to facilities pre-approved by the competent authorities of the importing countries to accept specific wastes for recovery:

(i) Notification. The exporter shall provide EPA a notification that contains all the information identified in Subsection R315-262-83(d) in English, at least ten days in advance of commencing shipment to a pre-approved facility. The notification shall indicate that the recovery facility is pre-approved, and may apply to a single specific shipment or to multiple shipments as described in Subsection R315-262-83(b)(1)(i). This information shall be sent to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, with the words "OECD Export Notification-Pre-approved Facility" prominently displayed on the envelope. General notifications that cover multiple shipments as described in Subsection R315-262-83(b)(1)(i) may cover a period of up to three years. Even when a general notification is used for multiple shipments, each shipment still shall be accompanied by its own movement document pursuant to Section R315-262-84.

(ii) Exports to pre-approved facilities may take place after the elapse of seven working days from the issuance of an Acknowledgement of Receipt of the notification by the competent authority of the country of import unless the exporter has received information indicating that the competent authority of any countries concerned objects to the shipment.

(c) Wastes not covered in the OECD Green and Amber lists. Wastes destined for recovery operations, that have not been assigned to the OECD Green and Amber lists, incorporated by reference in Subsection R315-262-89(d), but which are considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a), are subject to the notification and consent requirements established for the Amber control procedures in accordance with Subsection R315-262-83(b). Wastes destined for recovery operations, that have not been assigned to the OECD Green and Amber lists incorporated by reference in Subsection R315-262-89(d), and are not considered hazardous under U.S. national procedures as defined by Subsection R315-262-80(a) are subject to the Green control procedures.

(d) Notifications submitted under Section R315-262-83 shall include the information specified in Subsections R315-262-83(d)(1) through (d)(14):

(1) Serial number or other accepted identifier of the notification document;

(2) Exporter name and EPA identification number, if applicable, address, telephone, fax numbers, and e-mail address;

(3) Importing recovery facility name, address, telephone, fax numbers, e-mail address, and technologies employed;

(4) Importer name, if not the owner or operator of the recovery facility, address, telephone, fax numbers, and e-mail address; whether the importer will engage in waste exchange recovery operation R12 or waste accumulation recovery operation R13 prior to delivering the waste to the final recovery facility and identification of recovery operations to be employed

at the final recovery facility;

(5) Intended transporter(s) and/or their agent(s); address, telephone, fax, and e-mail address;

(6) Country of export and relevant competent authority, and point of departure;

(7) Countries of transit and relevant competent authorities and points of entry and departure;

(8) Country of import and relevant competent authority, and point of entry;

(9) Statement of whether the notification is a single notification or a general notification. If general, include period of validity requested;

(10) Date(s) foreseen for commencement of transboundary movement(s);

(11) Means of transport envisaged;

(12) Designation of waste type(s) from the appropriate OECD list incorporated by reference in Subsection R315-262-89(d), description(s) of each waste type, estimated total quantity of each, RCRA waste code, and the United Nations number for each waste type;

(13) Specification of the recovery operation(s) as defined in Section R315-262-81.

(14) Certification/Declaration signed by the exporter that states:

I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, and that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement.

Name:

Signature:

Date:

Note to Subsection R315-262-83(d)(14): The United States does not currently require financial assurance for these waste shipments. However, U.S. exporters may be asked by other governments to provide and certify to such assurance as a condition of obtaining consent to a proposed movement.

(e) Certificate of Recovery. As soon as possible, but no later than thirty days after the completion of recovery and no later than one calendar year following receipt of the waste, the U.S. recovery facility shall send a certificate of recovery to the exporter and to the competent authorities of the countries of export and import by mail, e-mail without a digital signature followed by mail, or fax followed by mail. The certificate of recovery shall include a signed, written and dated statement that affirms that the waste materials were recovered in the manner agreed to by the parties to the contract required under Section R315-262-85.

#### **R315-262-84. Transboundary Movements of Hazardous Waste for Recovery or Disposal -- Movement Document.**

(a) All U.S. parties subject to the contract provisions of Section R315-262-85 shall ensure that a movement document meeting the conditions of Subsection R315-262-84(b) accompanies each transboundary movement of wastes subject to the Amber control procedures from the initiation of the shipment until it reaches the final recovery facility, including cases in which the waste is stored and/or sorted by the importer prior to shipment to the final recovery facility, except as provided in Subsections R315-262-84(a)(1) and (2).

(1) For shipments of hazardous waste within the United States solely by water, bulk shipments only, the generator shall forward the movement document with the manifest to the last water, bulk shipment, transporter to handle the waste in the United States if exported by water, in accordance with the manifest routing procedures at Subsection R315-262-23(c).

(2) For rail shipments of hazardous waste within the United States which originate at the site of generation, the

generator shall forward the movement document with the manifest, in accordance with the routing procedures for the manifest in Subsection R315-262-23(d), to the next non-rail transporter, if any, or the last rail transporter to handle the waste in the United States if exported by rail.

(b) The movement document shall include all information required under Section R315-262-83, for notification, as well as the following Subsection R315-262-84(b)(1) through (b)(7):

(1) Date movement commenced;

(2) Name; if not exporter, address; telephone; fax numbers; and e-mail of primary exporter;

(3) Company name and EPA ID number of all transporters;

(4) Identification; license, registered name or registration number; or means of transport, including types of packaging envisaged;

(5) Any special precautions to be taken by transporter(s);

(6) Certification/declaration signed by the exporter that no objection to the shipment has been lodged, as follows:

I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement, and that:

1. All necessary consents have been received; or

2. The shipment is directed to a recovery facility within the OECD area and no objection has been received from any of the countries concerned within the thirty day tacit consent period; or

3. The shipment is directed to a recovery facility pre-approved for that type of waste within the OECD area; such an authorization has not been revoked, and no objection has been received from any of the countries concerned.

Delete sentences that are not applicable

Name:

Signature:

Date:

(7) Appropriate signatures for each custody transfer, e.g., transporter, importer, and owner or operator of the recovery facility.

(c) Exporters also shall comply with the special manifest requirements of Subsections R315-262-54(a), (b), (c), (e), and (i) and importers shall comply with the import requirements of Section R315-262-60.

(d) Each U.S. person that has physical custody of the waste from the time the movement commences until it arrives at the recovery facility shall sign the movement document; e.g., transporter, importer, and owner or operator of the recovery facility.

(e) Within three working days of the receipt of imports subject to Sections R315-262-80 through 89, the owner or operator of the U.S. recovery facility shall send signed copies of the movement document to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and to the competent authorities of the countries of export and transit. If the concerned U.S. recovery facility is a R12/R13 recovery facility as defined under Section R315-262-81, the facility shall retain the original of the movement document for three years.

#### **R315-262-85. Contracts.**

(a) Transboundary movements of hazardous wastes subject to the Amber control procedures are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements, when the movement occurs between parties controlled by the same corporate or legal

entity. Such contracts or equivalent arrangements shall be executed by the exporter and the owner or operator of the recovery facility, and shall specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of Section R315-262-85 only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangements.

(b) Contracts or equivalent arrangements shall specify the name and EPA ID number, where available, of Subsections R315-262-85(b)(1) through (b)(4):

- (1) The generator of each type of waste;
- (2) Each person who will have physical custody of the wastes;
- (3) Each person who will have legal control of the wastes; and
- (4) The recovery facility.

(c) Contracts or equivalent arrangements shall specify which party to the contract will assume responsibility for alternate management of the wastes if their disposition cannot be carried out as described in the notification of intent to export. In such cases, contracts shall specify that:

(1) The person having actual possession or physical control over the wastes will immediately inform the exporter and the competent authorities of the countries of export and import and, if the wastes are located in a country of transit, the competent authorities of that country; and

(2) The person specified in the contract will assume responsibility for the adequate management of the wastes in compliance with applicable laws and regulations including, if necessary, arranging the return of wastes and, as the case may be, shall provide the notification for re-export.

(d) Contracts shall specify that the importer will provide the notification required in Subsection R315-262-82(c) prior to the re-export of controlled wastes to a third country.

(e) Contracts or equivalent arrangements shall include provisions for financial guarantees, if required by the competent authorities of any countries concerned, in accordance with applicable national or international law requirements.

Note to Subsection R315-262-85(e): Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD Member countries do. It is the responsibility of the exporter to ascertain and comply with such requirements; in some cases, transporters or importers may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.

(f) Contracts or equivalent arrangements shall contain provisions requiring each contracting party to comply with all applicable requirements of Sections R315-262-80 through 89.

(g) Upon request by EPA, U.S. exporters, importers, or recovery facilities shall submit to EPA copies of contracts, chain of contracts, or equivalent arrangements, when the movement occurs between parties controlled by the same corporate or legal entity. Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted in accordance with 40 CFR 2.203(b) shall be treated as confidential and shall be disclosed by EPA only as provided in 40 CFR 260.2.

Note to Subsection R315-262-85(g): Although the United States does not require routine submission of contracts at this time, the OECD Decision allows Member countries to impose such requirements. When other OECD Member countries require submission of partial or complete copies of the contract as a condition to granting consent to proposed movements, EPA shall request the required information; absent submission of

such information, some OECD Member countries may deny consent for the proposed movement.

#### **R315-262-86. Provisions Relating to Recognized Traders.**

(a) A recognized trader who takes physical custody of a waste and conducts recovery operations, including storage prior to recovery, is acting as the owner or operator of a recovery facility and shall be so authorized in accordance with all applicable Federal laws.

(b) A recognized trader acting as an exporter or importer for transboundary shipments of waste shall comply with all the requirements of Sections R315-262-80 through 89 associated with being an exporter or importer.

#### **R315-262-87. Reporting and Recordkeeping.**

(a) Annual reports. For all waste movements subject to Sections R315-262-80 through 89, persons, e.g., exporters, recognized traders, who meet the definition of primary exporter in Section R315-262-51 or who initiate the movement documentation under Section R315-262-84 shall file an annual report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. If the primary exporter or the person who initiates the movement document under Section R315-262-84 is required to file an annual report for waste exports that are not covered under Sections R315-262-80 through 89, he may include all export information in one report provided the following information on exports of waste destined for recovery within the designated OECD Member countries is contained in a separate section. Such reports shall include all of the following Sections R315-262-87(a)(1) through (a)(6) specified as follows:

(1) The EPA identification number, name, and mailing and site address of the exporter filing the report;

(2) The calendar year covered by the report;

(3) The name and site address of each final recovery facility;

(4) By final recovery facility, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number, from Sections R315-261-20 through 24 or R315-262-30 through 35, designation of waste type(s) and applicable waste code(s) from the appropriate OECD waste list incorporated by reference in Subsection R315-262-89(d), DOT hazard class, the name and U.S. EPA identification number, where applicable, for each transporter used, the total amount of hazardous waste shipped pursuant to Sections R315-262-80 through 89, and number of shipments pursuant to each notification;

(5) In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than 100kg but less than 1,000kg in a calendar month, and except for hazardous waste for which information was already provided pursuant to Section R315-262-41:

(i) A description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated; and

(ii) A description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and

(6) A certification signed by the person acting as primary exporter or initiator of the movement document under Section R315-262-84 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 the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.

(b) Exception reports. Any person who meets the definition of primary exporter in Section R315-262-51 or who initiates the movement document under Section R315-262-84 shall file an exception report in lieu of the requirements of Section R315-262-42, if applicable, with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, if any of the following occurs:

(1) He has not received a copy of the RCRA hazardous waste manifest, if applicable, signed by the transporter identifying the point of departure of the waste from the United States, within forty-five days from the date it was accepted by the initial transporter;

(2) Within ninety days from the date the waste was accepted by the initial transporter, the exporter has not received written confirmation from the recovery facility that the hazardous waste was received;

(3) The waste is returned to the United States.

(c) Recordkeeping.

(1) Persons who meet the definition of primary exporter in Section R315-262-51 or who initiate the movement document under Section R315-262-84 shall keep the following records in Subsections R315-262-87(c)(1)(i) through (c)(1)(iv):

(i) A copy of each notification of intent to export and all written consents obtained from the competent authorities of countries concerned for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(ii) A copy of each annual report for a period of at least three years from the due date of the report;

(iii) A copy of any exception reports and a copy of each confirmation of delivery, i.e., movement document, sent by the recovery facility to the exporter for at least three years from the date the hazardous waste was accepted by the initial transporter or received by the recovery facility, whichever is applicable; and

(iv) A copy of each certificate of recovery sent by the recovery facility to the exporter for at least three years from the date that the recovery facility completed processing the waste shipment.

(2) The periods of retention referred to in Section R315-262-87 are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

#### **R315-262-89. OECD Waste Lists.**

(a) General. For the purposes of Sections R315-262-80 through 89, a waste is considered hazardous under U.S. national procedures, and hence subject to Sections R315-262-80 through 89, if the waste:

(1) Meets the Federal definition of hazardous waste in Section R315-261-3; and

(2) Is subject to either Sections R315-262-20 through 25 and 27, the universal waste management standards of Rule R315-273, the export requirements in the spent lead-acid battery management standards of Section R315-266-80.

(b) If a waste is hazardous under Subsection R315-262-89(a), it is subject to the Amber control procedures, regardless of whether it appears in Appendix 4 of the OECD Decision, as defined in Section R315-262-81.

(c) The appropriate control procedures for hazardous wastes and hazardous waste mixtures are addressed in Section R315-262-82.

(d) The OECD waste lists, as set forth in Annex B ("Green List") and Annex C ("Amber List") (collectively "OECD waste lists") of the 2009 "Guidance Manual for the Implementation of Council Decision C(2001)107/FINAL, as Amended, on the Control of Transboundary Movements of Wastes Destined for Recovery Operations," are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is incorporated as it exists on the date of the approval and a notice of any change in these materials shall be published in the Federal Register. The materials are available for inspection at: the U.S. Environmental Protection Agency, Docket Center Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004 (Docket # EPA-HQ-RCRA-2005-0018) or at the National Archives and Records Administration (NARA), and may be obtained from the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue André Pascal, F-75775 Paris Cedex 16, France. For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>. To contact the EPA Docket Center Public Reading Room, call (202) 566-1744. To contact the OECD, call +33 (0) 1 45 24 81 67.

#### **R315-262-200. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Definitions for Sections R315-262-200 through R315-262-216.**

(a) The following definitions apply to Sections R315-262-200 through 216:

(1) "College/University" means a private or public, post-secondary, degree-granting, academic institution, that is accredited by an accrediting agency listed annually by the U.S. Department of Education.

(2) "Eligible academic entity" means a college or university, or a non-profit research institute that is owned by or has a formal written affiliation agreement with a college or university, or a teaching hospital that is owned by or has a formal written affiliation agreement with a college or university.

(3) "Formal written affiliation agreement for a non-profit research institute" means a written document that establishes a relationship between institutions for the purposes of research and/or education and is signed by authorized representatives, as defined by Section R315-260-10, from each institution. A relationship on a project-by-project or grant-by-grant basis is not considered a formal written affiliation agreement. A formal written affiliation agreement for a teaching hospital means a master affiliation agreement and program letter of agreement, as defined by the Accreditation Council for Graduate Medical Education, with an accredited medical program or medical school.

(4) Laboratory means an area owned by an eligible academic entity where relatively small quantities of chemicals and other substances are used on a non-production basis for teaching or research, or diagnostic purposes at a teaching hospital, and are stored and used in containers that are easily manipulated by one person. Photo laboratories, art studios, and field laboratories are considered laboratories. Areas such as chemical stockrooms and preparatory laboratories that provide a support function to teaching or research laboratories, or diagnostic laboratories at teaching hospitals, are also considered laboratories.

(5) "Laboratory clean-out" means an evaluation of the inventory of chemicals and other materials in a laboratory that are no longer needed or that have expired and the subsequent removal of those chemicals or other unwanted materials from the laboratory. A clean-out may occur for several reasons. It

may be on a routine basis, e.g., at the end of a semester or academic year, or as a result of a renovation, relocation, or change in laboratory supervisor/occupant. A regularly scheduled removal of unwanted material as required by Section R315-262-208 does not qualify as a laboratory clean-out.

(6) "Laboratory worker" means a person who handles chemicals and/or unwanted material in a laboratory and may include, but is not limited to, faculty, staff, post-doctoral fellows, interns, researchers, technicians, supervisors/managers, and principal investigators. A person does not need to be paid or otherwise compensated for his/her work in the laboratory to be considered a laboratory worker. Undergraduate and graduate students in a supervised classroom setting are not laboratory workers.

(7) "Non-profit research institute" means an organization that conducts research as its primary function and files as a non-profit organization under the tax code of 26 U.S.C. 501(c)(3).

(8) "Reactive acutely hazardous unwanted material" means an unwanted material that is one of the acutely hazardous commercial chemical products listed in Subsection R315-261-33(e) for reactivity.

(9) "Teaching hospital" means a hospital that trains students to become physicians, nurses or other health or laboratory personnel.

(10) "Trained professional" means a person who has completed the applicable RCRA training requirements of 40 CFR 265.16, which is incorporated by reference in Section R315-265-1, for large quantity generators, or is knowledgeable about normal operations and emergencies in accordance with Subsection R315-262-17 for small quantity generators and very small quantity generators. A trained professional may be an employee of the eligible academic entity or may be a contractor or vendor who meets the requisite training requirements.

(11) "Unwanted material" means any chemical, mixtures of chemicals, products of experiments or other material from a laboratory that is no longer needed, wanted or usable in the laboratory and that is destined for hazardous waste determination by a trained professional. Unwanted materials include reactive acutely hazardous unwanted materials and materials that may eventually be determined not to be solid waste pursuant to Section R315-261-2, or a hazardous waste pursuant to Section R315-261-3. If an eligible academic entity elects to use another equally effective term in lieu of "unwanted material," as allowed by Subsection R315-262-206(a)(1)(i), the equally effective term has the same meaning and is subject to the same requirements as "unwanted material" under Section R315-262-200 through 216.

(12) "Working container" means a small container, i.e., two gallons or less, that is in use at a laboratory bench, hood, or other work station, to collect unwanted material from a laboratory experiment or procedure.

**R315-262-201. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Applicability of Sections R315-262-200 through R315-262-216.**

(a) Large quantity generators and small quantity generators. Sections R315-262-200 through R315-262-216 provides alternative requirements to the requirements in Sections R315-262-11 and R315-262-15 for the hazardous waste determination and accumulation of hazardous waste in laboratories owned by eligible academic entities that choose to be subject to Sections R315-262-200 through R315-262-216, provided that they complete the notification requirements of Section R315-262-203.

(b) Very small quantity generators. Sections R315-262-200 through R315-262-216 provide alternative requirements to the conditional exemption in Section R315-262-14 for the

accumulation of hazardous waste in laboratories owned by eligible academic entities that choose to be subject to Sections R315-262-200 through R315-262-216, provided that they complete the notification requirements of Section R315-262-203.

**R315-262-202. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Sections R315-262-200 through R315-262-216 are Optional.**

(a) Large quantity generators and small quantity generators. Eligible academic entities have the option of complying with Sections R315-262-200 through R315-262-216 with respect to its laboratories, as an alternative to complying with the requirements of Section R315-262-11 and Section R315-262-15.

(b) Very small quantity generators. Eligible academic entities have the option of complying with Sections R315-262-200 through 216 with respect to laboratories, as an alternative to complying with the conditional exemption of Section R315-262-14.

**R315-262-203. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- How an Eligible Academic Entity Indicates it will be Subject to the Requirements of Sections R315-262-200 through R315-262-216.**

(a) An eligible academic entity shall notify the Director in writing, using the RCRA Subtitle C Site Identification Form, EPA Form 8700-12, that it is electing to be subject to the requirements of Sections R315-262-200 through R315-262-216 for all the laboratories owned by the eligible academic entity under the same EPA Identification Number. An eligible academic entity that is a very small quantity generator and does not have an EPA Identification Number shall notify that it is electing to be subject to the requirements of Sections R315-262-200 through R315-262-216 for all the laboratories owned by the eligible academic entity that are on-site, as defined by Section R315-260-10. An eligible academic entity shall submit a separate notification, Site Identification Form, for each EPA Identification Number, or site, for very small quantity generators, that is electing to be subject to the requirements of Sections R315-262-200 through R315-262-216, and shall submit the Site Identification Form before it begins operating under Sections R315-262-200 through R315-262-216.

(b) When submitting the Site Identification Form, the eligible academic entity shall, at a minimum, fill out the following fields on the form:

- (1) Reason for Submittal.
- (2) Site EPA Identification Number, except for very small quantity generators.
- (3) Site Name.
- (4) Site Location Information.
- (5) Site Land Type.
- (6) North American Industry Classification System (NAICS) Code(s) for the Site.
- (7) Site Mailing Address.
- (8) Site Contact Person.
- (9) Operator and Legal Owner of the Site.
- (10) Type of Regulated Waste Activity.
- (11) Certification.

(c) An eligible academic entity shall keep a copy of the notification on file at the eligible academic entity for as long as its laboratories are subject to Sections R315-262-200 through R315-262-216.

(d) A teaching hospital that is not owned by a college or university shall keep a copy of its formal written affiliation

agreement with a college or university on file at the teaching hospital for as long as its laboratories are subject to Sections R315-262-200 through R315-262-216.

(e) A non-profit research institute that is not owned by a college or university shall keep a copy of its formal written affiliation agreement with a college or university on file at the non-profit research institute for as long as its laboratories are subject to Sections R315-262-200 through R315-262-216.

**R315-262-204. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities - How an Eligible Academic Entity Indicates It Will Withdraw from the Requirements of Sections R315-262-200 Through 216.**

(a) An eligible academic entity shall notify the Director in writing, using the RCRA Subtitle C Site Identification Form (EPA Form 8700-12), that it is electing to no longer be subject to the requirements of Sections R315-262-200 through R315-262-216 for all the laboratories owned by the eligible academic entity under the same EPA Identification Number and that it will comply with the requirements of Sections R315-262-11 and R315-262-15 for small quantity generators and large quantity generators. An eligible academic entity that is a very small quantity generator and does not have an EPA Identification Number shall notify that it is withdrawing from the requirements of Sections R315-262-200 through R315-262-216 for all the laboratories owned by the eligible academic entity that are on-site and that it will comply with the conditional exemption in Section R315-262-14. An eligible academic entity shall submit a separate notification, Site Identification Form, for each EPA Identification Number, or site, for very small quantity generators, that is withdrawing from the requirements of Sections R315-262-200 through R315-262-216 and shall submit the Site Identification Form before it begins operating under the requirements of Sections R315-262-11 and R315-262-15 for small quantity generators and large quantity generators, or Section R315-262-14 for very small quantity generators.

(b) When submitting the Site Identification Form, the eligible academic entity shall, at a minimum, fill out the following fields on the form:

- (1) Reason for Submittal.
- (2) Site EPA Identification Number, except for very small quantity generators.
- (3) Site Name.
- (4) Site Location Information.
- (5) Site Land Type.
- (6) North American Industry Classification System (NAICS) Code(s) for the Site.
- (7) Site Mailing Address.
- (8) Site Contact Person.
- (9) Operator and Legal Owner of the Site.
- (10) Type of Regulated Waste Activity.
- (11) Certification.

(c) An eligible academic entity shall keep a copy of the withdrawal notice on file at the eligible academic entity for three years from the date of the notification.

**R315-262-205. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities Summary of the Requirements of Sections R315-262-200 through R315-262-216.**

An eligible academic entity that chooses to be subject to Sections R315-262-200 through 216 is not required to have interim status or a RCRA Part B permit for the accumulation of unwanted material and hazardous waste in its laboratories, provided the laboratories comply with the provisions of Sections R315-262-200 through 216 and the eligible academic entity has

a Laboratory Management Plan (LMP) in accordance with Section R315-262-214 that describes how the laboratories owned by the eligible academic entity will comply with the requirements of Sections R315-262-200 through 216.

**R315-262-206. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Labeling and Management Standards for Containers of Unwanted Material in the Laboratory.**

An eligible academic entity shall manage containers of unwanted material while in the laboratory in accordance with the requirements in Section R315-262-206.

(a) Labeling: Label unwanted material as follows:

(1) The following information shall be affixed or attached to the container:

(i) The words "unwanted material" or another equally effective term that is to be used consistently by the eligible academic entity and that is identified in Part I of the Laboratory Management Plan, and

(ii) Sufficient information to alert emergency responders to the contents of the container. Examples of information that would be sufficient to alert emergency responders to the contents of the container include, but are not limited to:

(A) The name of the chemical(s),

(B) The type or class of chemical, such as organic solvents or halogenated organic solvents.

(2) The following information may be affixed or attached to the container, but shall at a minimum be associated with the container:

(i) The date that the unwanted material first began accumulating in the container, and

(ii) Information sufficient to allow a trained professional to properly identify whether an unwanted material is a solid and hazardous waste and to assign the proper hazardous waste code(s), pursuant to Section R315-262-11. Examples of information that would allow a trained professional to properly identify whether an unwanted material is a solid or hazardous waste include, but are not limited to:

(A) The name and/or description of the chemical contents or composition of the unwanted material, or, if known, the product of the chemical reaction,

(B) Whether the unwanted material has been used or is unused,

(C) A description of the manner in which the chemical was produced or processed, if applicable.

(b) Management of Containers in the Laboratory. An eligible academic entity shall properly manage containers of unwanted material in the laboratory to assure safe storage of the unwanted material, to prevent leaks, spills, emissions to the air, adverse chemical reactions, and dangerous situations that may result in harm to human health or the environment. Proper container management shall include the following:

(1) Containers are maintained and kept in good condition and damaged containers are replaced, overpacked, or repaired, and

(2) Containers are compatible with their contents to avoid reactions between the contents and the container; and are made of, or lined with, material that is compatible with the unwanted material so that the container's integrity is not impaired, and

(3) Containers shall be kept closed at all times, except:

(i) When adding, removing or bulking unwanted material, or

(ii) A working container may be open until the end of the procedure or work shift, or until it is full, whichever comes first, at which time the working container shall either be closed or the contents emptied into a separate container that is then closed, or

(iii) When venting of a container is necessary:

(A) For the proper operation of laboratory equipment,

such as with in-line collection of unwanted materials from high performance liquid chromatographs; or

(B) To prevent dangerous situations, such as build-up of extreme pressure.

**R315-262-207. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Training.**

An eligible academic entity shall provide training to all individuals working in a laboratory at the eligible academic entity, as follows:

(a) Training for laboratory workers and students shall be commensurate with their duties so they understand the requirements in Sections R315-262-200 through 216 and can implement them.

(b) An eligible academic entity can provide training for laboratory workers and students in a variety of ways, including, but not limited to:

(1) Instruction by the professor or laboratory manager before or during an experiment; or

(2) Formal classroom training; or

(3) Electronic/written training; or

(4) On-the-job training; or

(5) Written or oral exams.

(c) An eligible academic entity that is a large quantity generator shall maintain documentation for the durations specified in 40 CFR 265.16(e), which is incorporated by reference in R315-265-1, demonstrating training for all laboratory workers that is sufficient to determine whether laboratory workers have been trained. Examples of documentation demonstrating training can include, but are not limited to, the following:

(1) Sign-in/attendance sheet(s) for training session(s); or

(2) Syllabus for training session; or

(3) Certificate of training completion; or

(4) Test results.

(d) A trained professional shall:

(1) Accompany the transfer of unwanted material and hazardous waste when the unwanted material and hazardous waste is removed from the laboratory, and

(2) Make the hazardous waste determination, pursuant to Subsections R315-262-11(a) through (d), for unwanted material.

**R315-262-208. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Removing Containers of Unwanted Material from the Laboratory.**

(a) Removing containers of unwanted material on a regular schedule. An eligible academic entity shall either:

(1) Remove all containers of unwanted material from each laboratory on a regular interval, not to exceed 12 months; or

(2) Remove containers of unwanted material from each laboratory within 12 months of each container's accumulation start date.

(b) The eligible academic entity shall specify in Part I of its Laboratory Management Plan whether it will comply with Subsection R315-262-208(a)(1) or (a)(2) for the regular removal of unwanted material from its laboratories.

(c) The eligible academic entity shall specify in Part II of its Laboratory Management Plan how it will comply with Subsection R315-262-208(a)(1) or (a)(2) and develop a schedule for regular removals of unwanted material from its laboratories.

(d) Removing containers of unwanted material when volumes are exceeded.

(1) If a laboratory accumulates a total volume of unwanted material, including reactive acutely hazardous unwanted

material, in excess of 55 gallons before the regularly scheduled removal, the eligible academic entity shall ensure that all containers of unwanted material in the laboratory, including reactive acutely hazardous unwanted material:

(i) Are marked on the label that is associated with the container, or on the label that is affixed or attached to the container, if that is preferred, with the date that 55 gallons is exceeded; and

(ii) Are removed from the laboratory within 10 calendar days of the date that 55 gallons was exceeded, or at the next regularly scheduled removal, whichever comes first.

(2) If a laboratory accumulates more than 1 quart of liquid reactive acutely hazardous unwanted material or more than 1 kg (2.2 pounds) of solid reactive acutely hazardous unwanted material before the regularly scheduled removal, then the eligible academic entity shall ensure that all containers of reactive acutely hazardous unwanted material:

(i) Are marked on the label that is associated with the container, or on the label that is affixed or attached to the container, if that is preferred, with the date that 1 quart or 1 kg is exceeded; and

(ii) Are removed from the laboratory within 10 calendar days of the date that 1 quart or 1 kg was exceeded, or at the next regularly scheduled removal, whichever comes first.

**R315-262-209. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Where and When to Make the Hazardous Waste Determination and Where to Send Containers of Unwanted Material Upon Removal from the Laboratory.**

(a) Large quantity generators and small quantity generators--an eligible academic entity shall ensure that a trained professional makes a hazardous waste determination, pursuant to Section R315-262-11, for unwanted material in any of the following areas:

(1) In the laboratory before the unwanted material is removed from the laboratory, in accordance with Section R315-262-210;

(2) Within 4 calendar days of arriving at an on-site central accumulation area, in accordance with Section R315-262-211; and

(3) Within 4 calendar days of arriving at an on-site interim status or permitted treatment, storage or disposal facility, in accordance with Section R315-262-212.

(b) Very small quantity generators--An eligible academic entity shall ensure that a trained professional makes a hazardous waste determination, pursuant to Subsections R315-262-11(a) through (d), for unwanted material in the laboratory before the unwanted material is removed from the laboratory, in accordance with Section R315-262-210.

**R315-262-210. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Making the Hazardous Waste Determination in the Laboratory Before the Unwanted Material is Removed from the Laboratory.**

If an eligible academic entity makes the hazardous waste determination, pursuant to Section R315-262-11, for unwanted material in the laboratory, it shall comply with the following:

(a) A trained professional shall make the hazardous waste determination, pursuant to Subsections R315-262-11(a) through (d), before the unwanted material is removed from the laboratory.

(b) If an unwanted material is a hazardous waste, the eligible academic entity shall:

(1) Write the words "hazardous waste" on the container label that is affixed or attached to the container, before the

hazardous waste may be removed from the laboratory; and

(2) Write the appropriate hazardous waste code(s) on the label that is associated with the container, or on the label that is affixed or attached to the container, if that is preferred, before the hazardous waste is transported off-site.

(3) Count the hazardous waste toward the eligible academic entity's generator status, pursuant to Section R315-262-13, in the calendar month that the hazardous waste determination was made.

(c) A trained professional shall accompany all hazardous waste that is transferred from the laboratory(ies) to an on-site central accumulation area or on-site interim status or permitted treatment, storage or disposal facility.

(d) When hazardous waste is removed from the laboratory:

(1) Large quantity generators and small quantity generators shall ensure it is taken directly from the laboratory(ies) to an on-site central accumulation area, or on-site interim status or permitted treatment, storage or disposal facility, or transported off-site.

(2) Very small quantity generators shall ensure it is taken directly from the laboratory(ies) to any of the types of facilities listed in Section R315-262-14.

(e) An unwanted material that is a hazardous waste is subject to all applicable hazardous waste regulations when it is removed from the laboratory.

**R315-262-211. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities - Making the Hazardous Waste Determination at an On-Site Central Accumulation Area.**

If an eligible academic entity makes the hazardous waste determination, pursuant to Section R315-262-11, for unwanted material at an on-site central accumulation area, it shall comply with the following:

(a) A trained professional shall accompany all unwanted material that is transferred from the laboratory(ies) to an on-site central accumulation area.

(b) All unwanted material removed from the laboratory(ies) shall be taken directly from the laboratory(ies) to the on-site central accumulation area.

(c) The unwanted material becomes subject to the generator accumulation regulations of Section R315-262-16 for small quantity generators or Section R315-262-17 for large quantity generators as soon as it arrives in the central accumulation area, except for the "hazardous waste" labeling conditions of Subsections R315-262-16(b)(6) and 17(a)(5).

(d) A trained professional shall determine, pursuant to Subsections R315-262-11(a) through (d), if the unwanted material is a hazardous waste within 4 calendar days of the unwanted materials' arrival at the on-site central accumulation area.

(e) If the unwanted material is a hazardous waste, the eligible academic entity shall:

(1) Write the words "hazardous waste" on the container label that is affixed or attached to the container, within 4 calendar days of arriving at the on-site central accumulation area and before the hazardous waste may be removed from the on-site central accumulation area, and

(2) Write the appropriate hazardous waste code(s) on the container label that is associated with the container, or on the label that is affixed or attached to the container, if that is preferred, before the hazardous waste may be treated or disposed of on-site or transported off-site, and

(3) Count the hazardous waste toward the eligible academic entity's generator category, pursuant to Section R315-262-13 in the calendar month that the hazardous waste determination was made, and

(4) Manage the hazardous waste according to all

applicable hazardous waste regulations.

**R315-262-212. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Making the Hazardous Waste Determination at an On-Site Interim Status or Permitted Treatment, Storage or Disposal Facility.**

If an eligible academic entity makes the hazardous waste determination, pursuant to Section R315-262-11, for unwanted material at an on-site interim status or permitted treatment, storage or disposal facility, it shall comply with the following:

(a) A trained professional shall accompany all unwanted material that is transferred from the laboratory(ies) to an on-site interim status or permitted treatment, storage or disposal facility.

(b) All unwanted material removed from the laboratory(ies) shall be taken directly from the laboratory(ies) to the on-site interim status or permitted treatment, storage or disposal facility.

(c) The unwanted material becomes subject to the terms of the eligible academic entity's hazardous waste permit or interim status as soon as it arrives in the on-site treatment, storage or disposal facility.

(d) A trained professional shall determine, pursuant to Subsections R315-262-11(a) through (d), if the unwanted material is a hazardous waste within 4 calendar days of the unwanted materials' arrival at an on-site interim status or permitted treatment, storage or disposal facility.

(e) If the unwanted material is a hazardous waste, the eligible academic entity shall:

(1) Write the words "hazardous waste" on the container label that is affixed or attached to the container within 4 calendar days of arriving at the on-site interim status or permitted treatment, storage or disposal facility and before the hazardous waste may be removed from the on-site interim status or permitted treatment, storage or disposal facility, and

(2) Write the appropriate hazardous waste code(s) on the container label that is associated with the container, or on the label that is affixed or attached to the container, if that is preferred, before the hazardous waste may be treated or disposed on-site or transported off-site, and

(3) Count the hazardous waste toward the eligible academic entity's generator status, pursuant to Subsections R315-261-5(c) and (d) in the calendar month that the hazardous waste determination was made, and

(4) Manage the hazardous waste according to all applicable hazardous waste regulations.

**R315-262-213. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Laboratory Clean-outs.**

(a) One time per 12 month period for each laboratory, an eligible academic entity may opt to conduct a laboratory clean-out that is subject to all the applicable requirements of Sections R315-262-200 through 216, except that:

(1) If the volume of unwanted material in the laboratory exceeds 55 gallons, or 1 quart of liquid reactive acutely hazardous unwanted material or 1 kg of solid reactive acutely hazardous unwanted material, the eligible academic entity is not required to remove all unwanted materials from the laboratory within 10 calendar days of exceeding 55 gallons, or 1 quart of liquid reactive acutely hazardous unwanted material or 1 kg of solid reactive acutely hazardous unwanted material, as required by Section R315-262-208. Instead, the eligible academic entity shall remove all unwanted materials from the laboratory within 30 calendar days from the start of the laboratory clean-out; and

(2) For the purposes of on-site accumulation, an eligible academic entity is not required to count a hazardous waste that



is an unused commercial chemical product, listed in Sections R315-261-30 through R315-261-35 or exhibiting one or more characteristics in Sections R315-261-20 through R315-261-24, generated solely during the laboratory clean-out toward its hazardous waste generator category, pursuant to Section R315-262-13. An unwanted material that is generated prior to the beginning of the laboratory clean-out and is still in the laboratory at the time the laboratory clean-out commences shall be counted toward hazardous waste generator category, pursuant to Section R315-262-13, if it is determined to be hazardous waste; and

(3) For the purposes of off-site management, an eligible academic entity shall count all its hazardous waste, regardless of whether the hazardous waste was counted toward generator category under Subsection R315-262-213(a)(2), and if it generates more than 1 kg per month of acute hazardous waste or more than 100 kg per month of non-acute hazardous waste, i.e., the very small quantity generator limits as defined in Section R315-260-10, the hazardous waste is subject to all applicable hazardous waste regulations when it is transported off site; and

(4) An eligible academic entity shall document the activities of the laboratory clean-out. The documentation shall, at a minimum, identify the laboratory being cleaned out, the date the laboratory clean-out begins and ends, and the volume of hazardous waste generated during the laboratory clean-out. The eligible academic entity shall maintain the records for a period of three years from the date the clean-out ends; and

(b) For all other laboratory clean-outs conducted during the same 12-month period, an eligible academic entity is subject to all the applicable requirements of Sections R315-262-200 through 216, including, but not limited to:

(1) The requirement to remove all unwanted materials from the laboratory within 10 calendar days of exceeding 55 gallons, or 1 quart of reactive acutely hazardous unwanted material, as required by Section R315-262-208; and

(2) The requirement to count all hazardous waste, including unused hazardous waste, generated during the laboratory clean-out toward its hazardous waste generator category, pursuant to Section R315-262-13.

**R315-262-214. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities Laboratory Management Plan.**

An eligible academic entity shall develop and retain a written Laboratory Management Plan, or revise an existing written plan. The Laboratory Management Plan is a site-specific document that describes how the eligible academic entity will manage unwanted materials in compliance with Sections R315-262-200 through 216. An eligible academic entity may write one Laboratory Management Plan for all the laboratories owned by the eligible academic entity that have opted into Sections R315-262-200 through 216, even if the laboratories are located at sites with different EPA Identification Numbers. The Laboratory Management Plan shall contain two parts with a total of nine elements identified in Subsections R315-262-214(a) and (b). In Part I of its Laboratory Management Plan, an eligible academic entity shall describe its procedures for each of the elements listed in Subsection R315-262-214(a). An eligible academic entity shall implement and comply with the specific provisions that it develops to address the elements in Part I of the Laboratory Management Plan. In Part II of its Laboratory Management Plan, an eligible academic entity shall describe its best management practices for each of the elements listed in Subsection R315-262-214(b). The specific actions taken by an eligible academic entity to implement each element in Part II of its Laboratory Management Plan may vary from the procedures described in the eligible academic entity's Laboratory Management Plan, without constituting a violation of Sections

R315-262-200 through 216. An eligible academic entity may include additional elements and best management practices in Part II of its Laboratory Management Plan if it chooses.

(a) The eligible academic entity shall implement and comply with the specific provisions of Part I of its Laboratory Management Plan. In Part I of its Laboratory Management Plan, an eligible academic entity shall:

(1) Describe procedures for container labeling in accordance with Subsection R315-262-206(a), as follows:

(i) Identifying whether the eligible academic entity will use the term "unwanted material" on the containers in the laboratory. If not, identify an equally effective term that will be used in lieu of "unwanted material" and consistently by the eligible academic entity. The equally effective term, if used, has the same meaning and is subject to the same requirements as "unwanted material."

(ii) Identifying the manner in which information that is "associated with the container" will be imparted.

(2) Identify whether the eligible academic entity will comply with Subsection R315-262-208(a)(1) or (a)(2) for regularly scheduled removals of unwanted material from the laboratory.

(b) In Part II of its Laboratory Management Plan, an eligible academic entity shall:

(1) Describe its intended best practices for container labeling and management, see the required standards at Section R315-262-206.

(2) Describe its intended best practices for providing training for laboratory workers and students commensurate with their duties, see the required standards at Subsection R315-262-207(a).

(3) Describe its intended best practices for providing training to ensure safe on-site transfers of unwanted material and hazardous waste by trained professionals, see the required standards at Subsection R315-262-207(d)(1).

(4) Describe its intended best practices for removing unwanted material from the laboratory, including:

(i) For regularly scheduled removals-Develop a regular schedule for identifying and removing unwanted materials from its laboratories, see the required standards at Subsections R315-262-208(a)(1) and (a)(2).

(ii) For removals when maximum volumes are exceeded:  
(A) Describe its intended best practices for removing unwanted materials from the laboratory within 10 calendar days when unwanted materials have exceeded their maximum volumes, see the required standards at Subsection R315-262-208(d).

(B) Describe its intended best practices for communicating that unwanted materials have exceeded their maximum volumes.

(5) Describe its intended best practices for making hazardous waste determinations, including specifying the duties of the individuals involved in the process, see the required standards at Subsections R315-262-11(a) through (d) and Sections R315-262-209 through R315-262-212.

(6) Describe its intended best practices for laboratory clean-outs, if the eligible academic entity plans to use the incentives for laboratory clean-outs provided in Section R315-262-213, including:

(i) Procedures for conducting laboratory clean-outs, see the required standards at Subsections R315-262-213(a)(1) through (3); and

(ii) Procedures for documenting laboratory clean-outs, see the required standards at Subsection R315-262-213(a)(4).

(7) Describe its intended best practices for emergency prevention, including:

(i) Procedures for emergency prevention, notification, and response, appropriate to the hazards in the laboratory; and

(ii) A list of chemicals that the eligible academic entity has, or is likely to have, that become more dangerous when they

exceed their expiration date and/or as they degrade; and

(iii) Procedures to safely dispose of chemicals that become more dangerous when they exceed their expiration date and/or as they degrade; and

(iv) Procedures for the timely characterization of unknown chemicals.

(c) An eligible academic entity shall make its Laboratory Management Plan available to laboratory workers, students, or any others at the eligible academic entity who request it.

(d) An eligible academic entity shall review and revise its Laboratory Management Plan, as needed.

**R315-262-215. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Unwanted Material that Is Not Solid or Hazardous Waste.**

(a) If an unwanted material does not meet the definition of solid waste in Section R315-261-2, it is no longer subject to Sections R315-262-200 through 216 or to Rules R315-260 through 266, 268, or 270.

(b) If an unwanted material does not meet the definition of hazardous waste in Section R315-261-3, it is no longer subject to Sections R315-262-200 through 216 or to Rules R315-260 through 266, 268, or 270, but shall be managed in compliance with any other applicable regulations and/or conditions.

**R315-262-216. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Non-Laboratory Hazardous Waste Generated at an Eligible Academic Entity.**

An eligible academic entity that generates hazardous waste outside of a laboratory is not eligible to manage that hazardous waste under Sections R315-262-200 through 216; and

(a) Remains subject to the generator requirements of Sections R315-262-11 and R315-262-15 for large quantity generators and small quantity generators, if the hazardous waste is managed in a satellite accumulation area, and all other applicable generator requirements of Rule R315-262, with respect to that hazardous waste; or

(b) Remains subject to the conditional exemption of Section R315-262-14 for very small quantity generators, with respect to that hazardous waste.

**R315-262-217. Appendix to Rule R315-262 -- Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A and Their Instructions).**

U.S. EPA Forms 8700-22 and Manifest Continuation Sheet (EPA Form 8700-22A) found in appendix to 40 CFR 262, 2015 edition, are incorporated and incorporated by reference.

Read all instructions before completing this form.

1. This form has been designed for use on a 12-pitch (elite) typewriter which is also compatible with standard computer printers; a firm point pen may also be used - press down hard.

2. Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, and disposal facilities to complete this form (FORM 8700-22) and, if necessary, the continuation sheet (FORM 8700-22A) for both inter- and intrastate transportation of hazardous waste.

Manifest 8700-22

The following statement shall be included with each Uniform Hazardous Waste Manifest, either on the form, in the instructions to the form, or accompanying the form:

Public reporting burden for this collection of information is estimated to average: 30 minutes for generators, 10 minutes for transporters, and 25 minutes for owners or operators of treatment, storage, and disposal facilities. This includes time for

reviewing instructions, gathering data, completing, reviewing and transmitting the form. Any correspondence regarding the PRA burden statement for the manifest shall be sent to the Director of the Collection Strategies Division in EPA's Office of Information Collection at the following address: U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Do not send the completed form to this address.

I. Instructions for Generators

Manifest 8700-22

The following statement shall be included with each Uniform Hazardous Waste Manifest, either on the form, in the instructions to the form, or accompanying the form:

Public reporting burden for this collection of information is estimated to average: 30 minutes for generators, 10 minutes for transporters, and 25 minutes for owners or operators of treatment, storage, and disposal facilities. This includes time for reviewing instructions, gathering data, completing, reviewing and transmitting the form. Send comments regarding the burden estimate, including suggestions for reducing this burden, to: Chief, Information Policy Branch (2136), U.S. Environmental Protection Agency, Ariel Rios Building; 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Item 1. Generator's U.S. EPA Identification Number

Enter the generator's U.S. EPA twelve digit identification number, or the State generator identification number if the generator site does not have an EPA identification number.

Item 2. Page 1 of \_

Enter the total number of pages used to complete this Manifest (i.e., the first page (EPA Form 8700-22) plus the number of Continuation Sheets (EPA Form 8700-22A), if any).

Item 3. Emergency Response Phone Number

Enter a phone number for which emergency response information can be obtained in the event of an incident during transportation. The emergency response phone number shall:

1. Be the number of the generator or the number of an agency or organization who is capable of and accepts responsibility for providing detailed information about the shipment;

2. Reach a phone that is monitored 24 hours a day at all times the waste is in transportation (including transportation related storage); and

3. Reach someone who is either knowledgeable of the hazardous waste being shipped and has comprehensive emergency response and spill cleanup/incident mitigation information for the material being shipped or has immediate access to a person who has that knowledge and information about the shipment.

Note: Emergency Response phone number information should only be entered in Item 3 when there is one phone number that applies to all the waste materials described in Item 9b. If a situation (e.g., consolidated shipments) arises where more than one Emergency Response phone number applies to the various wastes listed on the manifest, the phone numbers associated with each specific material should be entered after its description in Item 9b.

Item 4. Manifest Tracking Number

This unique tracking number shall be pre-printed on the manifest by the forms printer.

Item 5. Generator's Mailing Address, Phone Number and Site Address

Enter the name of the generator, the mailing address to which the completed manifest signed by the designated facility should be mailed, and the generator's telephone number. Note, the telephone number (including area code) should be the normal business number for the generator, or the number where the generator or his authorized agent may be reached to provide

instructions in the event the designated and/or alternate (if any) facility rejects some or all of the shipment. Also enter the physical site address from which the shipment originates only if this address is different than the mailing address.

Item 6. Transporter 1 Company Name, and U.S. EPA ID Number

Enter the company name and U.S. EPA ID number of the first transporter who will transport the waste. Vehicle or driver information may not be entered here.

Item 7. Transporter 2 Company Name and U.S. EPA ID Number

If applicable, enter the company name and U.S. EPA ID number of the second transporter who will transport the waste. Vehicle or driver information may not be entered here.

If more than two transporters are needed, use a Continuation Sheet(s) (EPA Form 8700-22A).

Item 8. Designated Facility Name, Site Address, and U.S. EPA ID Number

Enter the company name and site address of the facility designated to receive the waste listed on this manifest. Also enter the facility's phone number and the U.S. EPA twelve digit identification number of the facility.

Item 9. U.S. DOT Description (Including Proper Shipping Name, Hazard Class or Division, Identification Number, and Packing Group)

Item 9a. If the wastes identified in Item 9b consist of both hazardous and nonhazardous materials, then identify the hazardous materials by entering an "X" in this Item next to the corresponding hazardous material identified in Item 9b.

If applicable, enter the name of the person accepting the waste on behalf of the second transporter. That person shall acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.

Item 9b. Enter the U.S. DOT Proper Shipping Name, Hazard Class or Division, Identification Number (UN/NA) and Packing Group for each waste as identified in 49 CFR 172. Include technical name(s) and reportable quantity references, if applicable.

Note: If additional space is needed for waste descriptions, enter these additional descriptions in Item 27 on the Continuation Sheet (EPA Form 8700-22A). Also, if more than one Emergency Response phone number applies to the various wastes described in either Item 9b or Item 27, enter applicable Emergency Response phone numbers immediately following the shipping descriptions for those Items.

Item 10. Containers (Number and Type)

Enter the number of containers for each waste and the appropriate abbreviation from Table I (below) for the type of container.

TABLE I

Types of Containers

- BA = Burlap, cloth, paper, or plastic bags.
- CF = Fiber or plastic boxes, cartons, cases.
- CM = Metal boxes, cartons, cases (including roll-offs).
- CW = Wooden boxes, cartons, cases.
- CY = Cylinders.
- DF = Fiberboard or plastic drums, barrels, kegs.
- DM = Metal drums, barrels, kegs.
- DT = Dump truck.
- DW = Wooden drums, barrels, kegs.
- HG = Hopper or gondola cars.
- TC = Tank cars.
- TP = Portable tanks.
- TT = Cargo tanks (tank trucks).

Item 11. Total Quantity

Enter, in designated boxes, the total quantity of waste. Round partial units to the nearest whole unit, and do not enter decimals or fractions. To the extent practical, report quantities using appropriate units of measure that will allow you to report

quantities with precision. Waste quantities entered should be based on actual measurements or reasonably accurate estimates of actual quantities shipped. Container capacities are not acceptable as estimates.

Item 12. Units of Measure (Weight/Volume)

Enter, in designated boxes, the appropriate abbreviation from Table II (below) for the unit of measure.

TABLE II

Units of Measure

- G = Gallons (liquids only).
- K = Kilograms.
- L = Liters (liquids only).
- M = Metric Tons (1000 kilograms).
- N = Cubic Meters.
- P = Pounds.
- T = Tons (2000 pounds).
- Y = Cubic Yards.

Note: Tons, Metric Tons, Cubic Meters, and Cubic Yards should only be reported in connection with very large bulk shipments, such as rail cars, tank trucks, or barges.

Item 13. Waste Codes

Enter up to six federal and state waste codes to describe each waste stream identified in Item 9b. State waste codes that are not redundant with federal codes shall be entered here, in addition to the federal waste codes which are most representative of the properties of the waste.

Item 14. Special Handling Instructions and Additional Information.

1. Generators may enter any special handling or shipment-specific information necessary for the proper management or tracking of the materials under the generator's or other handler's business processes, such as waste profile numbers, container codes, bar codes, or response guide numbers. Generators also may use this space to enter additional descriptive information about their shipped materials, such as chemical names, constituent percentages, physical state, or specific gravity of wastes identified with volume units in Item 12.

2. This space may be used to record limited types of federally required information for which there is no specific space provided on the manifest, including any alternate facility designations; the manifest tracking number of the original manifest for rejected wastes and residues that are re-shipped under a second manifest; and the specification of PCB waste descriptions and PCB out-of-service dates required under 40 CFR 761.207. Generators, however, cannot be required to enter information in this space to meet state regulatory requirements.

Item 15. Generator's/Officer's Certifications

1. The generator shall read, sign, and date the waste minimization certification statement. In signing the waste minimization certification statement, those generators who have not been exempted by statute or regulation from the duty to make a waste minimization certification under section 3002(b) of RCRA are also certifying that they have complied with the waste minimization requirements. The Generator's Certification also contains the required attestation that the shipment has been properly prepared and is in proper condition for transportation (the shipper's certification). The content of the shipper's certification statement is as follows: "I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked, and labeled/placarded, and are in all respects in proper condition for transport by highway according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgment of Consent." When a party other than the generator prepares the shipment for transportation, this party may also sign the shipper's certification

statement as the offeror of the shipment.

2. Generator or Offeror personnel may preprint the words, "On behalf of" in the signature block or may hand write this statement in the signature block prior to signing the generator/offeror certification, to indicate that the individual signs as the employee or agent of the named principal.

Note: All of the above information except the handwritten signature required in Item 15 may be pre-printed.

#### II. Instructions for International Shipment Block

##### Item 16. International Shipments

For export shipments, the primary exporter shall check the export box, and enter the point of exit (city and state) from the United States. For import shipments, the importer shall check the import box and enter the point of entry (city and state) into the United States.

#### III. Instructions for Transporters

##### Item 17. Transporters' Acknowledgments of Receipt

Enter the name of the person accepting the waste on behalf of the first transporter. That person shall acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt. Only one signature per transportation company is required. Signatures are not required to track the movement of wastes in and out of transfer facilities, unless there is a change of custody between transporters.

If applicable, enter the name of the person accepting the waste on behalf of the second transporter. That person shall acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.

Note: Transporters carrying imports, who are acting as importers, may have responsibilities to enter information in the International Shipments Block. Transporters carrying exports may also have responsibilities to enter information in the International Shipments Block. See above instructions for Item 16.

#### IV. Instructions for Owners and Operators of Treatment, Storage, and Disposal Facilities

##### Item 18. Discrepancy

##### Item 18a. Discrepancy Indication Space

1. The authorized representative of the designated (or alternate) facility's owner or operator shall note in this space any discrepancies between the waste described on the Manifest and the waste actually received at the facility. Manifest discrepancies are: significant differences (as defined by Subsections R315-264-72(b) and 40 CFR 265.72(b)), which is incorporated by reference in Section R315-265-1, between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives, rejected wastes, which may be a full or partial shipment of hazardous waste that the TSDF cannot accept, or container residues, which are residues that exceed the quantity limits for "empty" containers set forth in Subsection R315-261-7(b).

2. For rejected loads and residues (Subsections R315-264-72(d), (e), and (f), or CFR 265.72(d), (e), or (f)), which are incorporated by reference in Section R315-265-1, check the appropriate box if the shipment is a rejected load (i.e., rejected by the designated and/or alternate facility and is sent to an alternate facility or returned to the generator) or a regulated residue that cannot be removed from a container. Enter the reason for the rejection or the inability to remove the residue and a description of the waste. Also, reference the manifest tracking number for any additional manifests being used to track the rejected waste or residue shipment on the original manifest. Indicate the original manifest tracking number in Item 14, the Special Handling Block and Additional Information Block of the additional manifests.

3. Owners or operators of facilities located in unauthorized States (i.e., states in which the U.S. EPA administers the hazardous waste management program) who cannot resolve

significant differences in quantity or type within 15 days of receiving the waste shall submit to their Regional Administrator a letter with a copy of the Manifest at issue describing the discrepancy and attempts to reconcile it (Subsections R315-264-72(c) and CFR 265.72(c), which is incorporated by reference in Section R315-265-1).

4. Owners or operators of facilities located in authorized States (i.e., those States that have received authorization from the U.S. EPA to administer the hazardous waste management program) should contact their State agency for information on where to report discrepancies involving "significant differences" to state officials.

##### Item 18b. Alternate Facility (or Generator) for Receipt of Full Load Rejections

Enter the name, address, phone number, and EPA Identification Number of the Alternate Facility which the rejecting TSDF has designated, after consulting with the generator, to receive a fully rejected waste shipment. In the event that a fully rejected shipment is being returned to the generator, the rejecting TSDF may enter the generator's site information in this space. This field is not to be used to forward partially rejected loads or residue waste shipments.

##### Item 18c. Alternate Facility (or Generator) Signature

The authorized representative of the alternate facility (or the generator in the event of a returned shipment) shall sign and date this field of the form to acknowledge receipt of the fully rejected wastes or residues identified by the initial TSDF.

##### Item 19. Hazardous Waste Report Management Method Codes

Enter the most appropriate Hazardous Waste Report Management Method code for each waste listed in Item 9. The Hazardous Waste Report Management Method code is to be entered by the first treatment, storage, or disposal facility (TSDF) that receives the waste and is the code that best describes the way in which the waste is to be managed when received by the TSDF.

##### Item 20. Designated Facility Owner or Operator Certification of Receipt (Except As Noted in Item 18a)

Enter the name of the person receiving the waste on behalf of the owner or operator of the facility. That person shall acknowledge receipt or rejection of the waste described on the Manifest by signing and entering the date of receipt or rejection where indicated. Since the Facility Certification acknowledges receipt of the waste except as noted in the Discrepancy Space in Item 18a, the certification should be signed for both waste receipt and waste rejection, with the rejection being noted and described in the space provided in Item 18a. Fully rejected wastes may be forwarded or returned using Item 18b after consultation with the generator. Enter the name of the person accepting the waste on behalf of the owner or operator of the alternate facility or the original generator. That person shall acknowledge receipt or rejection of the waste described on the Manifest by signing and entering the date they received or rejected the waste in Item 18c. Partially rejected wastes and residues shall be re-shipped under a new manifest, to be initiated and signed by the rejecting TSDF as offeror of the shipment.

##### Instructions -- Continuation Sheet, U.S. EPA Form 8700-22A

Read all instructions before completing this form. This form has been designed for use on a 12-pitch (elite) typewriter; a firm point pen may also be used---press down hard.

This form shall be used as a continuation sheet to U.S. EPA Form 8700-22 if:

More than two transporters are to be used to transport the waste; or

More space is required for the U.S. DOT descriptions and related information in Item 9 of U.S. EPA Form 8700-22.

Federal regulations require generators and transporters of

hazardous waste and owners or operators of hazardous waste treatment, storage, or disposal facilities to use the uniform hazardous waste manifest (EPA Form 8700-22) and, if necessary, this continuation sheet (EPA Form 8700-22A) for both interstate and intrastate transportation.

**Item 21. Generator's ID Number**

Enter the generator's U.S. EPA twelve digit identification number or, the State generator identification number if the generator site does not have an EPA identification number.

**Item 22. Page \_\_\_**

Enter the page number of this Continuation Sheet.

**Item 23. Manifest Tracking Number**

Enter the Manifest Tracking number from Item 4 of the Manifest form to which this continuation sheet is attached.

**Item 24. Generator's Name---**

Enter the generator's name as it appears in Item 5 on the first page of the Manifest.

**Item 25. Transporter---Company Name**

If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 3 Company Name. Also enter the U.S. EPA twelve digit identification number of the transporter described in Item 25.

**Item 26. Transporter---Company Name**

If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 4 Company Name. Each Continuation Sheet can record the names of two additional transporters. Also enter the U.S. EPA twelve digit identification number of the transporter named in Item 26.

**Item 27. U.S. D.O.T. Description Including Proper Shipping Name, Hazardous Class, and ID Number (UN/NA)**

For each row enter a sequential number under Item 27b that corresponds to the order of waste codes from one continuation sheet to the next, to reflect the total number of wastes being shipped. Refer to instructions for Item 9 of the manifest for the information to be entered.

**Item 28. Containers (No. And Type)**

Refer to the instructions for Item 10 of the manifest for information to be entered.

**Item 29. Total Quantity**

Refer to the instructions for Item 11 of the manifest form.

**Item 30. Units of Measure (Weight/Volume)**

Refer to the instructions for Item 12 of the manifest form.

**Item 31. Waste Codes**

Refer to the instructions for Item 13 of the manifest form.

**Item 32. Special Handling Instructions and Additional Information**

Refer to the instructions for Item 14 of the manifest form.

**Transporters**

**Item 33. Transporter - Acknowledgment of Receipt of Materials**

Enter the same number of the Transporter as identified in Item 25. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 25. That person shall acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

**Item 34. Transporter - Acknowledgment of Receipt of Materials**

Enter the same number of the Transporter as identified in Item 26. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 26. That person shall acknowledge acceptance of the waste described on the Manifest by signing and entering the date of

receipt.

**Owner and Operators of Treatment, Storage, or Disposal Facilities**

**Item 35. Discrepancy Indication Space**

Refer to Item 18. This space may be used to more fully describe information on discrepancies identified in Item 18a of the manifest form.

**Item 36. Hazardous Waste Report Management Method Codes**

For each field here, enter the sequential number that corresponds to the waste materials described under Item 27, and enter the appropriate process code that describes how the materials will be processed when received. If additional continuation sheets are attached, continue numbering the waste materials and process code fields sequentially, and enter on each sheet the process codes corresponding to the waste materials identified on that sheet.

**R315-262-230. Alternative Standards for Episodic Generation -- Applicability.**

Sections R315-262-230 through 233 are applicable to very small quantity generators and small quantity generators as defined in Section R315-260-10.

**R315-262-231. Alternative Standards for Episodic Generation -- Definitions for Sections R315-262-230 Through 233.**

(a) "Episodic event" means an activity or activities, either planned or unplanned, that does not normally occur during generator operations, resulting in an increase in the generation of hazardous wastes that exceeds the calendar month quantity limits for the generator's usual category.

(b) "Planned episodic event" means an episodic event that the generator planned and prepared for, including regular maintenance, tank cleanouts, short-term projects, and removal of excess chemical inventory

(c) "Unplanned episodic event" means an episodic event that the generator did not plan or reasonably did not expect to occur, including production process upsets, product recalls, accidental spills, or "acts of nature," such as tornado, hurricane, or flood.

**R315-262-232. Alternative Standards for Episodic Generation -- Conditions for a Generator Managing Hazardous Waste from an Episodic Event.**

(a) Very small quantity generator. A very small quantity generator may maintain its existing generator category for hazardous waste generated during an episodic event provided that the generator complies with the following conditions:

(1) The very small quantity generator is limited to one episodic event per calendar year, unless a petition is granted under Section R315-262-233;

(2) Notification. The very small quantity generator shall notify the Director no later than thirty (30) calendar days prior to initiating a planned episodic event using EPA Form 8700-12. In the event of an unplanned episodic event, the generator shall notify the Director within 72 hours of the unplanned event via phone, email, or fax and subsequently submit EPA Form 8700-12. The generator shall include the start date and end date of the episodic event, the reason(s) for the event, types and estimated quantities of hazardous waste expected to be generated as a result of the episodic event, and shall identify a facility contact and emergency coordinator with 24-hour telephone access to discuss the notification submittal or respond to an emergency in compliance with Subsection R315-262-16(b)(9)(i);

(3) EPA ID Number. The very small quantity generator shall have an EPA identification number or obtain an EPA identification number using EPA Form 8700-12;

(4) Accumulation. A very small quantity generator is prohibited from accumulating hazardous waste generated from an episodic event on drip pads and in containment buildings. When accumulating hazardous waste in containers and tanks the following conditions apply:

(i) Containers. A very small quantity generator accumulating in containers shall mark or label its containers with the following:

(A) The words "Episodic Hazardous Waste";

(B) An indication of the hazards of the contents, examples include:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704; and

(C) The date upon which the episodic event began, clearly visible for inspection on each container.

(ii) Tanks. A very small quantity generator accumulating episodic hazardous waste in tanks shall do the following:

(A) Mark or label the tank with the words "Episodic Hazardous Waste";

(B) Mark or label its tanks with an indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704;

(C) Use inventory logs, monitoring equipment or other records to identify the date upon which each episodic event begins; and

(D) Keep inventory logs or records with the above information on site and readily available for inspection.

(iii) Hazardous waste shall be managed in a manner that minimizes the possibility of a fire, explosion, or release of hazardous waste or hazardous waste constituents to the air, soil, or water;

(A) Containers shall be in good condition and compatible with the hazardous waste being accumulated therein. Containers shall be kept closed except to add or remove waste; and

(B) Tanks shall be in good condition and compatible with the hazardous waste accumulated therein. Tanks shall have procedures in place to prevent the overflow (e.g., be equipped with a means to stop inflow with systems such as a waste feed cutoff system or bypass system to a standby tank when hazardous waste is continuously fed into the tank). Tanks shall be inspected at least once each operating day to ensure all applicable discharge control equipment, such as waste feed cutoff systems, bypass systems, and drainage systems are in good working order and to ensure the tank is operated according to its design by reviewing the data gathered from monitoring equipment such as pressure and temperature gauges from the inspection.

(5) The very small quantity generator shall comply with the hazardous waste manifest provisions of Sections R315-262-20 through 27 when it sends its episodic event hazardous waste off site to a designated facility, as defined in Section R315-260-10.

(6) The very small quantity generator has up to sixty (60) calendar days from the start of the episodic event to manifest and send its hazardous waste generated from the episodic event to a designated facility, as defined in Section R315-260-10.

(7) Very small quantity generators shall maintain the following records for three (3) years from the end date of the episodic event:

(i) Beginning and end dates of the episodic event;

(ii) A description of the episodic event;

(iii) A description of the types and quantities of hazardous wastes generated during the event;

(iv) A description of how the hazardous waste was managed as well as the name of the designated facility that received the hazardous waste;

(v) Name(s) of hazardous waste transporters; and

(vi) An approval letter from the Director if the generator petitioned to conduct one additional episodic event per calendar year.

(b) Small quantity generators. A small quantity generator may maintain its existing generator category during an episodic event provided that the generator complies with the following conditions:

(1) The small quantity generator is limited to one episodic event per calendar year unless a petition is granted under Section R315-262-233;

(2) Notification. The small quantity generator shall notify the Director no later than thirty (30) calendar days prior to initiating a planned episodic event using EPA Form 8700-12. In the event of an unplanned episodic event, the small quantity generator shall notify the Director within 72 hours of the unplanned event via phone, email, or fax, and subsequently submit EPA Form 8700-12. The small quantity generator shall include the start date and end date of the episodic event and the reason(s) for the event, types and estimated quantities of hazardous wastes expected to be generated as a result of the episodic event, and identify a facility contact and emergency coordinator with 24-hour telephone access to discuss the notification submittal or respond to emergency;

(3) EPA ID Number. The small quantity generator shall have an EPA identification number or obtain an EPA identification number using EPA Form 8700-12; and

(4) Accumulation by small quantity generators. A small quantity generator is prohibited from accumulating hazardous wastes generated from an episodic event waste on drip pads and in containment buildings. When accumulating hazardous waste generated from an episodic event in containers and tanks, the following conditions apply:

(i) Containers. A small quantity generator accumulating episodic hazardous waste in containers shall meet the standards at Subsection R315-262-16(b)(2) and shall mark or label its containers with the following:

(A) The words "Episodic Hazardous Waste";

(B) An indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704; and

(C) The date upon which the episodic event began, clearly visible for inspection on each container.

(ii) Tanks. A small quantity generator accumulating episodic hazardous waste in tanks shall meet the standards at Subsection R315-262-16(b)(3) and shall do the following:

(A) Mark or label its tank with the words "Episodic Hazardous Waste";

(B) Mark or label its tanks with an indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704;

(C) Use inventory logs, monitoring equipment or other records to identify the date upon which each period of accumulation begins and ends; and

(D) Keep inventory logs or records with the above information on site and available for inspection.

(5) The small quantity generator shall treat hazardous waste generated from an episodic event on site or manifest and ship such hazardous waste off site to a designated facility (as defined by Section R315-260-10) within sixty (60) calendar days from the start of the episodic event.

(6) The small quantity generator shall maintain the following records for three (3) years from the end date of the episodic event:

(i) Beginning and end dates of the episodic event;

(ii) A description of the episodic event;

(iii) A description of the types and quantities of hazardous wastes generated during the event;

(iv) A description of how the hazardous waste was managed as well as the name of the designated facility (as defined by Section R315-260-10) that received the hazardous waste;

(v) Name(s) of hazardous waste transporters; and

(vi) An approval letter from the Director if the generator petitioned to conduct one additional episodic event per calendar year.

**R315-262-233 Alternative Standards for Episodic Generation -- Petition to Manage One Additional Episodic Event Per Calendar Year.**

(a) A generator may petition the Director for a second episodic event in a calendar year without impacting its generator category under the following conditions:

(1) If a very small quantity generator or small quantity generator has already held a planned episodic event in a calendar year, the generator may petition the Director for an additional unplanned episodic event in that calendar year within 72 hours of the unplanned event.

(2) If a very small quantity generator or small quantity generator has already held an unplanned episodic event in a calendar year, the generator may petition the Director for an additional planned episodic event in that calendar year.

(b) The petition shall include the following:

(1) The reason(s) why an additional episodic event is needed and the nature of the episodic event;

(2) The estimated amount of hazardous waste to be managed from the event;

(3) How the hazardous waste is to be managed;

(4) The estimated length of time needed to complete management of the hazardous waste generated from the episodic event - not to exceed sixty (60) days; and

(5) Information regarding the previous episodic event managed by the generator, including the nature of the event, whether it was a planned or unplanned event, and how the generator complied with the conditions.

(c) The petition shall be made to the Director in writing,

either on paper or electronically.

(d) The generator shall retain written approval in its records for three (3) years from the date the episodic event ended.

**R315-262-250. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Applicability.**

The regulations of Sections R315-262-250 through 265 apply to those areas of a large quantity generator where hazardous waste is generated or accumulated on site.

**R315-262-251. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Maintenance and Operation of Facility.**

A large quantity generator shall maintain and operate its facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

**R315-262-252. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Required Equipment.**

All areas deemed applicable by Section R315-262-250 shall be equipped with the items in Subsections R315-262-252(a) through (d) (unless none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below or the actual hazardous waste generation or accumulation area does not lend itself for safety reasons to have a particular kind of equipment specified below). A large quantity generator may determine the most appropriate locations within its facility to locate equipment necessary to prepare for and respond to emergencies:

(a) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

(b) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;

(c) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and

(d) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

**R315-262-253. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Testing and Maintenance of Equipment.**

All communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of emergency.

**R315-262-254. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Access to Communications or Alarm System.**

(a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation shall have immediate access (e.g., direct or unimpeded access) to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required under Section R315-262-252.

(b) In the event there is just one employee on the premises while the facility is operating, the employee shall have

immediate access, e.g., direct or unimpeded access, to a device, such as a telephone, immediately available at the scene of operation, or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required under Section R315-262-252.

**R315-262-255. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Required Aisle Space.**

The large quantity generator shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

**R315-262-256. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Arrangements with Local Authorities.**

(a) The large quantity generator shall attempt to make arrangements with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers, and local hospitals, taking into account the types and quantities of hazardous wastes handled at the facility. Arrangements may be made with the Local Emergency Planning Committee, if it is determined to be the appropriate organization with which to make arrangements.

(1) A large quantity generator attempting to make arrangements with its local fire department shall determine the potential need for the services of the local police department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals.

(2) As part of this coordination, the large quantity generator shall attempt to make arrangements, as necessary, to familiarize the above organizations with the layout of the facility, the properties of the hazardous waste handled at the facility and associated hazards, places where personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes as well as the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(3) Where more than one police or fire department might respond to an emergency, the large quantity generator shall attempt to make arrangements designating primary emergency authority to a specific fire or police department, and arrangements with any others to provide support to the primary emergency authority.

(b) The large quantity generator shall maintain records documenting the arrangements with the local fire department as well as any other organization necessary to respond to an emergency. This documentation shall include documentation in the operating record that either confirms such arrangements actively exist or, in cases where no arrangements exist, confirms that attempts to make such arrangements were made.

(c) A facility possessing 24-hour response capabilities may seek a waiver from the State Fire Marshal or locality as far as needing to make arrangements with the local fire department as well as any other organization necessary to respond to an emergency, provided that the waiver is documented in the operating record.

**R315-262-260. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Purpose and Implementation of Contingency Plan.**

(a) A large quantity generator shall have a contingency plan for the facility. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

(b) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

**R315-262-261. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Content of Contingency Plan.**

(a) The contingency plan shall describe the actions facility personnel shall take to comply with Sections R315-262-260 and 265 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

(b) If the generator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with some other emergency or contingency plan, it need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the standards of Rule R315-262. The generator may develop one contingency plan that meets all regulatory standards. The plan should be based on the National Response Team's Integrated Contingency Plan Guidance, "One Plan."

(c) The plan shall describe arrangements agreed to with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers, local hospitals or, if applicable, the Local Emergency Planning Committee, pursuant to Section R315-262-256.

(d) The plan shall list names and emergency telephone numbers of all persons qualified to act as emergency coordinator (see Section R315-262-264), and this list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they will assume responsibility as alternates. In situations where the generator facility has an emergency coordinator continuously on duty because it operates 24 hours per day, every day of the year, the plan may list the staffed position, e.g., operations manager, shift coordinator, shift operations supervisor, as well as an emergency telephone number that can be guaranteed to be answered at all times.

(e) The plan shall include a list of all emergency equipment at the facility, such as fire extinguishing systems, spill control equipment, communications and alarm systems, internal and external, and decontamination equipment, where this equipment is required. This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(f) The plan shall include an evacuation plan for generator personnel where there is a possibility that evacuation could be necessary. This plan shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes, in cases where the primary routes could be blocked by releases of hazardous waste or fires.

**R315-262-262. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Copies of Contingency Plan.**

A copy of the contingency plan and all revisions to the plan shall be maintained at the large quantity generator and:

(a) The large quantity generator shall submit a copy of the contingency plan and all revisions to all local emergency responders (i.e., police departments, fire departments, hospitals and State and local emergency response teams that may be called upon to provide emergency services). This document may also be submitted to the Local Emergency Planning Committee, as appropriate.

(b) A large quantity generator that first becomes subject to these provisions after May 30, 2017 or a large quantity generator that is otherwise amending its contingency plan shall



at that time submit a quick reference guide of the contingency plan to the local emergency responders identified at Subsection R315-262-262(a) or, as appropriate, the Local Emergency Planning Committee. The quick reference guide shall include the following elements:

- (1) The types/names of hazardous wastes in layman's terms and the associated hazard associated with each hazardous waste present at any one time, e.g., toxic paint wastes, spent ignitable solvent, corrosive acid;
- (2) The estimated maximum amount of each hazardous waste that may be present at any one time;
- (3) The identification of any hazardous wastes where exposure would require unique or special treatment by medical or hospital staff;
- (4) A map of the facility showing where hazardous wastes are generated, accumulated and treated and routes for accessing these wastes;
- (5) A street map of the facility in relation to surrounding businesses, schools and residential areas to understand how best to get to the facility and also evacuate citizens and workers;
- (6) The locations of water supply, e.g., fire hydrant and its flow rate;
- (7) The identification of on-site notification systems, e.g., a fire alarm that rings off site, smoke alarms; and
- (8) The name of the emergency coordinator(s) and 7/24-hour emergency telephone number(s) or, in the case of a facility where an emergency coordinator is continuously on duty, the emergency telephone number for the emergency coordinator.

(c) Generators shall update, if necessary, their quick reference guides, whenever the contingency plan is amended and submit these documents to the local emergency responders identified at Subsection R315-262-262(a) or, as appropriate, the Local Emergency Planning Committee.

**R315-262-263. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Amendment of Contingency Plan.**

The contingency plan shall be reviewed, and immediately amended, if necessary, whenever:

- (a) Applicable regulations are revised;
- (b) The plan fails in an emergency;
- (c) The generator facility changes--in its design, construction, operation, maintenance, or other circumstances--in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency;
- (d) The list of emergency coordinators changes; or
- (e) The list of emergency equipment changes.

**R315-262-264. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Emergency Coordinator.**

At all times, there shall be at least one employee either on the generator's premises or on call, i.e., available to respond to an emergency by reaching the facility within a short period of time, with the responsibility for coordinating all emergency response measures and implementing the necessary emergency procedures outlined in Section R315-262-265. Although responsibilities may vary depending on factors such as type and variety of hazardous waste(s) handled by the facility, as well as type and complexity of the facility, this emergency coordinator shall be thoroughly familiar with all aspects of the generator's contingency plan, all operations and activities at the facility, the location and characteristics of hazardous waste handled, the location of all records within the facility, and the facility's layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan.

**R315-262-265. Preparedness, Prevention, and Emergency**

**Procedures for Large Quantity Generators -- Emergency Procedures.**

(a) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or designee when the emergency coordinator is on call) shall immediately:

- (1) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and
- (2) Notify appropriate state or local agencies with designated response roles if their help is needed.

(b) Whenever there is a release, fire, or explosion, the emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any released materials. The emergency coordinator may do this by observation or review of the facility records or manifests and, if necessary, by chemical analysis.

(c) Concurrently, the emergency coordinator shall assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment shall consider both direct and indirect effects of the release, fire, or explosion, e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions.

(d) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, the emergency coordinator shall report the findings as follows:

(1) If the assessment indicates that evacuation of local areas may be advisable, the emergency coordinator shall immediately notify appropriate local authorities. The emergency coordinator shall be available to help appropriate officials decide whether local areas should be evacuated; and

(2) The emergency coordinator shall immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center, using their 24-hour toll free number 800-424-8802, and the Division of Waste Management and Radiation Control at 801-536-0200 or after hours at 801-536-4123. The report shall include:

- (i) Name and telephone number of reporter;
- (ii) Name and address of the generator;
- (iii) Time and type of incident (e.g., release, fire);
- (iv) Name and quantity of material(s) involved, to the extent known;
- (v) The extent of injuries, if any; and
- (vi) The possible hazards to human health, or the environment, outside the facility.

(e) During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the generator's facility. These measures shall include, where applicable, stopping processes and operations, collecting and containing released hazardous waste, and removing or isolating containers.

(f) If the generator stops operations in response to a fire, explosion or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(g) Immediately after an emergency, the emergency coordinator shall provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility. Unless the generator can demonstrate, in accordance with Subsections R315-261-3(c) or (d), that the recovered material is not a hazardous waste, then it is a newly generated hazardous waste that shall be managed in accordance with all the applicable requirements and conditions for exemption in Rules R315-262, 263, and 265.

(h) The emergency coordinator shall ensure that, in the

affected area(s) of the facility:

(1) No hazardous waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

(2) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(i) The generator shall note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, the generator shall submit a written report on the incident to the Director. The report shall include:

(I) Name, address, and telephone number of the generator;

(II) Date, time, and type of incident, e.g., fire, explosion;

(III) Name and quantity of material(s) involved;

(IV) The extent of injuries, if any;

(V) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(VI) Estimated quantity and disposition of recovered material that resulted from the incident.

**KEY: hazardous waste, generators**  
**August 31, 2017**

**19-6-105**

**19-6-106**

**R317. Environmental Quality, Water Quality.****R317-101. Utah Wastewater Project Assistance Program.****R317-101-1. Statutory Authority.**

The authority for the Department of Environmental Quality acting through the Utah Water Quality Board to issue loans to political subdivisions to finance all or part of wastewater project costs and to enter into credit enhancement agreements, interest buy-down agreements, and Hardship Grants is provided in Sections 11-8-2 and 73-10c-4.

**R317-101-2. Definitions.**

"Cost Effective Analysis" means an analysis of feasible project alternatives capable of meeting state and federal water quality and public health requirements. The cost effective analysis shall be certified by the political subdivision and it shall include:

- A. monetary costs including the present worth or equivalent annual value of all capital costs;
- B. operation, maintenance, and replacement costs;
- C. fiscal sustainability, e.g., the cost of replacement of the project; and
- D. maximizes the potential for efficient use, reuse, recapture, and conservation of water and for energy conservation to the maximum extent practicable.

"Credit Enhancement Agreement" means any agreement entered into between the Board, on behalf of the State, and a political subdivision, for the purpose of providing methods and assistance to political subdivisions to improve the security for and marketability of wastewater project obligations.

"Eligible Project Costs" means project costs that meet the financial assistance requirements established by the Board.

"Executive Secretary" means the Executive Secretary of the Water Quality Board.

"Financial Assistance" means a project loan, bond purchase, credit enhancement agreement, interest buy-down agreement or hardship grant.

"Hardship Grant" means a grant of monies to a political subdivision, individual, corporation, association, state of federal agency or other private entity that meets the wastewater project loan considerations or nonpoint source eligibility criteria whose project is determined by the Board to not be economically feasible unless grant assistance is provided. A hardship grant may be authorized in the following forms:

- A. A Planning Advance is required to be repaid at a later date, unless deemed otherwise by the Board, to help meet project costs incident to planning to determine the economic, engineering and financial feasibility of a proposed project.
- B. A Design Advance is required to be repaid at a later date, to help meet project costs incident to design including, but not limited to, surveys, preparation of plans, working drawings, specifications, investigations and studies.
- C. A Project Grant is not required to be repaid.

"Interest Buy-Down Agreement" means any agreement entered into between the Board, on behalf of the State, and a political subdivision, for the purpose of reducing the cost of financing incurred by a political subdivision on bonds issued by the political subdivision for project costs.

"Nonpoint Source (NPS) Project" means a facility, system, practice, study, activity or mechanism that abates, prevents or reduces the pollution of water of this state by a nonpoint source.

"Principal Forgiveness" means a loan wherein a portion of the loan amount is forgiven (not required to be repaid) upon closing the loan.

"Project Costs" means the cost of acquiring and constructing any project and include: the cost of acquisition and construction of any facility or any modification, improvement, or extension of such facility; any cost incident to the acquisition of any necessary property, easement or right of way; engineering or architectural fees, legal fees, fiscal agent's and financial

advisors' fees; any cost incurred for any preliminary planning to determine the economic and engineering feasibility of a proposed project; costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications and the inspection and supervision of the construction of any facility; interest accruing on loans made under this program during acquisition and construction of the project; and any other cost incurred by the political subdivision, the Board or the Department of Environmental Quality, in connection with the issuance of obligation of the political subdivision to evidence any loan made to it under the law.

"Political Subdivision" means any county, city, town, improvement district, metropolitan water district, water conservancy district, special service district, drainage district, irrigation district, separate legal or administrative entity created under the Interlocal Co-operation Act or any other entity constituting a political subdivision under the laws of Utah.

"Wastewater Project" means a sewer, storm or sanitary sewage system, sewage treatment facility, lagoon, sewage collection facility and system and related pipelines and all similar systems, works and facilities necessary or desirable to collect, hold, cleanse or purify any sewage or other polluted waters of this State; and a study, pollution prevention activity, or pollution education activity that will protect waters of this state.

"Wastewater Project Obligation" means, as appropriate, any bond, loan, note or other obligation of a political subdivision issued to finance all or part of the cost of acquiring, constructing, expanding, upgrading or improving a wastewater project.

**R317-101-3. Application and Project Initiation Procedures.**

The following procedures must normally be followed to obtain financial assistance from the Board:

A. It is the responsibility of the applicant to obtain the necessary financial, legal and engineering counsel to prepare an effective and appropriate financial assistance agreement, including cost effectiveness evaluations of financing methods and alternatives, for consideration by the Board.

B. A completed application form, project engineering report as appropriate, and financial capability assessment are submitted to the Board. Any comments from the local health department or association of governments should accompany the application.

C. The staff prepares an engineering and financial feasibility report on the project for presentation to the Board.

D. The Board authorizes financial assistance for the project on the basis of the feasibility report prepared by the staff, designates whether a loan, credit enhancement agreement, interest buy-down agreement, hardship grant or any combination thereof, is to be entered into, and approves the project schedule see Section R317-101-14. The Board shall authorize a hardship grant only if it determines that other financing alternatives are unavailable or unreasonably expensive to the applicant. If the applicant seeks financial assistance in the form of a loan of amounts in the security account established pursuant to Title 73, Chapter 10c, which loan is intended to provide direct financing of projects costs, then the Board shall authorize such loan only if it determines that credit enhancement agreements, interest buy-down agreements and other financing alternatives are unavailable or unreasonably expensive to the applicant or that a loan represents the financing alternative most economically advantageous to the state and the applicant; provided, that for purposes of this paragraph and for purposes of Subsection 73-10c-4(2), the term "loan" shall not include loans issued in connection with interest buy-down agreements as described in Section R317-101-12 hereof or in connection with any other interest buy-down arrangement.

E. Planning Advance Only - The applicant requesting a

Planning Advance must attend a preapplication meeting, complete an application for a Planning Advance, prepare a plan of study, and submit a draft contract for planning services.

F. Design Advance Only - The applicant requesting a design advance must have completed an engineering plan which meets program requirements and submitted a draft contract for design services.

G. The project applicant must demonstrate public support for the project.

H. Political subdivisions which receive assistance for a wastewater project under these rules must agree to participate annually in the Municipal Wastewater Planning Program (MWPP).

I. Political subdivisions which receive assistance under these rules and which own a culinary water system must complete and submit a Water Conservation Plan, per Section 73-10-32.

J. The project applicant's engineer prepares a preliminary design report, as appropriate, outlining detailed design criteria for submission to the Board.

K. Upon approval of the preliminary design report by the Board, the applicant's engineer completes the plans, specifications, and contract documents for review by the Board.

L. For financial assistance mechanisms when the applicant's bond is purchased by the Board, the project applicant's bond documentation, including an opinion from legal counsel experienced in bond matters that the wastewater project obligation is a valid and binding obligation of the political subdivision, must be submitted to the Assistant Attorney General for preliminary approval and the applicant shall publish a Notice of Intent to issue bonds in a newspaper of general circulation pursuant to Section 11-14-201. For financial assistance mechanisms when the applicant's bond is not purchased by the Board, the applicant shall submit a true and correct copy of an opinion from legal counsel experienced in bond matters that the wastewater project obligation is a valid and binding obligation of the political subdivision.

M. Hardship Grant - The Board executes a grant agreement setting forth the terms and conditions of the grant.

N. The Director issues a Construction Permit and Plan Approval for plans and specifications, and concurs in bid advertisement.

O. If a project is designated to be financed by a loan or an interest buy-down agreement as described in Sections R317-101-12 through R317-101-13, from the Board, to cover any part of project costs an account supervised by the applicant and the Board will be established by the applicant to assure that loan funds are used only for qualified project costs. If financial assistance for the project is provided by the Board in the form of a credit enhancement agreement as described in Section R317-101-11 all project funds will be maintained in a separate account and a quarterly report of project expenditures will be provided to the Board.

P. A copy of the applicant's Sewer Use Ordinance or Resolution and User Charge System must be submitted to the Division for review and approval to insure adequate provisions for debt retirement, operation and maintenance, or both.

Q. A plan of operation must be submitted by the applicant to the Division for new treatment works, sewerage systems, and projects involving upgrades that add additional treatment, e.g., advanced treatment. The Plan must address: adequate staffing, with an operator certified at the appropriate level in accordance with Rule R317-10, training, and start up procedures to assure efficient operation and maintenance of the facilities. The plan must be submitted by the applicant in draft at initiation of construction and approved in final form prior to 50% of construction completion.

R. An Operation and Maintenance Manual (Manual) which provides long-term guidance for efficient facility

operations and maintenance is submitted by the applicant and approved in draft and final form prior to, respectively, 50% and 90% of project construction completion. Existing Manuals can be submitted or amended if the existing Manual is relevant to the funded project.

S. The applicant's contract with its engineer must be submitted to the Board for review to determine that there will be adequate engineering involvement, including project supervision and inspection, to successfully complete the project.

T. The applicant's attorney must provide an opinion to the Board regarding legal incorporation of the applicant, valid legal title to rights-of-way and the project site, and adequacy of bidding and contract documents.

U. Credit Enhancement Agreement and Interest Buy-Down Agreement Only - The Board issues the credit enhancement agreement or interest buy-down agreement setting forth the terms and conditions of the security or other forms of assistance provided by the agreement and notifies the applicant to sell the bonds as described in Sections R317-101-11 through R317-101-12.

V. Credit Enhancement Agreement and Interest Buy-Down Agreement Only - The applicant sells the bonds on the open market and notifies the Board of the terms of sale. If a credit enhancement agreement is being utilized, the bonds sold on the open market shall contain the legend required by Subsection 73-10c-6(2)(a). If an interest buy-down agreement is being utilized, the bonds sold on the open market shall bear a legend which makes reference to the interest buy-down agreement and states that such agreement does not constitute a pledge of or charge against the general revenues, credit or taxing powers of the state and that the holder of any such bond may look only to the applicant and the funds and revenues pledged by the applicant for the payment of interest and principal on the bonds.

W. The applicant opens bids for the project.

X. Loan Only - The Board gives final approval to purchase the bonds and execute the loan contract as described in Section R317-101-13.

Y. Loan Only - The final closing of the loan is conducted.

Z. The Board gives approval to award the contract to the low responsive and responsible bidder.

AA. A preconstruction conference is held.

BB. The applicant issues a written notice to proceed to the contractor.

#### **R317-101-4. Loan, Credit Enhancement, Interest Buy-Down, and Hardship Grant Consideration Policy.**

##### **A. Water Quality Board Priority Determination**

In determining the priority for financial assistance the Board shall consider:

1. the ability of the political subdivision to obtain funds for the wastewater project from other sources or to finance such project from its own resources;
2. the ability of the political subdivision to repay the loan or other project obligations;
3. whether a good faith effort to secure all or part of the services needed from the private sector through privatization has been made; and
4. whether the wastewater project:
  - a. meets a critical local or state need;
  - b. is cost effective;
  - c. will protect against present or potential health hazards;
  - d. is needed to comply with minimum standards of the Federal Water Pollution Control Act Amendments of 1972, U.S.C. 1251 et. Seq., or any similar or successor statute;
  - e. is needed to comply with the minimum standards of Title 19, Chapter 5 Utah Water Quality Act, or any similar or successor statute;
  - f. is designed to reduce or prevent the pollution of the

waters of this state; or

g. furthers the concept of regionalized sewer service;

5. the priority point total for the project as determined by the Board from application of the current Utah State Project Priority System Rule R317-100;

6. the overall financial impact of the proposed project on the citizens of the community including direct and overlapping indebtedness, tax levies, user charges, impact or connection fees, special assessments, etc., resulting from the project, and anticipated operation and maintenance costs versus the median adjusted gross household income of the community;

7. the readiness of the project to proceed;

8. Consistency with other funding source commitments that may have been obtained for the project; and

9. other criteria that the Board may deem appropriate.

B. Water Quality Board Financial Assistance Determination. The amount and type of assistance offered will be based on the following considerations:

1. for loan consideration, the estimated annual cost of sewer service to the average residential user should not exceed 1.4% of the median adjusted gross household income from the most recent available State Tax Commission records. Consideration will also be given to the applicant's unemployment data, population trends, and the applicant's level of contribution to the project. For hardship grant consideration, exclusive of advances for planning and design, the estimated annual cost of sewer service for the average residential user should exceed 1.4% of the median adjusted gross household income from the most recent available State Tax Commission records. The Board will also consider the applicant's level of contribution to the project;

2. the estimated, average residential cost, as a percent of median adjusted gross household income, for the proposed project should be compared to the average user charge, as a percent of median adjusted gross household income, for recently constructed projects in the State of Utah;

3. maximizing return on the security account while still allowing the project to proceed;

4. local political and economic conditions;

5. cost effectiveness evaluation of financing alternatives;

6. availability of funds in the security account;

7. environmental need; and

8. other data and criteria the Board may deem appropriate.

C. The Executive Secretary may not execute financial assistance for NPS projects totaling more than \$1,000,000 per fiscal year unless directed by the Board.

#### **R317-101-5. Financial Assistance For Onsite Wastewater Systems.**

A. Replacement or repair of Onsite Wastewater Systems (OWS), as defined in Section R317-4-2, are eligible for funding if they have malfunctioned or are in non-compliance with state administrative rules or local regulations governing the same.

1. Funding will only be made for the repair or replacement of existing malfunctioning OWS when the malfunction is not attributable to inadequate system operation and maintenance.

2. The Executive Secretary, or another whom the Board may designate, will authorize and execute OWS grant agreements and loan agreements with the applicant for a wastewater project as defined by Subsection R317-101-2.C.

3. OWS funding recipients must have a total household income no greater than 150% of the state median adjusted gross household income, as determined from the Utah Tax Commission's most recently published data or other means testing as approved by the Executive Secretary.

4. Eligible activities under the OWS Financial Assistance program include:

a. septic tank;

b. absorption system;

c. building sewer;

d. appurtenant facilities

e. conventional or alternative OWS;

f. connection of the residence to an existing centralized sewer system, including connection or hook-up fees, if this is determined to be the best means of resolving the failure of an OWS; and

g. costs for construction, permits, legal work, engineering, and administration.

5. Ineligible project components include:

a. land;

b. interior plumbing components;

c. impact fees, if connecting to a centralized sewer system is determined to be the best means of resolving the failure of an OWS;

d. OWS for new homes or developments; and

e. OWS operation and maintenance.

6. The local health department will certify the completion of the project to the Division.

7. To be reimbursed for project expenditures the borrower must solicit bids for the work, maintain and submit invoices, financial records, or receipts that document the expenditures or costs.

B. The following procedures apply to OWS loans:

1. OWS loan applications will be received by the local health department which will evaluate the need, priority, eligibility and technical feasibility of each project. The local health department will issue a certificate of qualification (COQ) for projects which qualify for a OWS loan. The COQ and completed loan application will be forwarded to the Division for its review;

2. the maximum term of the OWS loan will be 10 years;

3. the interest rate of OWS loans may be between 0% and 60% of the interest rate on a 30-year U.S. Treasury bill;

4. security conditions for OWS loans:

a. the borrower must adequately secure the loan with real property or other appropriate security; and

b. the ratio of the loan amount to the value of the pledged security must not be greater than 70%;

5. OWS loan recipients will be billed for monthly payments of principal and interest beginning 60 days after execution of the loan agreement;

6. the OWS loan must be paid in full at the time the property served by the project is sold or transferred; and

7. the Division, or its designee, will evaluate the financial aspects of the project and the credit worthiness of the applicant.

C. The following procedures apply to OWS grants:

OWS grants may be made to recipients that are unable to secure a loan but are otherwise eligible for funding as identified in Subsection R317-101-5.A.4.

#### **R317-101-6. Financial Assistance for Large Underground Wastewater Disposal Systems.**

A. Large Underground Wastewater Disposal Systems (LUWDS) projects, as defined in Subsection 73-10c-2(9), may be eligible for funding from the state revolving loan funds and from the Hardship Grant Program. Application and project initiation procedures including loans, credit enhancement, interest buy-down and hardship grant consideration policies for LUWDS are defined in Sections R317-101-3 through R317-101-4 except as otherwise stated.

B. The following procedures apply to LUWDS project loans:

1. Projects will be prioritized according to criteria established in Section R317-100-4, Utah State Project Priority System for the Utah Wastewater Project Assistance Program.

2. The maximum term of LUWDS project loans will be twenty years but not beyond a term exceeding the depreciable life of the project.

3. The interest rate on LUWDS project loans will be determined by the Board.

C. The following procedures apply to LUWDS project grants. Hardship Grants may be considered for LUWDS projects that meet criteria established in Section R317-101-4 and that:

1. address a critical water quality need or health hazard;
2. would otherwise not be economically feasible; or
3. implement provisions of TMDLs.

**R317-101-7. Financial Assistance for NPS Projects.**

A. NPS Projects, as defined in Section 73-10c-2(9), are eligible for funding from the state revolving loan fund and from the Hardship Grant Program.

1. Funding to individuals in amounts in excess of \$150,000 will be presented to and authorized funding by the Board. Funding of less than \$150,000 will be considered and authorized funding by the Executive Secretary.

2. The Executive Secretary, or another whom the Board may designate, will authorize and execute NPS project loan agreements, grant agreements, or both, with the applicant.

3. Eligible projects under the NPS project funding programs include projects that:

- a. abate or reduce raw sewage discharges;
- b. repair or replace failing individual on-site wastewater disposal systems;
- c. reduce untreated or uncontrolled runoff;
- d. improve critical aquatic habitat resources;
- e. conserve soil, water, or other natural resources;
- f. protect and improve ground water quality;
- g. preserve and protect the beneficial uses of water of the state;
- h. reduce the number of water bodies not achieving water quality standards;
- i. improve watershed management;
- j. prepare and implement total maximum daily load (TMDL) assessments;
- k. are a study, activity, or mechanism that abates, prevents or reduces water pollution; or
- l. supports educational activities that promotes water quality improvement.

B. The following procedures apply to NPS project loans:

1. Projects will be prioritized according to criteria established in Section R317-100-4, Utah State Project Priority System for the Utah Wastewater Project Assistance Program.

2. The maximum term of NPS program loans will be twenty years but not beyond a term exceeding the depreciable life of the project.

3. The interest rate on NPS project loans will be determined by the Board.

4. NPS project loans are exempt from environmental reviews under the National Environmental Policy Act (NEPA) as long as the funding of these projects is identified in Utah's NPS Pollution Management Plan.

5. Security of NPS project loans.

a. NPS project loans to individuals in amounts greater than \$15,000 will be secured by the borrower with water stock or real estate. Loans less than \$15,000 may be secured with other assets.

b. For NPS project loans to individuals the ratio of the loan amount to the value of the pledged security must not be greater than 70%.

c. NPS loans to political subdivisions of the state will be secured by a revenue bond, general obligation bond or some other acceptable instrument of debt.

6. The Division will determine project eligibility and priority. Periodic payments will be made to the borrower, contractors, or consultants for work relating to the planning, design, and construction of the project. The borrower must maintain and submit the financial records that document

expenditures or costs.

7. The Division, or its designee, will perform periodic project inspections. Final payment on the NPS loan project will not occur until a final inspection has occurred and an acceptance letter issued for the completed project.

8. NPS project loan recipients will be billed periodically for payments of principal and interest as agreed to in the executed loan agreements or bond documents.

9. The Division, or its designee, will evaluate the financial aspects of the NPS project and the credit worthiness of the applicant.

C. The following procedures apply to NPS project grants. Hardship Grants may be considered for a NPS project that:

1. addresses a critical water quality need or health hazard;
2. remediates water quality degradation resulting from natural sources damage including fires, floods, or other disasters;
3. would otherwise not be economically feasible;
4. provides financial assistance for a study, pollution prevention activity, or educational activity; or
5. implements provisions of TMDLs.

**R317-101-8. Loans For Storm Water Projects.**

Storm water projects are eligible for funding through the Utah Wastewater Project Assistance Program, as identified in Subsection 73-10c-2(12). In addition to other rules identified in Rule R317-101 which may apply, the following particular rules apply to storm water project loans:

A. Loans will only be made to political subdivisions of the state.

B. The interest rate charged on storm water project loans will be equal to 60% of the interest rate on a 30-year U.S. Treasury bill.

C. Storm water project loans will be made twice per year. Projects will be prioritized so that the limited funds which are available are allocated first to the highest priority projects in accordance with Sections R317-100-3 through R317-100-4, ranking systems of the Utah State Project Priority System for the Utah Wastewater Project Assistance Program.

D. Storm water projects are eligible for funding provided a significant portion of the project is for the purpose of improving water quality.

**R317-101-9. Planning Advance.**

A. A Planning Advance can only be made to a political subdivision which demonstrates a financial hardship.

B. A Planning Advance is made to a political subdivision with the intent to provide interim financial assistance for project planning until the long-term project financing can be secured. Once the long-term project financing has been secured, the Planning Advance must be expeditiously repaid to the Board.

C. The applicant must demonstrate that all funds necessary to complete project planning will be available prior to commencing the planning effort. The Planning Advance will be deposited with these other funds into a supervised escrow account at the time the grant agreement between the applicant and Board is executed.

D. Failure on the part of the recipient of a Planning Advance to implement the construction project may authorize the Board to seek repayment of the Advance on such terms and conditions as it may determine.

E. The recipient of a Planning Advance must first receive written approval for any cost increases or changes to the scope of work.

**R317-101-10. Design Advance.**

A. A Design Advance can only be made to a political subdivision which demonstrates a financial hardship.

B. A Design Advance is made to a political subdivision

with the intent to provide interim financial assistance for the completion of the project design until the long-term project financing can be secured. Once the long-term project financing has been secured, the Project Design Advance must be expeditiously repaid to the Board.

C. The applicant must demonstrate that all funds necessary to complete the project design will be available prior to commencing the design effort. The Design Advance will be deposited with these other funds into a supervised escrow account at the time the grant agreement between the applicant and Board is executed.

D. Failure on the part of the recipient of a Design Advance to implement the construction project may result in the Board seeking repayment of the Advance on such terms and conditions as it determines.

E. The recipient of a Design Advance must first receive written approval for any cost increases or changes to the scope of work.

#### **R317-101-11. Credit Enhancement Agreements.**

The Board will determine whether a project may receive all or part of a loan, hardship grant, credit enhancement agreement or interest buy-down agreement subject to the criteria in Section R317-101-4. To provide security for project obligations the Board may agree to purchase project obligations of political subdivisions or make loans to the political subdivisions to prevent defaults in payments on project obligations. The Board may also consider making loans to the political subdivisions to pay the cost of obtaining letters of credit from various financial institutions, municipal bond insurance, or other forms of insurance or security for project obligations. In addition, the Board may consider other methods and assistance to political subdivisions to properly enhance the marketability of project obligations or enhance the security for project obligations.

#### **R317-101-12. Interest Buy-Down Agreement.**

Interest buy-down agreements may consist of:

A. A financing agreement between the Board and political subdivision whereby a specified sum is loaned or granted to the political subdivision to be placed in a trust account. The trust account shall be used exclusively to reduce the cost of financing for the project.

B. A financing agreement between the Board and the political subdivision whereby the proceeds of bonds purchased by the Board is combined with proceeds from publicly issued bonds to finance the project. The rate of interest on bonds purchased by the Board may carry an interest rate lower than the interest rate on the publicly issued bonds, which when blended together will provide a reduced annual debt service for the project.

C. Any other legal method of financing which reduces the annual payment amount on locally issued bonds. After credit enhancement agreements have been evaluated by the Board and it is determined that this method is not feasible or additional assistance is required, interest buy-down agreements and loans may be considered. Once the level of financial assistance required to make the project financially feasible is determined, a cost effective evaluation of interest buy-down options and loans must be completed. The financing alternative chosen should be the one most economically advantageous for the state and the applicant.

#### **R317-101-13. Loans.**

The Board may make loans to finance all or part of a wastewater project only after credit enhancement agreements and interest buy-down agreements have been evaluated and found either unavailable or unreasonably expensive. The financing alternative chosen should be the one most economically advantageous for the state and its political

subdivision.

#### **R317-101-14. Project Authorization.**

A project may be authorized for a loan, credit enhancement agreement, interest buy-down agreement or hardship grant in writing by the Board following submission and favorable review of an application form, engineering report, if required, financial capability assessment and Staff feasibility report. The engineering report must include the preparation of a cost effective analysis according to Section R317-101-2. If it is anticipated that a project will be a candidate for financial assistance from the Board, the Staff should be contacted, and the plan of study for the engineering report, if required, should be approved before the planning is initiated.

Once the application form, plan of study, engineering report, and financial capability assessment are reviewed, the staff will prepare a project feasibility report for the Board's consideration in authorizing a project. The project feasibility report will include a detailed evaluation of the project with regard to the Board's funding priority criteria, and will contain recommendations for the type of financial assistance which may be extended, i.e., a loan, credit enhancement agreement, interest buy-down agreement or hardship grant.

Project authorization is not a contractual commitment and is conditioned upon the availability of funds at the time of loan closing, or signing of the credit enhancement, interest buy-down, or grant agreement and upon adherence to the project schedule approved at that time. If the project is not proceeding according to the project schedule the Board may withdraw the project authorization so that projects that are ready to proceed can obtain necessary funding. Extensions to the project schedule may be considered by the Board, but any extension requested must be fully justified.

#### **R317-101-15. Financial Evaluations.**

A. The Board considers it a proper function to assist and give direction to project applicants in obtaining funding from such State, Federal or private financing sources as may be available to achieve the most effective utilization of resources in meeting the needs of the State. This may also include joint financing arrangements with several funding agencies to complete a total project.

B. Hardship Grants will be evidenced by a grant agreement.

C. Loans will be evidenced by the sale of any legal instrument which meets the legal requirements of the Title 11, Chapter 14, Local Government Bonding Act, to the Board.

D. The Board will consider the financial feasibility and cost effectiveness evaluation of the project in detail. The financial capability assessment must be completed as a basis for the review. The Board will generally use these reports to determine whether a project will be authorized to receive a loan, credit enhancement agreement, interest buy-down agreement or hardship grant, as described in Sections R317-101-5 through R317-101-9. If a project is authorized to receive a loan, the Board will establish the portion of the construction cost to be included in the loan and will set the terms for the loan. The Board will require the applicants to repay the loan as rapidly as is reasonably consistent with the financial capability of the applicant. It is the Board's intent to avoid repayment schedules which would exceed the design life of the project facilities.

E. In order to support costs associated with the administration of the loan program, the Board may charge a loan origination fee. A recipient may use loan proceeds to pay the loan origination fee. The loan origination fee shall be due at the recipient's scheduled loan closing.

F. The Board shall determine the date on which annual repayment will be made. In fixing this date, all possible contingencies shall be considered, and the Board may allow the

system user one year of actual use of the project facilities before the first repayment is required.

G. The applicant shall furnish the Board with acceptable evidence that the applicant is capable of paying its share of the construction costs during the construction period.

H. Loans and Interest Buy-Down Agreements Only - The Board may require, as part of the loan or interest buy-down agreement, that any local funds which are to be used in financing the project be committed to construction prior to or concurrent with the committal of State funds.

I. The Board will not forgive the applicant of any payment after the payment is due.

**R317-101-16. Committal of Funds and Approval of Agreements.**

After the Board has approved the plans and specifications by the issuance of a Construction Permit and Plan Approval, and has received the appropriate legal documents and other items listed in the authorization letter, the project will be considered by the Board for final approval. The Board will determine whether the project loan, interest buy-down agreement or grant agreement is in proper order on the basis of the Board's authorization. The Executive Secretary may then close the loan, credit enhancement or grant agreement if representations to the Board or other aspects of the project have not changed significantly since the Board's funding authorization, provided all conditions imposed by the Board have been met. If significant changes have occurred, the Board will then review the project and, if satisfied, will then commit funds, approve the signing of the contract, credit enhancement agreement, interest buy-down or grant agreement, and instruct the Executive Secretary to submit a copy of the signed contract agreement to the Division of Finance.

**R317-101-17. Construction.**

The Division staff may conduct inspections and will report to the applicant. Contract change orders must be properly negotiated with the contractor and approved in writing. Change orders in excess of \$10,000 must receive prior written approval by the Division staff before execution. Upon successful completion of the project and recommendation of the applicant's engineer, the applicant will request the Division to conduct a final inspection. When the project is complete to the satisfaction of the applicant's engineer, the Division staff, and the applicant, written approval will be issued by the Director to commence using the project facilities.

**KEY: wastewater, water quality, loans, sewage treatment**  
**September 24, 2015** 19-5  
**Notice of Continuation March 20, 2018** 73-10c  
11-8-2



**R357. Governor, Economic Development.****R357-16. Utah Outdoor Recreation Infrastructure Grant.****R357-16-1. Authority.**

(1) Subsection 63N-9-203 requires the office to make rules establishing the eligibility and reporting criteria for an entity to receive an infrastructure grant.

**R357-16-2. Definitions.**

(1) Terms in these rules are defined in Utah Code Section 63N-9-102.

**R357-16-3. Application Form and Submission Procedure.**

(1) The application will be provided by the Office and contain the following content:

- (a) General submission instructions;
- (b) Grants available to be claimed;
- (c) Criteria for qualification of a grant;
- (d) Instructions regarding a project description including timeline;
- (e) Instructions for providing an outlined budget for total project cost, highlight of funds already procured for the project; and an itemized budget showing planned use of the grant funds being requested;
- (f) Instructions for reporting project impacts including community and economic impacts;
- (g) The application scoring system;
- (h) Any required deadlines, reports, and relevant timelines; and

(i) All required documents and information necessary for verification and approval of the application.

(2) The application shall be created in an electronic form available to the public at [business.utah.gov](http://business.utah.gov)

(3) The application shall also be available in paper form for any person or entity that requests it.

(4) Applications must be submitted to Office of Outdoor Recreation staff on or before the specified deadline in the application.

(5) Staff will review final applications for completeness and the program manager of the Office of Outdoor Recreation will verify that the documentation is complete and that it meets the program criteria as outlined in statute and this rule.

(6) All completed documentations will be reviewed and awardees selected via the criteria and method as outlined in this rule.

**R357-16-4. Eligible Entities.**

(1) Grants may be awarded to the following entities within the state of Utah:

- (a) Non-profit corporations physically located within the State with a 501(c)(3) and (c)(6) status;
- (b) Municipalities;
- (c) Counties; and
- (d) Tribal governments.

(2) The following entities may not receive an infrastructure grant:

- (a) a federal government entity;
- (b) a state agency; and
- (c) a for-profit entity.

**R357-16-5. Infrastructure Project Eligibility Criteria.**

(1) Budget/Costs/Matching Requirements: The Office will not fund more than 50% of the proposed project's eligible costs. The grant recipient shall provide matching funds having a value equal to or greater than the amount of the infrastructure grant.

(a) The maximum grant request is dependent on available funds and will be outlined in the grant application.

(b) Up to 50% of the grant recipient match may be provided through an in-kind contribution by the grant recipient, if:

(i) approved by the executive director after consultation with the director and the board; and

(ii) the in-kind donation does not include real property.

(c) Matching requirements, eligible and ineligible matching costs, and other matching funding requirements will be provided in the grant application.

(d) At least 75% of the matching funds for the project must be secured in order to apply.

(2) Economic Development or Tourism Endorsement: The infrastructure project shall have an endorsement from the local economic development office and/or local tourism director stating that the project will have the ability to attract growth and retention in the community/area and/or have the potential for increased visitation to the area. Endorsement: The infrastructure project endorsement should be provided in writing at the time of application.

(a) Statement of Responsibility: The applicant must include a Statement of Responsibility from the entity who will maintain the recreational infrastructure in the future. This will be required by the Office as a condition to receiving a grant.

(3) Public Lands: If the project is located on public lands, it must have approval from the appropriate public entity.

(a) The applicant may be required to show approval from the agency that follows the National Environmental Policy Act (NEPA) process as a condition to receiving the grant.

(4) Property Ownership: All projects must be located on land that is owned by or under the control of the applicant or a partner (e.g. local government or conservancy.)

(a) If the project crosses private property, as in the case of a trail, a binding agreement must be reached with the property owners for a minimum of 10 years.

(5) Sensitive Wildlife Areas: Applicant must coordinate with the Utah Division of Wildlife Resources (DWR) to determine if the project is located in a special management area for sensitive species such as the greater sage grouse.

(a) If the project is in or near a Sage Grouse Management Area (SGMA), the project proponent shall coordinate with DWR to make reasonable accommodations to avoid, minimize or mitigate the impacts to greater sage-grouse and their habitats.

(6) infrastructure projects may include but are not limited to:

(a) The establishment, construction, or renovation of trails, trail facilities, and trail infrastructure (e.g. trail kiosk, trail wayfinding signage, trailhead parking, restroom facilities, bridge or tunnel);

(b) The construction of a project for water-related outdoor recreational activities;

(c) The development of a project for wildlife watching opportunities, including bird watching;

(d) The development of a project that provides winter recreation amenities;

(e) the construction or improvement of a community park that has amenities for outdoor recreation;

(f) The construction or improvement of a naturalistic and accessible playground;

(g) the construction of a community owned or sponsored campground; or

(h) The establishment or construction of a community owned outdoor shooting or archery range.

(8) Ineligible Infrastructure projects may include but are not limited to:

(a) A private business such as outdoor service concession, amusement park, tubing park, etc.;

(b) Outdoor education programming;

(c) Outdoor swimming pools;

(d) Golf Courses;

(e) Athletic fields or courts;

(f) Outdoor amphitheaters;

(g) General community wayfinding signage; or

- (h) Harbor dredging projects.

**R357-16-7. Method and Formula for Determining Grant Recipients.**

(1) The Office shall use a weighted scoring system to enable the Utah Outdoor Recreation Grant Advisory Committee (pursuant to 63N-9-204) to analyze and advise on the awarding of grant and grant amounts.

(a) The scoring system shall be made available in the application;

(b) The scoring system will assess and value general categories including:

- i. Community need;
- ii. Economic impact including the potential to increase area tourism;
- iii. Recreation access and value;
- iv. Project readiness; and
- v.
- vi. Location within an underserved population or area.

(2) The Office shall distribute the grant applications among the committee members and ensure that each application will be reviewed and scored by members of the advisory committee.

(3) The Office will use the average of the scores to create a prioritization matrix ranking the applications in ascending order.

(4) Committee Review Procedure

(a) The Office shall convene the advisory committee for a meeting for the purpose of selecting the projects which will be recommended for the review

i. Method and formula for determining grant awards in committee meeting:

A. A prioritization matrix will be utilized to rank the projects

B. All but the lowest ranked projects will receive a review during the meeting of the committee

1. Subject to procedural rules, a member and a second may request a vote to bring a low scored project that was not scheduled for review to receive consideration by the committee

2. Subject to procedural rules, a member and a second may request a full committee vote for recommendation of an award

ii. Prioritization may be given to projects that:

A. Conform to the criteria and eligibility as set forth in the program guide; and

B. can increase visitation; or

C. will serve an underprivileged or underserved community; or

D. will provide geographic parity; or

E. are trails that are "family friendly" or

F. are trail segments that complete trail gap; or

G. will add to connect trails for a larger trail network; or

H. enhance an outdoor recreation amenity that draws tourists; and

I. have coordinated with the local tourism office to market the project as a tourism attraction.

(b) Rules for scoring during Grant scoring meeting

i. No committee member shall vote on a project in which he/she has substantial interest and shall leave the room while the project is being reviewed and voted on.

ii. To aid in the meeting evaluation, a synopsis of each of the projects will be provided and each reviewer will have access to all scored evaluations

(c) In accordance with available funds, the committee will give proposals for funding

(d) The recommendations for grant awards will be forwarded to the executive director who will consult with the director and the Governor's Office of Economic Development board and give final approval.

(e) In the event an awardee's project no long qualifies for

the grant, the grant award may be awarded to the highest scored project of the denied applicants.

(f) The office will notify applicants of the funding decision within two weeks of the final decision

i. Winning applicants will be notified of expected contractual requirements

ii. The grant applicants who were unsuccessful in winning a grant award will be notified of the rejection.

A. A copy of the reviewers written comments with redacted names shall be provided to rejected applicants upon request.

**R357-16-8. Reporting and Cooperation Requirements.**

(1) Grant recipient will cooperate with reasonable requests for site visits during and after completion of the Project.

(2) Grant recipient will provide any additional financial records related to the grant project upon the Office's request. Grant recipient will give a progress report twice yearly until project is completed.

(3) Grant recipient will provide economic development information and supporting documentation of economic development goals achieved at minimum on an annual basis or upon the Office's request.

(a) Such information shall be provided for up to 10 years following completion of the Project.

(4) Grant recipient shall provide a description and an itemized report detailing the expenditure of the grant or the intended expenditure of any grant funds that has not been spent.

(5) Grant recipient shall provide the Office with a final written itemized report when the entire grant is spent.

(6) The reports referenced in (4) and (5) shall be provided at least annually, and no later than 60 days after the grant agreement has expired.

(a) Each report shall include:

i. an accounting of project expenditures; and

ii. assurances that all monies paid to the grant recipient were used for planning, construction, or improvements as describe in the recipient's grant application and grant agreement.

**R357-16-9. Appeal of Application Denial.**

(1) A denial of an applicant's request for a grant may be appealed by written request pursuant to Utah Code Section 63G-4-201, and in accordance with this rule.

(2) Hearings must be requested within 30 calendar days from the date that the Office sends written notice of its denial of grant.

(3) Failure to submit a timely request for a hearing constitutes a waiver of due process rights. The request must explain why the party is seeking agency relief, and the party must submit the request on the "Request for Hearing/Agency Action" form. The party must mail or email a scanned copy of the form to the address or email address contained on the denial.

(4) The Office considers a hearing request that a recipient sends via mail to be filed on the date of the postmark. If the postmark date is illegible, erroneous, or omitted, the Office considers the request to be filed on the date that the Office receives it, unless the sender can demonstrate through convincing evidence that it was mailed before the date of receipt.

(5) The Office shall hold informal adjudicative proceedings in accordance with Utah Code Sections 63G-4-202 and 203. The Office shall notify the petitioner and Office representative of the date, time and place of the hearing at least ten days in advance of the hearing. Continuances of scheduled hearings are not favored, but may be for good cause shown. Failure by any party to appear at the hearing after notice has been given shall be grounds for default and shall waive both the right to contest the allegations and the right to the hearing.

(6) The Petitioner named in the notice of agency action

and the Office shall be permitted to testify, present evidence, and comment on the issues. Formal rules of evidence shall not apply; however,

- (a) Testimony may be taken under oath.
  - (b) All hearings are open to all parties.
  - (c) Discovery is prohibited; informal disclosures will be ruled on at the pre-hearing conference.
  - (d) A respondent shall have access to relevant information contained in the Office's files and to material gathered in the investigation of respondent to the extent permitted by law.
  - (e) The Office may cause an official record of the hearing to be made, at the Office's expense.
- (7) Within a reasonable time, not to exceed 60 days after the close of the informal proceeding, the Office shall issue a signed decision in writing that includes a findings of fact and conclusions of law, and time limits for appeals rights, and administrative or judicial review in accordance with Utah Code Subsection 63G-4-203(i).

**KEY: Outdoor Recreation Infrastructure Grant, outdoor recreation, grants  
January 17, 2018**

**63N-9-203**

**R392. Health, Disease Control and Prevention, Environmental Services.****R392-300. Recreation Camp Sanitation.****R392-300-1. Authority and Purpose.**

(1) This rule is authorized under Sections 26-1-5, 26-1-30(23), and 26-15-2.

(2) This rule establishes definitions; sets standards for health and welfare of individuals and for the prevention of the spread of disease in or from a recreational camp.

**R392-300-2. Applicability.**

This rule applies to any person who owns or operates a camp in Utah, unless specifically exempted. This rule applies to the repair, maintenance, use, operation, and occupancy of camps or campsites designed, intended for use, or otherwise used for temporary human habitation in Utah. This rule does not apply to primitive or backcountry camping.

**R392-300-3. Definitions.**

For the purposes of this rule, the following terms, phrases, and words shall have the meanings herein expressed:

(1) "Camp" means any day-use area, primitive camp, modern camp, semi-developed, or semi-primitive campground.

(2) "Day-use area" means an area in which human occupation is limited specifically to day use, and does not include overnight sleeping accommodations. A day-use area may include any parcel or tract of land designated as a recreation park, picnic grounds, or recreational area located within the confines of an organized recreation camp.

(3) "Local health officer" means the health officer of the local health department having jurisdiction, or designated representative.

(4) "Modern camp" means a campground of two or more campsites accessible by any type of vehicular traffic, and having permanent buildings for sleeping, a potable water supply under pressure, and food service facilities. Modern camps may be operated on a seasonal or short-term basis, and may include privately owned campgrounds such as youth camps, boy or girl scout camps, mixed-age group camps, summer camps, athletic camps, family group camps, or camps that are operated and maintained under the guidance, supervision or auspices of religious, public and private educational, and community service organizations.

(5) "Operator" means a person with ownership or overall responsibility for managing or operating a camp in the State of Utah.

(6) "Plumbing Code" means International Plumbing Code as incorporated and amended in Title 15A, State Construction and Fire Codes Act.

(7) "Primitive" or "Back-country" means camping in a completely naturalized wilderness location that is in no way preconditioned for camping, and where no services or amenities are provided to the camper.

(8) "Service building" means a permanent structure located within a camp that contains toilet, hand sink, or bathing facilities for use by recreation camp occupants.

(9) "Semi-developed" means a campground of two or more campsites where potable water services are made available. These campsites are accessible by any type of vehicular traffic and are not furnished with permanent sleeping or culinary buildings. Roads, trails and campsites are defined, basic facilities (toilets or privies, tables, fire pits or tent pads) are provided. These camps include state forest campgrounds, privately owned campgrounds, and youth camps.

(10) "Semi-primitive" means a campground where potable water services are not available. Rudimentary facilities including vault privies or earthen pit privies and fire pits are present.

(11) "Wastewater" means discharges from all plumbing

facilities including, rest rooms, kitchen, and laundry fixtures either separately or in combination.

**R392-300-4. General.**

(1) This rule does not require a construction change in any portion of a camp if the camp was in compliance with the law in effect at the time the camp was constructed, except as in R392-300-4(1)(a).

(a) The local health officer may require construction changes if it is determined the camp or portion thereof is dangerous, unsafe, unsanitary, or a nuisance or menace to life, health, or property.

(2) The operator shall carry out the provisions of this rule.

(3) 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.

(4) The operator shall comply with all applicable building, zoning, electrical, health, fire codes and all local ordinances.

(5) Campsites, including day-use areas, shall be constructed to provide adequate surface drainage, and shall be isolated from any existing or potential public health hazard or nuisance.

**R392-300-5. Water Supply.**

(1) Potable water supply systems for use by public lodging 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 ensure that each day-use area and modern or semi-developed camp is provided with potable water.

(a) Where individual water connections are not provided to camp sites, common-use water faucets shall be accessible to camp occupants, and located not more than 300 feet from any camp site.

(b) A threaded spigot is prohibited on any water faucet providing potable water to a camp.

(c) The operator shall ensure that the area immediately around a water faucet (i.e. spigot) is designed 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.

(3) The operator may be required to sample water systems operated on a seasonal basis for bacteriologic analysis, as determined by the local health officer.

(4) When a semi-primitive camp is provided with potable water, the operator shall comply with all requirements of R392-300-5.

**R392-300-6. Wastewater Disposal Requirements.**

(1) The operator shall make sewer service available to any modern camp or semi-developed camp.

(2) Sewer systems for use by camp 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; and

(c) local health department regulations.

(3) All wastewater shall be discharged to a public sanitary sewer system whenever practicable.

(a) Where connection to a public sewer is not practicable, 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.

(b) 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.

(4) Sanitary vault privies or earthen pit privies shall be located, constructed, and maintained according to the requirements of Rule R317-560 and local health department regulation in such a manner that:

- (a) users do not contact waste matter deposited;
- (b) access to the privy interior or vault is minimized for flies, insects, rats, and other animals;
- (c) surface or ground water cannot enter the vault or pit, either as runoff or as flood water;
- (d) the waste material in the privy cannot contaminate a water supply, stream, or body of water; and
- (e) odors are minimized both inside and outside the privy structure.

(5) The operator shall take measures to ensure that campers do not defecate or urinate or otherwise dispose of human waste except at designated privies or toilet facilities.

**R392-300-7. Required Plumbing - Modern Camps.**

(1) The minimum plumbing fixtures to be provided for modern camps shall be based on 50 percent of the total number of occupants being male and 50 percent being female, except where the camp is used exclusively by one gender, and shall be calculated from Table I.

(a) Showers and sinks shall be provided with hot and cold potable water.

TABLE I  
Required Minimum Plumbing Fixtures For Modern Camps

Plumbing Fixtures	Ratio of Plumbing Fixtures For Number of Camp Occupants		
	Males	Females	Both Sexes
Toilets	1:40*	1:25*	--
Sinks	1:35*	1:35*	
Showers	1:35*	1:35*	
Drinking			
Fountains	--	--	1:300*
Service Sink	--	--	1 per service building
Potable Water Faucet	--	--	1 per service building

\*Or fraction thereof

(2) Sinks shall be located either in the same room as toilets, or immediately adjacent to the service building.

(3) Urinals may be substituted for up to half of the required number of toilets for males, provided the urinal is installed in addition to a toilet at the same location.

(4) Service buildings shall be located not less than 15 feet and not more than 300 feet from any living and camping spaces served, unless integrated into a permanent building at a modern camp.

(5) Soap and toilet tissue in suitable dispensers and waste receptacles with lids shall be provided in each service building.

(6) Clean individual disposable towels shall be provided at each sink. Alternate hand drying methods approved by the local health officer may be substituted for individual disposable towels.

(7) The operator shall maintain each service building in a clean and sanitary condition.

**R392-300-8. Required Plumbing -- Semi-Developed Camps.**

(1) For semi-developed camps, the minimum plumbing fixtures to be provided shall be based on the number of sites, according to Table II.

(a) The operator shall calculate the minimum required number of fixtures according to Table II.

TABLE II  
Required Minimum Plumbing Fixtures for Semi-Developed Camps

Plumbing Fixtures	Ratio of Plumbing Fixtures Per Number of Camp Sites
Toilets or vault privies	1:15*
Potable Water Faucet	1:15*

\*Or fraction thereof

**R392-300-9. Required Plumbing -- Day Use Areas.**

The minimum plumbing fixtures to be provided for day use areas shall be calculated from Table III.

TABLE III  
Required Minimum Plumbing Fixtures for Day Use Areas

Plumbing Fixtures	Ratio of Plumbing Fixtures Per Number of Day Use Sites
Toilets or vault privies	1:15*
Potable Water Faucet	1:15*

\*Or fraction thereof

**R392-300-10. Operation and Maintenance.**

(1) When tents, or permanent or semi-permanent buildings are provided by the operator, they shall:

- (a) be of sound construction;
- (b) assure adequate protection against the weather;
- (c) include essential facilities to permit maintenance in a clean and operable condition;
- (d) include openable windows or mechanical ventilation; and
- (e) provide adequate storage for personal belongings.

(2) 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.

(3)(a) Each provided bed, bunk, or cot shall be maintained in a sanitary condition.

(b) Mattresses, mattress covers, quilts, blankets, pillows, pillowcases, sheets, bedcovers, and other bedding shall be kept clean and in good repair.

(c) A sheet shall be provided for each bed, and shall be large enough to cover the top and all four sides of the mattress.

(d) A pillowcase shall be provided for each supplied pillow.

(e) Supplied bedding shall be replaced with clean linen, including sheets and pillowcases, before new occupant use.

(4) All buildings, rooms, and equipment, including furnishings and equipment in camping areas, and the grounds surrounding them shall be maintained in a clean and operable condition.

(5) Where electric power is available, service buildings shall be provided with outside lighting to indicate the location and entrance doorways of each.

(6) Where necessary, all reasonable means shall be employed to eliminate or control infestations of vermin, vectors, or pests within all parts of any camp. This shall include approved screening or other approved control of outside openings in structures intended for occupancy or food service facilities.

(7) Each modern camp 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 in critical areas.

(8) The operator of a camp 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.

**R392-300-11. Food Service.**

When food service is provided for camp occupants, 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.

**R392-300-12. Solid Wastes.**

(1) The operator shall provide adequate containers to prevent the accumulation of solid waste in the camp.

(2) Solid waste generated at a camp 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.

**R392-300-13. 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 camp occupants or staff.

**R392-300-14. Inspections and Investigations.**

(1)(a) Upon presenting proper identification, the operator shall permit a local health officer to enter upon the premises of a camp to perform inspections, investigations, reviews, and other actions as necessary to ensure compliance with Rule R392-300.

(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.

**R392-300-15. Closing or Restricting of Camps or Sites.**

(1) If a local health officer deems a camp, campsite, or portion thereof to be an imminent risk to the life, health, or safety of the public, the area may be closed or its use may be restricted, as determined by the local health officer.

(2) Within a reasonable time as ordered by the local health officer, the operator shall restrict public access to the impacted area of any camp, campsite, or portion thereof that has been closed or restricted to use by a local health officer.

(3) It shall be unlawful for an operator to allow any person to occupy a camp or campsite that has been deemed unfit for human habitation until written approval of the local health officer is given.

**KEY: camp, campground, public health, recreation areas**  
**March 26, 2018** **26-15-2**  
**Notice of Continuation November 8, 2016**

**R392. Health, Disease Control and Prevention, Environmental Services.**

**R392-401. Roadway Rest Area Sanitation.**

**R392-401-1. Authority and Purpose.**

(1) This rule is authorized under Sections 26-1-5, 26-1-30(23), and 26-15-2.

(2) This rule establishes definitions; sets standards for health and welfare of individuals and for the prevention of the spread of disease in or from a roadway rest area.

**R392-401-2. Applicability.**

This rule applies to the maintenance, use, and operation of roadway rest areas designed, intended for use, or otherwise used by the public while traveling on public roadways, unless specifically exempted. This includes any area designated as an Interstate Oasis as defined by the Federal Highway Administration under 23 U.S.C. Sec. 111 and listed in 71 Federal Register 201 (18 October 2006), pp. 61529-61534. This rule does not apply to scenic view or roadside picnic areas or other parking areas if those areas have proper signage indicating that public facilities are not offered.

**R392-401-3. Definitions.**

For the purposes of this rule, the following terms, phrases, and words shall have the meanings herein expressed:

(1) "Local health officer" means the health officer of the local health department having jurisdiction or designated representative.

(2) "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.

(3) "Operator" means a person with ownership or overall responsibility for managing or operating a roadway rest area in the State of Utah.

(4) "Plumbing Code" means International Plumbing Code as incorporated and amended in Title 15A, State Construction and Fire Codes Act.

(5) "Roadway rest area" or "Rest area" means any building, or buildings, or grounds, parking areas, including toilet, hand washing, water supply and wastewater facilities intended for the accommodation of people using such facilities while traveling on public roadways. This includes rest areas, welcome centers, and rest stops.

(6) "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.

(7) "Wastewater" means discharges from all plumbing facilities including rest rooms, kitchen, and laundry fixtures either separately or in combination.

**R392-401-4. General.**

(1) This rule does not require a construction change in any portion of a roadway rest area if the rest area was in compliance with the law in effect at the time the roadway rest area was constructed, except as in R392-401-4(1)(a).

(a) Construction changes may be required by the local health officer if it is determined the roadway rest area or portion thereof is dangerous, unsafe, unsanitary, or a nuisance to life, health, or property.

(2) The operator shall carry out the provisions of this rule.

(3) Severability - If any provision of this code, or its application to any person or circumstances is declared invalid, the application of such provision to other persons or circumstances, and the remainder of this code, shall not be affected thereby.

(4) A roadway rest area 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 existing or potential public health hazard or nuisance.

(5) The operator shall comply with all applicable building, zoning, electrical, health, fire codes and all local ordinances.

**R392-401-5. Water Supply Requirements.**

(1) When an operator supplies potable water for rest area patron use, the potable water supply system 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) Any plumbing fixture provided by the operator that normally requires water for its operation shall have an adequate potable water supply under pressure.

(3) The operator may be required to sample water systems operated on a seasonal basis for bacteriologic analysis, as determined by the local health officer.

(4) If a roadway rest area experiences or will experience a disruption of potable water or sewer service for more than four hours, for any reason, the operator shall notify the local health officer within one hour of becoming aware of the service disruption.

**R392-401-6. Wastewater Disposal Requirements.**

(1) The operator shall ensure that sewer services are made available to roadway rest area patrons.

(2) Sewer systems for use by roadway rest area patrons 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 R317-4;
- (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; or
- (b) 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 vault 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 vault privy structure.

(5) The operator shall submit all required plans for the construction or alteration of an onsite wastewater disposal system in accordance with Title R317.

**R392-401-7. Solid Wastes.**

(1) The operator shall provide adequate containers to prevent the accumulation of solid waste in or around the rest area.

(2) Solid waste generated at a roadway rest 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.

**R392-401-8. Maintenance Requirements.**

(1) All buildings, rooms, and equipment and the grounds surrounding them shall be maintained in a clean and operable condition.

(2) Where necessary, all reasonable means shall be employed to eliminate or control infestations of vermin, vectors, or pests within a roadway rest area. This shall include approved screening or other approved control of outside openings in structures.

(3) Where electric power is available, roadway rest areas shall be provided with outside lighting to indicate the location and entrance doorways.

**R392-401-9. Operation Requirements.**

(1) When an operator provides plumbing fixtures as described in Subsection R392-401-5(2), the operator shall supply in each toilet room:

- (a) soap and toilet tissue in suitable dispensers;
- (b) individual disposable towels or other approved hand drying facilities; and
- (c) a solid, durable, and easily cleanable waste receptacle with lid.

(2) When a vault privy is provided for patron use as described in Subsection R392-401-6(4)(b), and potable water is not plumbed, connected, or supplied to the toilet room, the operator shall supply in each toilet room:

- (a) a solid, durable, and easily cleanable waste receptacle with lid; and
- (b) toilet tissue in a suitable dispenser

(3) The operator shall post signage in a conspicuous location to discourage patrons from depositing toilet tissue in a waste receptacle.

**R392-401-10. Inspections and Investigations.**

Upon presenting proper identification, the operator shall permit the local health officer to enter upon the premises of a roadway rest area to perform inspections, investigations, reviews, and other actions as necessary to ensure compliance with Rule R392-401.

**R392-401-11. Closing or Restricting of a Roadway Rest Area.**

(1) If a local health officer deems a roadway rest area or portion thereof to be an imminent risk to the life, health, or safety of the public, the roadway rest 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 roadway rest area 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 roadway rest area 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, rest areas, restrooms**  
**March 26, 2018** **26-15-2**  
**Notice of Continuation November 7, 2016**



**R392. Health, Disease Control and Prevention, Environmental Services.****R392-502. Public Lodging Facility Sanitation.****R392-502-1. Authority and Purpose.**

(1) This rule is authorized under Sections 26-1-5, 26-1-30(23), and 26-15-2.

(2) This rule establishes definitions; sets standards for health and welfare of guests of public lodging and for the prevention of the spread of disease in or through public lodgings.

**R392-502-2. Applicability.**

This rule applies to any person who owns or operates a public lodging facility in Utah, unless specifically exempted. This rule applies to the repair, maintenance, use, operation, and occupancy of public lodging facilities designed, intended for use, or otherwise used for human habitation in Utah.

**R392-502-3. Definitions.**

For the purposes of this rule, the following terms, phrases, and words shall have the meanings herein expressed:

(1) "Clean" means the condition of being visibly free from dirt, soil, stain, leftover food particles, or other materials not intended to be a part of the object in question.

(2) "Dilapidated" means a building or structure, or part thereof, which is:

(a) deemed structurally unsafe for habitation by the local building authority; or

(b) deemed unsanitary or constituting a public health hazard by the local health officer.

(3) "Habitable space" means a space within a building or structure intended to be used for living, sleeping, cooking, or eating. Bathrooms, laundry rooms, toilet rooms, closets, halls, storage or utility spaces, accessory buildings, and similar areas are not considered habitable spaces.

(4) "Hot water" means water heated to a temperature of not less than 110 degrees F (43.3 degrees C) at the outlet.

(5) "Linens" means fabric household goods intended for daily guest use, such as bedding, towels, and tablecloths.

(6) "Local Health Department" has the same meaning as provided in Section 26A-1-102(5).

(7) "Local Health Officer" means the director of the jurisdictional local health department as defined in 26A, Chapter 1, or a designated representative.

(8) "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.

(9) "Operator" means any person who owns, leases, manages or controls, or who has the duty to manage or control a public lodging facility.

(10) "Pet" means a domesticated companion animal that is not included in the definition of a service animal or support animal under federal or state law that allows access of the animal to a public lodging facility.

(11) "Pet Friendly" means the designation of certain guest rooms or all guest rooms by an owner or operator to allow pets to stay in a guest room with the guest.

(12) "Pest" means a noxious, destructive, or troublesome organism whether plant or animal, when found in and around places of human occupancy, habitation, or use which threatens the health or well-being of the public.

(13) "Plumbing Code" means International Plumbing Code as incorporated and amended in Title 15A, State Construction and Fire Codes Act.

(14) "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.

(15) "Premises" means any lot, parcel, or plot of land,

including any buildings or structure.

(16) "Public lodging facility" means:

(a) a place that is maintained, advertised, offered, used, or kept to provide temporary lodging for the general public.

(b) Public lodging facility includes hotels, motels, bed and breakfasts, hostels, guest ranches, resorts, cabins, or any other structure designed or intended to provide temporary lodging for guests.

(c) Included in the public lodging facility are the premises upon which the facility is located together with parking lots, recreational facilities on the grounds, and other appurtenances.

(d) For the purposes of this rule, a public lodging facility does not include:

(i) student housing such as a dormitory or boarding house operated by an educational institution;

(ii) transient housing such as employee or migrant worker living quarters regulated under Rule R392-501; or

(iii) a private residence or domicile unless it is advertised, offered, used, or kept as a place of public lodging.

(17) "Public lodging unit" or "Guestroom" means a room, suite, or space occupied by the public located in and operated by a public lodging facility.

(18) "Red tagged" means having a notice affixed to an appliance by a qualified servicing utility indicating that the appliance has been found to contain an imminent safety hazard.

(19) "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.

(20) "Service Animal" has the same meaning as provided in Section 35.104 of the Americans with Disabilities Act Title II Regulations.

(21) "Vector" means any organism, such as insects or rodents, that transmits a pathogen that can adversely affect public health.

(22) "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.

(23) "Virucidal disinfectant" as defined in this rule means:

(a) a chlorine bleach and water solution with a concentration of 1,000 to 5,000 ppm chlorine (5-25 tablespoons of household bleach (5.25%) per gallon of water); or

(b) a disinfectant product registered as effective against norovirus with the U.S. Environmental Protection Agency, having an EPA Registration number and being listed on the current publication of the Office of Pesticide Programs' List G.

(24) "Wastewater" means sewage, industrial waste, or other liquid or waterborne substances causing or capable of causing pollution of waters of the state.

**R392-502-4. General Public Lodging Provisions.**

(1) This rule does not require a construction change in any portion of a public lodging facility if the public lodging facility was in compliance with the law in effect at the time the facility was constructed, except as in R392-502-4 (1)(a).

(a) The local health officer may require construction changes if it is determined the public lodging facility or portion thereof is dangerous, unsafe, unsanitary, or a nuisance or risk to life, health, or property.

(2) The operator of a public lodging facility shall:

(a) comply with the provisions of this rule; and

(b) be responsible for the conduct of occupants to ensure compliance with 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 provisions to other persons or circumstances, and the remainder of this rule, shall not be

affected thereby.

(4) A public lodging facility 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 existing or potential public health hazard or nuisance.

(5) A public lodging facility must have:

- (a) a 24-unit ANSI compliant First Aid kit in a readily accessible location, properly stocked, and checked monthly; and
- (b) an adequate supply of virucidal disinfectant for disinfecting a room or its contents after a known incident of vomiting or diarrhea.

**R392-502-5. Water Supply.**

(1) Potable water supply systems for use by public lodging 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 ensure that the public lodging facility and each public lodging unit bathroom is provided with potable water.

(3) If a public lodging facility experiences or will experience a disruption of potable water or sewer service for more than four hours for any reason, the operator shall notify the local health officer within one hour of becoming aware of the service disruption.

**R392-502-6. Wastewater Disposal Requirements.**

(1) The operator shall ensure that sewer services are made available to the public lodging facility occupants.

(2) Sewer systems for use by public lodging 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; and
- (c) local health department regulations.

(3) All wastewater shall be discharged to a public sanitary sewer system whenever practicable.

(4)(a) Where connection to a public sanitary sewer is not practicable, wastewater shall be discharged to an approved onsite wastewater disposal system.

(b) The operator shall submit all required plans for the construction or alteration of an onsite wastewater disposal system in accordance with Title R317.

**R392-502-7. Ventilation, Heating, Electrical, Lighting, and Plumbing Requirements.**

(1) Every bathroom shall have:

- (a) at least one window facing directly outdoors that can be easily opened, or;
- (b) a mechanical device that ventilates to the outside.

(2) For guestroom heating, every public lodging unit shall have:

- (a) properly maintained and safely operating heating equipment and appurtenances, or;
- (b) a common heating system that is correctly installed and maintained in a safe and working condition.

(3)(a) An operator, agent, or other person shall only install, operate, or use a heating device, or water heating unit producing heat by combustion that is:

- (i) vented to the outside of the structure in a manner approved by the local building official or fire inspector; and
- (ii) supplied with sufficient air to continuously and adequately support fuel combustion.

(b) The operator is prohibited from using a heating device,

or water heating unit producing heat by combustion that has been deemed unsafe (i.e. "red tagged") by the servicing utility or building official.

(c) All heating devices shall be constructed, installed, and operated in accordance with applicable building, boiler, and utility codes.

(4) Every public lodging unit and all common areas shall be supplied with electrical service. All outlets, wirings, circuit panels, and fixtures shall be correctly installed and maintained in good and safe working condition in accordance with the electrical code incorporated and amended in Title 15A, State Construction and Fire Codes Act.

(5) Every common entryway, hall, and stairway in a public lodging facility shall be lighted at all times to provide in all parts at least ten foot-candles (108 lux) of light at floor or tread level. This requirement does not preclude the use of on-demand lighting.

(6) The operator shall ensure that every plumbing fixture, waste pipe, water pipe, and appurtenance is properly constructed, installed, and maintained in accordance with Plumbing Code.

(7) The operator shall provide a continuous supply of cold and hot water at every sink, bathtub, and shower, where installed, for each:

- (a) public restroom; and
- (b) public lodging unit.

(8) If plumbing fixtures are not included in a guestroom, the operator shall make communal facilities available to public lodging occupants as required in table 1:

Plumbing Fixtures	Ratio of Plumbing Fixtures For Public Lodging Facility Occupants
Toilets	1:10
Sinks	1:10
Shower/Bath	1:8
Drinking Fountain	1:100
Service Sink	1

(9) The facility shall be equipped with a service sink, also known as a mop receptor or utility sink, which shall be used for cleaning mops and disposing of mop water. The operator shall refrain from using other plumbing fixtures for these purposes.

**R392-502-8. Cleaning and Hygiene Requirements.**

(1) The operator shall maintain all buildings, rooms, equipment, and surrounding grounds in a clean and safe condition. Rubbish, litter and other items not used in the operation of the establishment shall not be permitted to accumulate on the premises.

(2) Interior surfaces shall be clean and in good repair.

(a) The operator shall clean to sight and touch all common-use items between guest use including the television remote, telephone, door knobs, and alarm clock.

(3) The operator shall ensure that bathroom plumbing fixtures and bathroom surfaces are maintained in a clean and sanitary condition.

(4) When cleaning a toilet in a public or communal bathroom, or in a guest room, the operator shall:

(a) use a separate wiping cloth that is clearly distinguishable between wiping cloths used to clean other surfaces; or

(b) use disposable wiping cloths.

(5) When cleaning vomit or diarrhea from any surface or location in the interior of a public lodging facility, the operator shall:

(a) wipe surfaces and immediately dispose of or launder all potentially infectious materials. Kitty litter (vermiculite), baking soda, or other absorbent material may be used on carpets and

upholstery to absorb liquid;

- (b) clean surfaces with soap and hot water;
- (c) rinse thoroughly with plain water;
- (d) wipe dry with paper towels;
- (e) disinfect with virucidal disinfectant; and
- (f) leave surfaces wet and allow for air drying according to the manufacturer's recommendations.

(6)(a) The operator shall keep public and communal bathrooms supplied with individual-use personal hygiene products including soap, hand drying materials or equipment, and toilet tissue.

(b) The use of common cloth towels is prohibited in public and communal bathrooms.

(c) Each public or communal bathroom shall have:

- (i) at least one solid, easily cleanable, covered waste receptacle; or
- (ii) at least one solid, easily cleanable, uncovered waste receptacle and a sanitary napkin receptacle. This requirement does not apply to guest rooms or public lodging unit restrooms.

(7) The operator shall supply each public lodging unit bathroom or shower room with soap, toilet paper, and clean towels daily upon request and between occupant use.

(8) Where a public lodging facility provides fitness equipment for guest use, the operator shall make sanitizer available for guest use along with instructions for proper handling and use.

#### **R392-502-9. Structural and Operational Requirements.**

(1) Every foundation, chimney, floor, exterior and interior wall, ceiling, and roof of all public lodging units shall be weather and water-tight, vermin-proof, and in good repair. All stairs and railings shall be correctly installed and maintained in good repair.

(a) Every public lodging unit bathroom and kitchen wall and ceiling surface shall be constructed and maintained reasonably impervious to water.

(i) Floor surfaces within two feet of the toilet shall be smooth and easily cleanable.

(ii) Floor/wall junctures in bathrooms and kitchens shall have coving to prevent the leakage of water into the wall through the juncture during toilet or shower overflows, regular mopping, or spills. Such coving shall be sealed to the floor.

(2) The operator shall take effective measures to keep vermin out of the public lodging facility and to prevent their breeding or presence on the premises. All exterior openings, windows, skylights, and outer doors shall be protected against the entrance of flies and other flying insects by self-closing doors, closed windows, 16-mesh or finer screening, controlled air currents, or other effective means.

(3) There shall be no fly or mosquito breeding places, vermin harborages, or undrained areas on the premises.

(4) 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 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.

#### **R392-502-10. Guestroom Bedding and Laundry Service.**

(1)(a) Each bed, bunk, or cot shall be maintained in a sanitary condition.

(b) Mattresses, mattress covers, quilts, blankets, pillows, pillowcases, sheets, bedcovers, and other bedding shall be kept clean and in good repair.

(c) Two sheets shall be provided for each bed, and shall be large enough to cover the top and all four sides of the mattress.

The upper sheet shall be folded over the top end of the bedcover for at least six inches.

(d) A pillowcase shall be provided for each pillow.

(e) Bedding shall be replaced with clean linen, including sheets and pillowcases, at least weekly and before each new occupant use.

(2)(a) The operator shall maintain and store all supplied linen in a clean and sanitary manner at a location free from the likelihood of contamination by vermin, wastewater, filth, or toxic chemicals.

(b) Clean linen shall not come in contact with soiled linen at any time.

(3) Laundry carts and baskets shall be constructed with smooth, durable, non-porous, and easily cleanable materials, and shall be maintained in good condition. Washable laundry bags and cart liners are permitted.

(4) If laundry is processed at the public lodging facility, the operator shall use the following laundry processing and cleaning procedures:

(a) When any used linen is soiled with blood, vomit, or fecal material, the operator shall:

(i) keep the soiled linen separate and shall not presort the contaminated laundry with other linens in the guest room or laundry processing room;

(ii) transport contaminated laundry separately to the laundry processing room;

(iii) place contaminated laundry directly into the washing machine. Removing solid fecal materials and pre-rinsing linen that is heavily contaminated with fecal material is permitted, but pre-rinsing linen that is contaminated with blood or vomit is not permitted.

(b) Any visible residue shall be removed from laundry carts and baskets;

(c) Carts and baskets used to transport used linens shall be cleaned each day of use with a disinfectant cleaner;

(d) Separate containers (carts, baskets, hampers, laundry bags, etc.) shall be used for transporting clean and soiled linens.

(e) Non-disposable laundry bags and cart liners shall be laundered frequently.

(f) Laundry machines and work tables shall be cleaned each day of use with a disinfectant cleaner;

(g) Laundry floors shall be damp mopped each day of use with a disinfectant cleaner.

#### **R392-502-11. Pets in a Public Lodging Facility.**

(1) Only service animals assisting persons with disabilities are permitted in dining areas, or in swimming pool or spa areas. Pets, emotional support animals, comfort animals, and therapy animals are not permitted in these areas.

(2) The operator may elect to allow animals in public lodging units when the following conditions are met:

(a) The operator shall prevent allergens, odors, noise, filth, and other nuisances from migrating to other units and from disturbing other guests.

(b) A pet friendly public lodging unit may not share heating, ventilation, or air-conditioning with another public lodging unit or any common area.

(c) The operator shall ensure that animal hair, fur, feathers, feces, and soiled bedding is removed at least once per day or as often as necessary to prevent unsanitary conditions or odors.

(d) The operator shall post a sign at the entrance of an individual public lodging unit where pets are allowed in order to designate the unit as "pet friendly". The clearly legible sign shall be placed in a position where it may be easily viewed upon entry into the room.

(3) If an operator chooses to modify the status of a public lodging unit from a pet friendly unit to a unit where pets are not allowed, the operator shall perform a full deep cleaning of the unit in a manner likely to remove allergens, which shall include,

at a minimum, the shampooing of carpets, laundering of bedding and window coverings, washing of all walls, and cleaning of all other objects and surfaces that may harbor allergens.

(4) A public lodging facility operator may provide a kennel facility for the use of guests who travel with pets.

(a) A kennel facility shall be maintained in a clean, safe, and sanitary condition, and free from nuisance.

(b) A kennel facility may not share heating, ventilation, or air-conditioning with public lodging units or common areas.

**R392-502-12. Utah Indoor Clean Air Act.**

All public lodging facilities shall comply with Rule R392-510, Utah Indoor Clean Air Act.

**R392-502-13. Swimming Pools.**

The operator shall comply with Rule R392-302, Design, Construction, and Operation of Public Pools for all pools or spas made available to public lodging facility guests or employees.

**R392-502-14. Food and Beverage Service.**

(1) All food services, including the dispensing of ice, shall comply with the requirements of Rule R392-100. The operator shall ensure that all ice machines intended for guest use are designed for automatic dispensing.

(a) This rule does not require that an operator provide a 3-compartment sink, or commercial-grade dishwasher or refrigerator in any guest room.

(2) All eating and drinking utensils and food service equipment for use by guests in rooms shall be:

(a) single service; or

(b) washed, rinsed, sanitized, and stored daily upon request and before each new occupant use in a manner prescribed in Rule R392-100 and protected from subsequent contamination.

(3) All appliances provided in public lodging units, including but not limited to coffee makers, microwaves, and refrigerators shall be cleaned between occupant use or more frequently as needed to be maintained clean by:

(a) using a clean, sanitary cloth; and

(b) not using any cleaning equipment, tool, or implement that was previously used in a toilet room or other unsanitary surface.

(4) A refrigerator, when provided in a guestroom, shall be capable of holding food at or below 41 degrees F.

(5) When a kitchenette is provided in the guestroom, the operator shall sanitize counter surfaces between guest use.

**R392-502-15. Solid Waste.**

(1) Solid waste generated at a public lodging facility shall be stored in a leak-proof, non-absorbent container, which shall be kept covered with a tight-fitting lid.

(2) All solid wastes shall be disposed with sufficient frequency and in such a manner as to prevent insect breeding or a public health nuisance.

**R392-502-16. Inspections and Investigations.**

(1)(a) Upon presenting proper identification, the operator shall permit the local health officer to enter the premises of a public lodging facility to perform inspections, investigations, reviews, and other actions as necessary to ensure compliance with Rule R392-502.

(b) The local health officer may not enter an occupied public lodging unit without the express verbal or written 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.

**R392-502-17. Closing of Public Lodging Units.**

(1) When a facility or guestroom is so damaged, decayed, dilapidated, unsanitary, unsafe, or vermin infested that it creates or may create a hazard to the health of the occupants or of the public, the public lodging facility or guestroom may be deemed unfit for human habitation, as determined by a local health officer.

(2) If a local health officer deems a public lodging facility or guestroom unfit for human occupancy due to vermin infestation, pest control services shall be completed under the direction of a licensed Utah pesticide applicator, and pesticide application practices shall be in compliance with R68-7, Utah Pesticide Control Rule.

(a) When bedbugs are discovered or significant evidence indicates their presence in an individual unit or multiple units, effective and safe treatment as well as closure of the affected units and any adjacent units may be required, as determined by a local health officer.

(3) A public lodging facility or guestroom that is deemed unfit for human habitation may be closed to occupancy or use until deemed fit for occupancy or use by the local health officer.

(4) Any public lodging facility or guestroom deemed unfit for human habitation and closed to occupancy shall be vacated within a reasonable time as ordered by the local health officer.

(5) It shall be unlawful for an operator to allow any person to occupy any public lodging facility or guestroom that has been deemed unfit for human habitation until written approval of the local health officer is given.

**KEY: public health, hotels, motels, resorts  
March 26, 2018  
Notice of Continuation March 15, 2017**

**26-15-2**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-3A. Outpatient Hospital Services.****R414-3A-1. Introduction and Authority.**

This rule defines the scope of outpatient hospital services available to Medicaid members for the treatment of disorders other than mental disease. This rule is authorized under Section 26-18-3 and governs the services allowed under 42 CFR 440.20.

**R414-3A-2. Definitions.**

- (1) "Outpatient" is defined in 42 CFR 440.20.
- (2) "Outpatient hospital" is a facility that:
  - (a) is in, or physically connected to, a hospital licensed by the Department as a general hospital, as defined by Subsection 26-21-2(11), and meets the standards set forth in Rule R432-100 and 42 CFR Part 482;
  - (b) meets participation requirements in the Medicare program; and
  - (c) has a Medicaid provider agreement with the Department.

**R414-3A-3. Member Eligibility Requirements.**

Outpatient hospital services are available to categorically and medically needy individuals.

**R414-3A-4. Program Access Requirements.**

- (1) An outpatient hospital must:
  - (a) Be licensed or formally-approved as a hospital by an officially designated authority for state-standard setting;
  - (b) Meet participation requirements in Medicare as a hospital;
  - (c) Be a hospital that accepts a Medicaid member for treatment and accepts responsibility to make sure the member receives all medically necessary services from Medicaid providers; and
  - (d) Accept financial responsibility for any services a member receives from a non-Medicaid provider.

**R414-3A-5. Services.**

- (1) Services appropriate in the outpatient hospital setting encompass medically necessary diagnostic, therapeutic, rehabilitative, or palliative medical services and supplies.
- (2) Outpatient hospital services include:
  - (a) the service of nurses or other personnel necessary to complete the service and provide member care during the provision of service;
  - (b) the use of hospital facilities, equipment, and supplies; and
  - (c) the technical portion of clinical laboratory and radiology services.
- (3) Cosmetic or reconstructive procedures are set forth in Section R414-1-29.
- (4) Sleep studies are available only in a sleep disorder center accredited by the American Academy of Sleep Medicine.
- (5) Hyperbaric oxygen therapy is limited to service in a facility in which the hyperbaric unit is accredited by the Undersea and Hyperbaric Medical Society. Hyperbaric oxygen therapy is therapy that places the member in an enclosed pressure chamber for medical treatment.

**R414-3A-6. Prior Authorization.**

Prior authorization is required on certain medical and surgical procedures in accordance with Section R414-1-14.

**R414-3A-7. Cost Sharing.**

Each Medicaid member is responsible for a copayment as established in the Utah Medicaid State Plan and incorporated by reference in Rule R414-1.

**R414-3A-8. Reimbursement for Services.**

Reimbursement for outpatient hospital services is in accordance with Attachment 4.19-B of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1.

**KEY: Medicaid****March 5, 2018****Notice of Continuation September 15, 2017**

**26-1-5**  
**26-18-2.3**  
**26-18-3(2)**  
**26-18-4**

**R426. Health, Family Health and Preparedness, Emergency Medical Services.****R426-6. Emergency Medical Services Per Capita and Competitive Grant Programs Rules.****R426-6-1. Authority and Purpose.**

- (1) This rule is established under Title 26 Chapter 8a.
- (2) The purpose of this rule provides guidelines for the equitable distribution of per capita grant funds and competitive grant funds specified under the Emergency Medical Services (EMS) Grants Program.

**R426-6-2. Per Capita and Competitive Grants Eligibility.**

(1) Grants are available only to licensed EMS ambulance services, paramedic services, EMS designated first response units, and EMS dispatch providers that are either:

- (a) Agencies or political subdivisions of local or state government or incorporated non-profit entities; or
- (b) for-profit EMS providers that are the primary EMS provider for a service area.

(2) A for-profit EMS provider is a primary EMS provider in a geographical service area if it is licensed for and provides service at a higher level than the public or non-profit provider;

- (a) The levels of EMS providers are in this rank order:
  - (i) Paramedic service;
  - (ii) EMT-IA;
  - (iii) Advanced EMT;
  - (iv) EMT;
  - (v) EMR;
  - (vi) EMD.

(b) Paramedic ambulance interfacility transports, EMT ambulance interfacility transports, or paramedic tactical rescue units are not eligible for grant funding because they cannot be the primary EMS provider for a geographical service area.

(3) Grants are available for use specifically related to the provision of emergency medical services. Grant funds cannot be used for rescue and fire equipment.

(4) Grantees must be in compliance with the EMS Systems Act and all EMS rules during the grant period.

(5) An applicant that is six months or more in arrears in payments owed to the Department is ineligible for per grant consideration.

**R426-6-3. Per Capita and Competitive Grants Implementation.**

(1) In accordance with Title 26, Chapter 8a, awards shall be implemented by grants between the Department and the grantee.

(2) The Grant Program Guidelines, outlining the review schedule, funding amounts, eligible expenditures, and awards schedule shall be established annually by the Department and EMS Committee.

(3) The Department may accept only complete applications which are submitted by the deadlines established by the Department and EMS Committee.

(4) Grant awards are effective on July 31 and must be used by May 15 of the following year. No extensions will be given.

(5) Grant funding is on a reimbursable basis after presentation of documentation of expenditures which are in accordance with the approved grant awards budget.

(6) No matching funds are required for per capita grants.

(7) Per capita funds may be used as matching funds for competitive grants.

(8) Per capita grant award shall be no less than \$500.

**R426-6-4. Per Capita Application and Award Formula.**

(1) Per capita grants are available to eligible providers that complete a grant application by the deadline established annually by the Department.

(2) Agency applicants shall certify agency personnel

rosters as part of the grant application process.

(a) A certified individual who works for both a public and a for-profit agency may be credited only to the public or non-profit licensee or designee.

(b) Certified individuals may be credited for only one agency. However, if a dispatcher is also an EMT, EMT-I, AEMT, EMT-IA, or paramedic, the dispatcher may be credited to one agency as a dispatcher and one agency as an EMT, EMT-I, AEMT, EMT-IA, or paramedic.

(c) Certified individuals who work for providers that cover multiple counties may be credited only for the county where the certified person lives.

(3) The Department shall allocate funds by using the following point totals for agency-certified personnel: certified Dispatchers = 1; certified EMRs = 1; certified EMTs = 2; certified Advanced EMTs = 3; certified Intermediate Advanced EMTs = 3; and certified Paramedics = 4. The number of certified personnel is based upon the personnel rosters of each licensed EMS provider, designated EMS dispatch agency, and designated EMS first response unit as a date as specified by the Department immediately prior to the grant year, which begins July 1. To comply with Legislative intent, the point totals of each eligible agency will be multiplied by the current county classification as provided under Section 17-50-501.

**R426-6-5. Competitive Grant Process.**

(1) It is the intent of the EMS Committee that there be local EMS council or committee review of EMS grant applications. Therefore, copies of competitive grant applications should be provided by grant applicants to their respective county EMS councils or committees and the multi-county EMS councils or committees, where organized, for review and recommendation to the State Grants subcommittee.

(2) Agencies that are licensed or designated, whose EMS service area includes multiple local EMS Committee jurisdictions will be reviewed separately by the State Grants Subcommittee.

(3) The Grants Subcommittee shall review the competitive grant applications and forward its recommendations to the EMS Committee. The EMS Committee shall review and comment on the Grants Subcommittee recommendations and forward to the Department.

(4) Grant recipients shall provide matching funds in the amount specified in the Grant Program Guidelines.

(5) The Grants Subcommittee may recommend reducing or waiving the matching fund requirements where appropriate in order to respond to special or pressing local or state EMS issues.

(6) The Grants Subcommittee shall make recommendations based upon the following criteria:

- (a) The impact on patient care;
- (b) a description of the size and significant impediments of the geographic service area;
- (c) the population demographics of the service area;
- (d) the urgency of the need;
- (e) call volume;
- (f) the per capita grant allocated to each agency, and its relative benefit on the agency to provide EMS service;
- (g) local county recommendation;
- (h) a description of the agency; and
- (i) percent of responses to non-residents of the service area.

**R426-6-6. Interim or Emergency Grant Awards.**

(1) The Grants Subcommittee may recommend interim or emergency grants if all the following are met:

- (a) Grant funds are available;
- (b) The applicant clearly demonstrates the need;
- (c) the application was not rejected by the Grants

Subcommittee during the current grant cycle; and

(d) Delay of funding to the next scheduled grant cycle would impair the agency's ability to provide EMS care.

(2) Applicants for interim or emergency grants shall:

(a) Submit an interim/emergency grant application, following the same format as annual grant applications; and

(b) submit the interim/emergency grant application to the Department at least 30 days prior to the EMS Committee meeting at which the grant application will be reviewed.

(3) The Grants Subcommittee shall review the interim/emergency grant application and forward recommendations to the EMS Committee. The EMS Committee shall review and comment on the Grants Subcommittee recommendations and forward to the Department.

**KEY: emergency medical services**  
**November 19, 2015**  
**Notice of Continuation March 28, 2018**

**26-8a**

**R432. Health, Family Health and Preparedness, Licensing.  
R432-2. General Licensing Provisions.**

**R432-2-1. Legal Authority.**

This rule is adopted pursuant to Title 26, Chapter 21.

**R432-2-2. Purpose.**

The purpose of this rule is to define the standards that health care facilities and agencies must follow in order to obtain a license. No person or governmental unit acting severally or jointly with any other person, or governmental unit shall establish, conduct, or maintain a health facility in this state without first obtaining a license from the Department. Section 26-21-8.

**R432-2-3. Exempt Facilities.**

The provisions of Section 26-21-7 apply for exempt facilities.

**R432-2-4. Distinct Part.**

Licensed health care facilities that wish to offer services outside the scope of their license or services regulated by another licensing rule, with the exception of federally recognized Swing Bed Units, shall submit for Department review a program narrative defining the levels of service to be offered and the specific patient population to be served. If the program is determined to require a license, the facility must meet the definition of a distinct part entity and all applicable codes and standards and obtain a separate license.

**R432-2-5. Requirements for a Satellite Service Operation.**

(1) A "satellite operation" is a health care treatment service that:

- (a) is administered by a parent facility within the scope of the parent facility's current license;
- (b) is located further than 250 yards from the licensed facility or other areas determined by the department to be a part of the provider's campus;
- (c) does not qualify for licensing under Section 26-21-2, and
- (d) is approved by the Department for inclusion under the parent facility's license and identified as a remote service.

(2) A licensed health care facility that wishes to offer a satellite operation shall submit for Department review a program narrative and one set of construction drawings. The program narrative shall define at least the following:

- (a) location of the remote facility (street address);
- (b) capacity of the remote facility;
- (c) license category of the parent facility;
- (d) service to be provided at the remote facility (must be a service authorized under the parent facility license);
- (e) ancillary administrative and support services to be provided at the remote facility; and
- (f) International Building Code occupancy classification of the remote facility physical structure.

(3) Upon receipt of the satellite service program narrative and construction drawings, the Department shall make a determination of the applicable licensing requirements including the need for licensing the service. The Department shall verify at least the following items:

- (a) There is only a single health care treatment service provided at the remote site and that it falls within the scope of the parent facility license;
- (b) The remote facility physical structure complies with all construction codes appropriate for the service provided;
- (c) All necessary administrative and support services for the specified treatment service are available, on a continuous basis during the hours of operation, to insure the health, safety, and welfare of the clients.
- (4) If a facility qualifies as a single satellite service

treatment center the Department shall issue a separate license identifying the facility as a "satellite service" of the licensed parent facility. This license shall be subject to all requirements set forth in R432-2 of the Health Facility Rules.

(5) A parent facility that wishes to offer more than one health care service at the same remote site shall either obtain a satellite service license for each service offered as described above or obtain a license for the remote complex as a free-standing health care facility.

(6) A satellite facility is not permitted within the confines of another licensed health care facility.

(7) A licensed hospital is limited to one emergency department satellite location. If a healthcare corporation owns and operates more than one hospital in the State of Utah;

(a) it may have up to two emergency department satellite locations associated with a licensed hospital; and

(b) the health care corporation's total number of emergency department satellite locations may not exceed the total number of licensed hospitals it owns and operates in the State of Utah.

**R432-2-6. Requirements for a Branch Location.**

(1) A "Branch Location" is a licensed Home Health, Personal Care or Hospice agency location which:

(a) is administered by a parent agency within the scope of the parent agency's current license;

(b) is located no further than 150 miles from the licensed parent agency or within a designated geographical service area as determined by the Department; and

(c) is approved by the Department as a branch location under the parent agency's license.

(2) An applicant for a branch location license shall submit a narrative of the program for Department review. The narrative shall include the following:

- (a) street address of the parent and branch;
- (b) license category of the parent agency;
- (c) service(s) to be provided at the branch location, which must be a service authorized under the parent agency license; and
- (d) ancillary administrative and support services to be provided at the branch location.

(3) Upon receipt of the branch location program narrative, the Department shall make a determination of the applicable licensing requirements including the need for licensing the service. The Department shall verify at least the following items:

- (a) the service provided at the remote site falls within the scope of the parent agency license; and
- (b) all necessary administrative and support services are available, on a continuous basis during the hours of operation, to insure the health, safety, and welfare of the clients.

(4) If a location qualifies as a branch location the Department shall issue a separate license identifying the agency as a "Branch Location" of the licensed parent agency. This license shall be subject to all requirements set forth in R432-2 of the Health Facility Rules.

**R432-2-7. Applications for License Actions.**

(1) An applicant for a license shall file a Request for Agency Action/License Application with the Utah Department of Health on a form furnished by the Department.

(2) Each applicant shall comply with all zoning, fire, safety, sanitation, building and licensing laws, regulations, ordinances, and codes of the city and county in which the facility or agency is located. The applicant shall obtain the following clearances and submit them as part of the completed application to the licensing agency:

(a) A certificate of fire clearance from the State Fire Marshal or designated local fire authority certifying compliance



with local and state fire codes is required with initial and renewal application, change of ownership, and at any time new construction or substantial remodeling has occurred.

(b) A satisfactory Food Services Sanitation Clearance report by a local or state sanitarian is required for facilities providing food service at initial application and upon a change of ownership.

(c) Certificate of Occupancy from the local building official at initial application, change of location and at the time of any new construction or substantial remodeling.

(3) As used in this section, an "owner" is any person or entity:

(a) ultimately responsible for operating a health care facility; or

(b) legally responsible for decisions and liabilities in a business management sense or that bears the final responsibility for operating decisions made in the capacity of a governing body.

(4) The applicant shall submit contact information for the ownership of the legal entity including the names, email addresses and mailing addresses.

(5) The applicant shall provide the following written assurances on all individuals listed in R432-2-7(4):

(a) None of the persons has been convicted of a felony;

(b) None of the persons has been found in violation of any local, state, or federal law which arises from or is otherwise related to the individual's relationship to a health care facility; and

(c) None of the persons who has currently or within the five years prior to the date of application had previous interest in a licensed health care facility that has been any of the following:

(i) subject of a patient care receivership action;

(ii) closed as a result of a settlement agreement resulting from a decertification action or a license revocation;

(iii) involuntarily terminated from participation in either Medicaid or Medicare programs; or

(iv) convicted of patient abuse, neglect or exploitation where the facts of the case prove that the licensee failed to provide adequate protection or services for the person to prevent such abuse.

#### **R432-2-8. License Fee.**

In accordance with Subsection 26-21-6(1)(d), the applicant shall submit a license fee with the completed application form. A current fee schedule is available from the Bureau of Health Facility Licensing upon request. Any late fees is assessed according to the fee schedule.

#### **R432-2-9. Additional Information.**

The Department may require additional information or review other documents to determine compliance with licensing rules. These include:

(1) architectural plans and a description of the functional program.

(2) policies and procedures manuals.

(3) verification of individual licenses, registrations or certification required by the Utah Department of Commerce.

(4) data reports including the submission of the annual report at the Departments request.

(5) documentation that sufficient assets are available to provide services: staff, utilities, food supplies, and laundry for at least a two month period of time.

#### **R432-2-10. Initial License Issuance or Denial.**

(1) The Department shall render a decision on an initial license application within 60 days of receipt of a complete application packet or within six months of the date the first component of an application packet is received; provided, in

either case, a minimum of 45 days is allowed for the initial policy and procedure manual review.

(2) Upon verification of compliance with licensing requirements the Department shall issue a provisional license.

(3) The Department shall issue a written notice of agency decision under the procedures for adjudicative proceedings (R432-30) denying a license if the facility is not in compliance with the applicable laws, rules, or regulations. The notice shall state the reasons for denial.

(4) An applicant who is denied licensing may reapply for initial licensing as a new applicant and shall be required to initiate a new request for agency action as described in R432-2-7.

(5) The Department shall assess an administrative fee on all denied license applications. This fee shall be subtracted from any fees submitted as part of the application packet and a refund for the balance returned to the applicant.

#### **R432-2-11. License Contents and Provisions.**

(1) The license shall document the following:

(a) the name of the health facility,

(b) licensee,

(c) type of facility,

(d) approved licensed capacity including identification of operational and secure unit beds,

(e) street address of the facility,

(f) issue and expiration date of license,

(g) construction variance information, and

(h) license number.

(2) The license is not assignable or transferable.

(3) Each license is the property of the Department. The licensee shall return the license within five days following closure of a health care facility or upon the request of the Department.

(4) The licensee shall post the license on the licensed premises in a place readily visible and accessible to the public.

#### **R432-2-12. Expiration and Renewal.**

(1) Each standard license shall expire at midnight on the day designated on the license as the expiration date, unless the license is revoked or extended under subsection (2) or (4) by the Department.

(2) If a facility is operating under a conditional license for a period extending beyond the expiration date of the current license, the Department shall establish a new expiration date.

(3) The licensee shall submit a Request for Agency Action/License Application form, applicable fees, clearances, and the annual report for the previous calendar year (if required by the Department under R432-2-9) 15 days before the current license expires.

(4) A license shall expire on the date specified on the license unless the licensee requests and is granted an extension from the Department.

(5) The Department shall renew a standard license upon verification that the licensee and facility are in compliance with all applicable license rules.

(6) Facilities no longer providing patient care or client services may not have their license renewed.

#### **R432-2-13. New License Required.**

(1) A prospective licensee shall submit a Request for Agency Action/License Application, fees, and required documentation for a new license at least 30 days before any of the following proposed or anticipated changes occur:

(a) occupancy of a new facility;

(b) change of ownership; or

(c) change in license category.

(2) Before the Department may issue a change of ownership license, the prospective licensee shall provide

documentation that:

(a) all patient care records, personnel records, staffing schedules, quality assurance committee minutes, in-service program records, and other documents required by applicable rules remain in the facility and have been transferred to the custody of the new licensee.

(b) the existing policy and procedures manual or a new manual has been adopted by the facility governing body before change of ownership occurs.

(c) new contracts for professional or other services not provided directly by the facility have been secured.

(d) new transfer agreements have been drafted and signed.

(e) written documentation exists of clear ownership or lease of the facility by the new owner.

(f) the licensee shall provide the new owner with a written accounting, prepared by an independent certified public accountant, of all patient funds being transferred, and obtain a written receipt for those funds from the new owner.

(g) Nursing Care and Small Health Care Facilities shall provide a certificate from the Division of Medicaid and Health Financing's Bureau of Financial Services noting the current owner has no outstanding monies owed to the division.

(3) A prospective licensee is responsible for all uncorrected rule violations and deficiencies including any current plan of correction submitted by the previous licensee unless a revised plan of correction, approved by the Department, is submitted by the prospective licensee before the change of ownership becomes effective.

(4) If a license is issued to the new owner the previous licensee shall return his license to the Department within five days of the new owner's receipt of the license.

(5) Upon verification that the facility is in compliance with all applicable licensing rules, the Department shall issue a new license effective the date compliance is determined as required by R432-2-9.

#### **R432-2-14. Change in Licensing Status.**

(1) A licensee shall submit a Request for Agency Action/License Application to amend or modify the license status at least 30 days before any of the following proposed or anticipated changes:

(a) increase or decrease of licensed capacity;

(b) change in name of facility;

(c) occupancy of a replacement facility;

(d) change of license classification; or

(e) change in administrator.

(2) An increase of licensed capacity may incur an additional license fee if the increase exceeds the maximum number of units in the fee category division of the existing license. This fee shall be the difference in license fee for the existing and proposed capacity according to the license fee schedule.

(3) Upon verification that the licensee and facility are in compliance with all applicable licensing rules, the Department shall issue an amended or modified license effective the date that the Department determines that the licensee is in compliance.

#### **R432-2-15. Facility Ceases Operation.**

(1) A licensee that voluntarily ceases operation shall complete the following:

(a) notify the Department and the patients or their next of kin at least 30 days before the effective date of closure.

(b) make provision for the safe keeping of records.

(c) return all patients' monies and valuables at the time of discharge.

(d) The licensee must return the license to the Department within five days after the facility ceases operation.

(2) If the Department revokes a facility's license or if it

issues an emergency closure order, the licensee shall document for Department review the following:

(a) the location and date of discharge for all residents,

(b) the date that notice was provided to all residents and responsible parties to ensure an orderly discharge and assistance with placement; and

(c) the date and time that the facility complied with the closure order.

#### **R432-2-16. Provisional License.**

(1) A provisional license is an initial license issued to an applicant for a probationary period of six months.

(2) In granting a provisional license, the Department shall determine that the facility has the potential to provide services and be in full compliance with licensing rules during the six month period.

(3) A provisional license is nonrenewable. The Department may issue a provisional license for no longer than six months.

(4) If the licensee fails to meet terms and conditions of licensing before the expiration date of the provisional license, the license shall automatically expire.

#### **R432-2-17. Conditional License.**

(1) A conditional license is a remedial license issued to a licensee if there is a determination of substandard quality of care, immediate jeopardy or a pattern of violations which would result in a ban on admissions at the facility or if the licensee is found to have:

(a) a Class I violation or a Class II violation that remains uncorrected after the specified time for correction;

(b) more than three cited repeat Class I or II violations from the previous year; or

(c) fails to fully comply with administrative requirements for licensing.

(2) A standard license is revoked by the issuance of a conditional license.

(3) The Department may not issue a conditional license after the expiration of a provisional license.

(4) In granting a conditional license, the Department shall be assured that the lack of full compliance does not harm the health, safety, and welfare of the patients.

(5) The Department shall establish the period of time for the conditional license based on an assessment of the nature of the existing violations and facts available at the time of the decision.

(6) The Department shall set conditions whereby the licensee must comply with an accepted plan of correction.

(7) If the licensee fails to meet the conditions before the expiration date of the conditional license, the license shall automatically expire.

#### **R432-2-18. Standard License.**

(1) A standard license is a license issued to a licensee if:

(a) the licensee meets the conditions attached to a provisional or conditional license;

(b) the licensee corrects the identified rule violations; or

(c) the licensee completes all licensing renewal requirements as per R432-2-12.

#### **R432-2-19. Variances.**

(1) A health facility may submit a request for agency action to obtain a variance from state rules at any time.

(a) An applicant requesting a variance shall file a Request for Agency Action/Variance Application with the Utah Department of Health on forms furnished by the Department.

(b) The Department may require additional information from the facility before acting on the request.

(c) The Department shall act upon each request for

variance in writing within 60 days of receipt of a completed request.

(2) If the Department grants a variance, it shall amend the license in writing to indicate that the facility has been granted a variance. The variance may be renewable or non-renewable. The licensee shall maintain a copy of the approved variance on file in the facility and make the copy available to all interested parties upon request.

(a) The Department shall file the request and variance with the license application.

(b) The terms of a requested variance may be modified upon agreement between the Department and the facility.

(c) The Department may impose conditions on the granting of a variance as it determines necessary to protect the health and safety of the residents or patients.

(d) The Department may limit the duration of any variance.

(3) The Department shall issue a written notice of agency decision denying a variance upon determination that the variance is not justified.

(4) The Department may revoke a variance if:

(a) The variance adversely affects the health, safety, or welfare of the residents.

(b) The facility fails to comply with the conditions of the variance as granted.

(c) The licensee notifies the Department in writing that it wishes to relinquish the variance and be subject to the rule previously varied.

(d) There is a change in the statute, regulations or rules.

**R432-2-20. Change In Ownership.**

(1) As used in this section, an "owner" is any person or entity:

(a) ultimately responsible for operating a health care facility; or

(b) legally responsible for decisions and liabilities in a business management sense or that bears the final responsibility for operating decisions made in the capacity of a governing body.

(2) The owner of the health care facility does not need to own the real property or building where the facility operates.

(3) A property owner is also an owner of the facility if he:

(a) retains the right or participates in the operation or business decisions of the enterprise;

(b) has engaged the services of a management company to operate the facility; or

(c) takes over the operation of the facility.

(4) A licensed provider whose ownership or controlling ownership interest has changed must submit a Request for Agency Action/License Application and fees to the department 30 days prior to the proposed change

(5) Changes in ownership that require action under subsection (4) include any arrangement that:

(a) transfers the business enterprise or assets to another person or firm, with or without the transfer of any real property rights;

(b) removes, adds, or substitutes an owner or part owner;

or

(c) in the case of an incorporated owner:

(i) is a merger with another corporation if the board of directors of the surviving corporation differs by 20 percent or more from the board of the original licensee; or

(ii) creates a separate corporation, including a wholly owned subsidiary, if the board of directors of the separate corporation differs by 20 percent or more from the board of the original licensee.

(6) A person or entity that contracts with an owner to manage the enterprise, subject to the owner's general approval of operating decisions it makes is not an owner, unless the parties have agreed that the managing entity is also an owner.

(7) A transfer between departments of government agencies for management of a government-owned health care facility is not a change of ownership under this section.

**KEY: health care facilities**

**March 22, 2018**

**Notice of Continuation January 29, 2018**

**26-21-9**

**26-21-11**

**26-21-12**

**26-21-13**

**R436. Health, Center for Health Data, Vital Records and Statistics.****R436-1. Duties of the Department of Health.****R436-1-1. Definitions.**

- (1) Terms used in this rule are defined in Section 26-2-2.
- (2) In addition, "Information for medical and health use only," means all of the information in the lower portion of the birth certificate and the similar information on the fetal death certificate; and the date and sex of the birth, death or fetal death.

**R436-1-2. Forms.**

All forms, certificates, and reports used in the system of vital statistics are the property of the Utah Department of Health, hereinafter referred to as "Department" and are subject to its rules and regulations. Only forms furnished by the State Registrar of Vital Statistics, hereinafter referred to as "State Registrar," shall be used in the reporting of vital statistics or in making copies thereof. These forms shall be used only for official purposes.

**R436-1-3. Requirements for Preparation of Certificates.**

All certificates and records relating to vital statistics must be prepared on a typewriter or other word processing equipment with a black ribbon or printed legibly in black, unfading ink. All required signatures shall be entered in black, unfading ink. Unless otherwise directed by the State Registrar, no certificate shall be complete and acceptable for registration that:

- (a) does not have the certifier's name typed or printed legibly under his signature;
- (b) does not supply all items of information called for, or satisfactorily account for their omission;
- (c) contains alterations or erasures that would be apparent on certified copies or would not be as permanent as the record itself;
- (d) does not contain handwritten signatures as required;
- (e) is marked "copy" or "duplicate;"
- (f) is a carbon copy;
- (g) is prepared on an improper form;
- (h) contains inconsistent data;
- (i) contains an indefinite cause of death which denotes only symptoms of disease or conditions resulting from disease;
- (j) is not prepared in conformity with rules or instructions issued by the Department.

**R436-1-4. Designation of Additional Offices.**

(1) Full-time local health officers may be designated by the Department to serve as the local registrar of vital statistics for the area they serve as health officer. They shall carry out their required duties without payment of any additional fee. For areas of the state not served by a full-time local health officer, the Department, acting through the State Registrar, shall designate an individual to serve as local registrar.

(2) The State Registrar shall delegate such duties and responsibilities to the local registrars as is deemed necessary to insure the efficient operation of the system of vital statistics. These may include the following:

- (a) The receipt and processing of birth, death, and spontaneous fetal death records. This includes the receipt of these records from the person responsible for filing the record, checking it for accuracy and completeness, making a local copy, and forwarding the original to the State Registrar at least once a week.
- (b) Issuance of certified copies of birth, death, and fetal death certificates after receiving written authorization from the State Registrar. Certified copies shall be issued only from the following documents:
- (i) the original certificate;
- (ii) a facsimile copy or other electronically transferred copy from the State Registrar;

(iii) the local registrar's copy of the original certificate.

All forms and procedures used to issue the copies shall be provided or approved by the State Registrar.

(c) Issuance of burial-transit and disinterment permits and other designated forms as prescribed by regulation or direction of the State Registrar.

(d) Acting as the agent of the State Registrar in their designated area and providing assistance to physicians, hospitals, funeral directors, and others in matters related to the system of vital statistics.

(3) The State Registrar, with the approval of the Department, shall determine the responsibilities and duties of each office independently.

**R436-1-5. Name of Child.**

A newborn child's name should be recorded on the birth certificate as determined by its' parents. If the parents disagree on the child's name and they have never married each other or are separated or divorced, the custodial parent shall determine the child's name. If the parents are married to each other and cannot agree on the child's name, it may be left blank on the birth certificate and added later by an Affidavit to Amend a Record or by court order.

**KEY: vital statistics, standards, appointment to office, custody of children****1993****26-2-3****Notice of Continuation March 19, 2018****26-2-4**

**R436. Health, Center for Health Data, Vital Records and Statistics.****R436-2. Infants of Unknown Parentage; Foundling Registration.****R436-2-1. Infants of Unknown Parentage; Foundling Registration.**

The report for an infant of unknown parentage shall be registered on a foundling certificate of live birth and shall, unless more definitive information is available:

(a) Show the date and place of finding.

(b) Show the signature and title of the custodian in lieu of the attendant during delivery.

If the child is identified and a certificate of birth is found or obtained, the foundling certificate shall be placed in a sealed file and shall not be open to inspection, except on the order of a court.

**KEY: vital statistics, custody of children**

**1989**

**26-2-6**

**Notice of Continuation March 20, 2018**

**R436. Health, Center for Health Data, Vital Records and Statistics.****R436-3. Amendment of Vital Records.****R436-3-1. Definitions.**

For purposes of this rule "putative father" means the man the birth mother specifies as the birth father.

**R436-3-2. Correction of Minor Errors on Birth Certificates.**

Amendment of obvious errors, transposition of letters in words of common knowledge, or omissions may be made by the Registrar while the original certificate is still in the local office, based on personal observation, query, or upon the request of a person with a direct and tangible interest in the certificate as defined in R436-13-1(1). When such additions or minor amendments are made by the Registrar, a notation as to the source of the information, together with the date the change was made and the initials of the authorized agent making the change, shall be made on the certificate in such a way as not to become a part of any certification issued. The certificate shall not be marked "Amended." After the certificate is registered and the original has been transmitted to the State Registrar and processing completed, all corrections must be made by amendment.

**R436-3-3. Amendments to Correct Errors or Omissions.**

(1) Whenever facts are not correctly stated in any certificate of birth, death or fetal death already registered, the person asserting that the error exists may make an affidavit under oath on the form prescribed by the State Registrar stating the corrections necessary to make the record correct. Such corrections shall be supported by the affidavit of one other credible person having knowledge of the facts. Such certificate, as corrected, shall be filed with the state or local registrar.

(2) If the amendment relates to a certificate which has not been transmitted to the State Registrar, the local registrar shall review the amendment for adequacy for filing. If the local registrar finds reason to doubt the adequacy of the amendment it shall be referred to the State Registrar.

(3) If the amendment relates to a certificate which has been transmitted to the State Registrar, the amendment shall be transmitted to the State Registrar who shall review it for acceptance for registration. If the State Registrar has reason to doubt the adequacy of the amendment, one or more items of documentary evidence to support the alleged facts may be required. A Supplemental Name Report may be used to add a child's name to its birth certificate when this information was not given at the time the certificate was registered. This form must be signed by both parents.

(4) An amendment shall be filed with and become part of the record to which it pertains. The original certificate shall be marked "Amended, 1 of 2," or however many parts the amendment may require. Subsequent parts will be marked accordingly.

(5) When an amendment is accepted, the State Registrar shall transmit copies of the amendment to the local registrar in whose office a copy of the original record is on file.

**R436-3-4. Amendment of Medical and Health Data.**

(1) Whenever the originally furnished medical and health data of any record of death, fetal death, or live birth is modified by supplemental information the certifying physician or medical examiner having knowledge of this information, may certify, under penalty of perjury, the changes necessary to make the information correct. The cause of death information may also be amended by the physician who performs an autopsy on the deceased.

(2) This amendment shall be processed in the manner prescribed in Section R436-3-2 of these rules.

**R436-3-5. Acknowledgement of Paternity by Natural Parents.**

(1) If the mother was married at any time during the pregnancy, the name of the husband shall be entered on the certificate as the father of the child, unless:

(a) paternity has been determined otherwise by a district court of this state, or

(b) the mother and the mother's husband execute joint or separate affidavits attesting that the husband is not the father of the child. The signature of the mother and of the husband shall be individually notarized on affidavit form(s). In such event, information about the father shall be omitted from the certificate, or

(c) the mother executes an affidavit attesting that the husband is not the father and that the putative father is the father, and the putative father executes an affidavit attesting that he is the father, and the husband executes an affidavit attesting that he is not the father. Affidavits may be joint or individual or a combination thereof, and each signature shall be individually notarized. In such event, the putative father shall be shown as the father on the certificate.

(2) If the mother was not married at any time during the pregnancy, the name of the father shall not be entered on the certificate without a declaration of paternity signed by the mother and the putative father.

(3) In any case in which paternity of a child is determined by a district court of this state, the name of the father and surname of the child shall be added to the certificate of birth in accordance with the finding and order of the court. If the court order does not specifically change the surname of the child, the child's surname shall remain the name listed on the original birth certificate.

(4) If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate.

(5) The affidavit for the declaration of paternity referenced in this rule shall be on a form provided by the State Registrar. When completed prior to the registration of the birth certificate they will be filed with the original birth certificate. When completed after the birth certificate has been registered they should be transmitted to the State Registrar for filing.

**KEY: vital statistics, amendments, fathers, mothers  
1994**

**Notice of Continuation March 20, 2018**

**26-2-7  
78B-15-302**

**R436. Health, Center for Health Data, Vital Records and Statistics.****R436-4. Delayed Registration of Birth.****R436-4-1. Registration - Ten Days to One Year.**

(1) By authority of Subsection 26-2-8(1), certificates of birth filed after ten days, but within one year from the date of birth, shall be registered on the standard birth certificate in the manner prescribed in Section 26-2-5. Such certificate shall not be marked "Delayed."

(2) The State Registrar may require additional evidence in support of the facts of birth and an explanation of why the birth certificate was not filed within the required ten days.

**R436-4-2. Delayed Birth Certificate Form.**

All certificates registered one year or more after the date of birth are to be registered on a delayed birth certificate form prescribed by the State Registrar.

**R436-4-3. Who May Request the Registration of and Sign a Delayed Birth Certificate.**

(1) If the birth of any person born in this state is not recorded in this state, the registrant (if 18 or older), the registrant's parent(s) or guardian, next of kin, or person older than the registrant having personal knowledge of the facts of birth, may request the registration of a delayed birth certificate subject to these rules and instructions issued by the State Registrar.

(2) Each delayed birth certificate shall be signed and sworn to before an official authorized to administer oaths by the person whose birth is to be registered. The registrant must be 18 years of age or over and competent to swear to the accuracy of the facts stated therein. If not, the certificate shall be signed and sworn to by one of the following in the indicated order of priority:

- (a) One of the parents of the registrant;
- (b) The guardian of the registrant;
- (c) A relative who is older than the registrant;
- (d) Any person older than the registrant having personal knowledge of the facts of birth.

(3) A delayed birth certificate shall not be filed for deceased individuals when application is made more than seven years after the birth is alleged to have occurred.

**R436-4-4. Facts to be Established for a Delayed Registration of Birth.**

(1) The minimum facts which must be established by documentary evidence shall be the following:

- (a) The full name of the person at the time of birth;
- (b) The date and place of birth;
- (c) The full maiden name of the mother;
- (d) The full name of the father; except that if the mother was not married either at the time of conception or at any time during pregnancy, the name of the father shall not be entered on the delayed certificate except as provided in R436-3-4.

**R436-4-5. Documentary Evidence - Requirements.**

(1) To be acceptable for filing, the name of the registrant and the date and place of birth entered on a delayed birth certificate shall be supported by at least:

- (a) Two pieces of documentary evidence, only one of which may be an affidavit of personal knowledge, if the record is filed in less than seven years after the date of birth;
- (b) Three pieces of documentary evidence, only one of which may be an affidavit of personal knowledge, if the record is filed seven years or more after the date of birth.

(2) Facts of parentage shall be supported by at least one of the above documents, which is not an affidavit of personal knowledge.

**R436-4-6. Documentary Evidence - Acceptability.**

(1) Documents presented, such as census, hospital, church, and school records, must be from independent sources and shall be in the form of the original record or duly certified copy thereof or a signed statement from the custodian of the record or document. All documents submitted into evidence, other than an affidavit of personal knowledge, must have been established at least ten years prior to the date of application or must have been established prior to the applicant's tenth birthday. Applications for delayed registration more than seven years after the birth must have at least one document that was established within 15 years of the date of birth.

(2) To be acceptable, an affidavit of personal knowledge must be prepared by one or both parents, other relative, or any person older than the registrant who has knowledge of the facts, and must be signed before an official authorized to administer oaths.

**R436-4-7. Abstraction of Documentary Evidence.**

(1) The State Registrar shall abstract on the delayed birth certificate a description of each document submitted to support the facts shown on the delayed birth certificate. This description shall include:

- (a) The title or description of the document;
- (b) The name and relationship of the affiant, if the document is an affidavit of personal knowledge, or the custodian, if the document is an original or certified copy of a record or a signed statement from the custodian;
- (c) The date the document being abstracted was originally filed;
- (d) The information regarding the birth facts contained in the document.

(2) All documents submitted in support of the delayed birth registration shall be returned to the applicant after review.

**R436-4-8. Certification by the State Registrar.**

The State Registrar shall, by signature, certify:

- (1) That no prior birth certificate is on file for the person whose birth is to be recorded;
- (2) That the evidence submitted to establish the facts of birth has been reviewed;
- (3) That the abstract of the evidence appearing on the delayed birth certificate accurately reflects the nature and content of the documents submitted to establish the facts of the birth.

**R436-4-9. Dismissal After One Year.**

Applications for delayed certificates which are inactive for one year may be dismissed at the discretion of the State Registrar.

**R436-4-10. Delayed Registration of Birth Resulting in Stillbirth.**

(1) If the parent or parents of a stillborn child request a certificate of birth resulting in stillbirth for the stillborn child that has not been registered within one year after the date of delivery, the state registrar shall search for the certificate of fetal death required under Section 26-2-14.

(2) If a certificate of fetal death for the stillborn was registered in the state of Utah, the state registrar shall provide the parent or parents a certificate of birth resulting in stillbirth based on the facts on the certificate of fetal death, with no additional documentary evidence required. Correction of errors or omissions on the original certificate of fetal death will be made in accordance with R436-3, except that an affidavit from one parent is sufficient to establish the name of the stillborn child.

(3) If a certificate of fetal death was not registered for the stillborn, the minimum facts that the applicant must establish by

documentary evidence to register the birth resulting in stillbirth are:

- (a) date of delivery.
- (b) place of delivery.
- (c) full maiden name of the mother.
- (d) full name of the father, except that if the mother was not married either at the time of conception or at any time during the pregnancy, the name of the father shall not be entered on the certificate except as provided in 436-3-5.
- (e) gestation of 20 weeks or more, as reported by the physician in attendance.
- (f) name of delivery attendant.

**KEY: vital statistics, evidence**

**December 19, 2002**

**Notice of Continuation March 20, 2018**

**26-2-8**

**26-2-19**

**26-2-14.1**

**26-2-14.2**



**R436. Health, Center for Health Data, Vital Records and Statistics.****R436-7. Death Registration.****R436-7-1. Death Registration.**

If all information necessary to complete a death certificate is not available within the time prescribed for filing of the certificate, the funeral director shall file the certificate completed with all information that is available. In all cases, the medical certification must be signed by the person responsible for such certification. If the cause of death is unknown, undetermined or pending investigation, the cause of death shall be shown as such on the certificate. Final disposition of the deceased shall not be made until authorized by the attending physician or the medical examiner. An amendment providing the information missing from the original certificate shall be filed with the State Registrar as soon as possible, but in all cases within 30 days after the date of the death.

**KEY: vital statistics, death, funeral industries**

**1989**

**26-2-13**

**Notice of Continuation March 21, 2018**

**R436. Health, Center for Health Data, Vital Records and Statistics.****R436-8. Authorization for Final Disposition of Deceased Persons.****R436-8-1. Removal of Body.**

Before removing a dead body or fetus from the place of death, the funeral director or person acting as such shall:

(a) Obtain permission from the next of kin or the custodian of the remains to remove the body or fetus from the place of death, and obtain assurance from the attending physician that death is from natural causes, and that the physician will assume responsibility for certifying to the cause of death or fetal death.

(b) Determine whether or not the medical examiner has been notified, if the death comes within his jurisdiction. If the medical examiner has not been notified or if that fact is unknown, make the notification and obtain authorization to remove the body.

(c) When the dead body or fetus is being removed from the hospital or other place of death by the next of kin or other person acting as the funeral director, the hospital or other custodian of the body shall not release the body until they are presented with a burial-transit permit issued by the appropriate local registrar or the state registrar.

**R436-8-2. Transportation of Dead Bodies.**

Any body shipped by common carrier must be embalmed by a licensed embalmer in a manner approved by the State Board of Embalming. The body must be placed in either (a) a sound casket enclosed in a strong outside shipping case, or (b) a metal container specifically designed for this purpose. If the body cannot be embalmed or is in a state of decomposition, it may be shipped only after enclosure in any air-tight metal casket encased in a strong outside shipping case, or in a sound casket encased in an air-tight metal, or metal-lined shipping case. When any body is to be transported by common carrier, the burial-transit permit shall be attached to the shipping case.

Any body transported by means other than a common carrier must be encased in a container (such as a plastic bag) which ensures against seepage of fluid and the escape of odors. However, bodies transported by a licensed funeral director in a vehicle used for such purpose need not be so encased.

If a dead body is to be transported by means other than a common carrier and for a purpose other than preparation or storage, the burial-transit permit shall be attached to the container in which the body is enclosed or in the possession of the person transporting the body.

**R436-8-3. Preservation of Bodies.**

No human body may be held in any place or be in transit more than 24 hours after death and pending final disposition, unless either maintained at a temperature of not more than 40 degrees F. or embalmed by a licensed embalmer in a manner approved by the State Board of Embalming, or by the embalmer licensed to practice in the state where the death occurred.

**R436-8-4. Authorization for Disinterment and Re-interment.**

An authorization for disinterment and re-interment of a dead body shall be issued by the local registrar of the district where the body is interred or by the State Registrar, upon receipt of a written application signed by the next of kin and the person who is in charge of the disinterment, or upon receipt of an order of a court of competent jurisdiction directing such disinterment. If the next of kin are in disagreement regarding the disinterment, the State Registrar may require a court order before issuing the disinterment permit.

Upon the relocation of a cemetery, the State Registrar or local registrar may issue a single disinterment permit to allow for mass disinterment of all bodies located in the cemetery. Prior to the issuance of this permit, the registrar must receive

written agreement that insofar as possible, the remains of each body will be identified and the place of disinterment and re-interment will be specified and provided to the sexton of the cemetery where re-interment occurs.

A dead body properly prepared by an embalmer and deposited in a receiving vault shall not be considered a disinterment when removed from the vault for final disposition.

**KEY: vital statistics, permits, funeral industries  
1989**

**Notice of Continuation March 20, 2018**

**26-2-16**

**26-2-17**

**R436. Health, Center for Health Data, Vital Records and Statistics.****R436-9. Persons and Institutions Required to Keep Monthly Listings of Vital Statistics Events.****R436-9-1. Persons and Institutions Required to Keep Monthly Listings of Vital Statistics Events.**

Hospitals, birthing centers, and maternity homes shall prepare a monthly listing of all births that occurred in their facilities. This listing shall include the date of birth, the parents' names, the sex of the child and the name of the medical attendant. The aforementioned facilities shall also gather and keep in their files all the information needed to complete the birth certificates for these deliveries. Hospitals are also required to include on the listing all induced abortions (names not required) occurring in their facility.

Hospitals and nursing homes shall prepare a monthly listing of all the deaths and fetal deaths that occurred in their institutions. The listing should include date of death, name of the deceased, age, name of the medical attendant, name of the funeral director or the person acting as such.

Funeral directors shall keep a listing of all deaths for which they conducted a funeral or provided a casket. The funeral director's listing shall include the county where the death occurred in addition to the required identifying information. Sextons or other persons in charge of cemeteries shall prepare a listing of all burials and other dispositions in their cemeteries. The listing should include the date of death, name of the deceased, age, county where death occurred, and name of the funeral director or the person in charge of the burial.

The above listings shall be prepared in triplicate on forms provided by the State Registrar. One copy is to be sent to the State Registrar, one to the local registrar of the area where the facility is located, and the third is to be kept by the agency which prepared it.

These reports are to be mailed by the tenth of the month following the month of occurrence.

**KEY: vital statistics, health facilities, funeral industries**

<b>1989</b>	<b>26-2-16</b>
<b>Notice of Continuation March 21, 2018</b>	<b>26-2-18</b>
	<b>26-2-23</b>

**R436. Health, Center for Health Data, Vital Records and Statistics.****R436-10. Birth and Death Certificates.****R436-10-1. Registration and Transmittal of Certificates by Local Registrars to the State Registrar.**

(1) Local registrars shall take appropriate action to be sure that all births and deaths that occur in their registration area are registered. Local registrars may only register vital statistics certificates for events which occur in their respective areas. In reviewing the certificates for these events prior to registration, the registrar shall check the certificates for completeness and accuracy. All appropriate items on the certificates should be completed in accordance to the item by item instructions issued by the State Registrar. To insure accuracy, cross-checks between items shall be made. The originators of certificates which are incomplete or inaccurate should be contacted and queried, in order to obtain the needed information.

(2) Registrars should check the certificates they receive against the monthly listings of hospitals, nursing homes, funeral directors, and sextons to verify that all vital statistics certificates are registered.

(3) Certificates acceptable for registration should have the date received and the registrar's signature entered in the appropriate places. Deputy local registrars, at the discretion of the local registrar, may use a signature stamp of the local registrar's signature. Stamped signatures should be initialed by the deputy applying the facsimile signature.

(4) After being signed and dated, certificates shall be assigned a local number. The local number is comprised of two elements: a numerical county indicator and a number for the event. Births and deaths (including fetal deaths) have their own numbering series. Each series begins anew at the start of each calendar year. However, certificates for events which occurred in a previous calendar year should be numbered in sequential order with the other events for the year in which they occurred.

(5) The local registrar shall then make a copy of the certificate for the local files and send the original certificate to the State Registrar. The certificates should be filed according to event (i.e., births and deaths, including fetal deaths) and according to year of occurrence. These files are confidential. All vital statistics records shall be kept in a secure place available only to authorized personnel.

(6) Original certificates shall be transmitted to the State Registrar within ten days of their receipt by the local registrar.

**KEY: vital statistics, local government, standards  
1989**

**26-2-19**

**Notice of Continuation March 20, 2018**

**R436. Health, Center for Health Data, Vital Records and Statistics.****R436-12. Certified Copies of Vital Statistics Records.****R436-12-1. Qualifications for Local Registrars to Issue Certified Copies of Vital Statistics Records.**

In addition to compliance with pertinent state statutes, standards for vital statistics registration and certification in local health departments are as follows:

(1) The full-time health director shall designate a specific position to have the responsibility of Deputy Local Registrar of Births and Deaths.

(2) The Deputy Local Registrar shall have adequate staff to provide necessary services in county offices during all working hours of the Department.

(3) Adequate office space shall be provided to house the required staff and necessary files or books of certificates.

(4) All registered certificates or copies thereof shall be in files or in other appropriate facilities so as to maintain the physical and legal integrity and the confidentiality of the certificates.

(5) Arrangements shall be made for the receipt of death certificates and issuance of burial permits 365 days a year.

(6) The original birth and death certificates shall be transmitted to the State Registrar on a regular basis. This shall not exceed ten days from the date of receipt by the local registrar.

(7) Birth and death certificates may be accepted by assistant deputy local registrars in county offices and burial permits may be issued by them. However, hospitals will routinely submit their birth certificates to the Deputy Local Registrar at the headquarters office of the local health department. Original birth and death certificates will be transmitted daily from each county office to the headquarters office and no copies will remain on file in the county office unless they have been authorized by the State Registrar to issue certified copies of birth and death certificates.

(8) Before a local registrar shall be authorized to issue certified copies of birth and death certificates as provided in Section 26-2-21, a written procedure shall be prepared and approved by the State Registrar. In addition, the local registrar shall demonstrate the availability of the following capabilities:

(a) An indexing procedure that provides for timely and accurate certificate retrieval.

(b) Photographic reproducing equipment that will provide a permanent copy of the certificate, using forms approved by the State Registrar.

(c) An accounting system that will provide for the collection, deposit, and reporting of all fees received for vital statistics transactions.

(d) Capability to amend or delete certificates from the local files when so notified by the State Registrar.

(e) Adequate staff and facilities so that the confidentiality of the vital statistics certificates is maintained and certified copies are issued only to persons who meet the criteria provided in Section 26-2-22.

**KEY: vital statistics, local government, standards  
1989**

**26-2-21**

**Notice of Continuation March 21, 2018**

**R436. Health, Center for Health Data, Vital Records and Statistics.****R436-13. Disclosure of Records.****R436-13-1. Integrity of Vital Records.**

To protect the integrity of vital records:

(1) The State Registrar and other custodians of vital records shall not permit inspection of, or disclose information contained in vital statistics records, or copy or issue a copy of all or part of any such record, unless the applicant has a direct and tangible interest in such record. In addition to the definition of direct, tangible, and legitimate interest as defined in Section 26-2-22, those who may or may not have a direct and tangible interest are as follows:

(a) The registrant, a member of the immediate family, the guardian, or a designated legal representative shall be considered to have a direct and tangible interest. Others may demonstrate a direct and tangible interest when information is needed for determination or protection of a personal or property right.

(b) The natural parents of adopted children, when neither has custody, shall not be considered to have a direct and tangible interest.

(c) Commercial firms or agencies requesting listings of names and addresses shall not be considered to have a direct and tangible interest.

(2) The State Registrar or the local custodian may provide copies of certificates or disclose data from vital statistics records to federal, state, county, or municipal agencies of government requesting such data in the conduct of their official duties. Certificate copies or individual identifiable information may not be given by the receiving government agency to other agencies or individuals, or used for purposes not authorized at the time of the request.

(3) The State Registrar or local custodian shall not issue a certified copy of a record until a signed application has been received from the applicant. In emergencies, telephone requests may be accepted with documentation as to the identity of the person making the telephone request. Whenever it is determined necessary to establish an applicant's right to information from a vital record, the State Registrar or local custodian may also require identification of the applicant or a sworn statement.

(4) When determining whether a genealogist under Subsection 26-2-22 (3)(b) has demonstrated a direct, legitimate, and tangible interest in a record, the custodian of vital records may consider various relevant factors including the following:

(a) the genealogist shares a common ancestor with the subject of the vital record, the subject is deceased, and the subject has no living immediate family;

(b) the genealogist's stated interest in the vital record;

(c) inability to find information sought in the vital record from other sources; or

(d) the genealogist can provide a written contract for professional genealogical services on behalf of the subject or the subject's immediate family members.

(5) Nothing in this rule shall be construed to permit disclosure of information contained in the "Information for Medical and Health Use Only" section of the birth and fetal death certificates or the "Information for Statistical Purposes Only" section of the Certificate of Marriage or Certificate of Divorce, Dissolution of Marriage, or Annulment unless specifically authorized by the State Registrar for statistical or research purposes or if authorized by a court of competent jurisdiction.

**R436-13-2. Identity Verification of Individuals Receiving Health Care Services.**

In accordance with Subsection 26-1-30 (30), the State Registrar may disclose information contained in vital records to

health care providers, public health authorities, and health care insurers, including a qualified network as defined in Section 26-1-37(1), for the purpose of coordinating among themselves to verify the identity of the individuals they serve. This authority includes the provision of computerized matching methods to:

(1) distinguish living from deceased individuals who have received health care services; and

(2) disambiguate individual identities.

**KEY: vital statistics, copying processes, standards  
July 26, 2016**

**Notice of Continuation March 21, 2018**

**26-2-22**

**R436. Health, Center for Health Data, Vital Records and Statistics.****R436-14. Copies of Data From Vital Records.****R436-14-1. Copies of Data From Vital Records.**

(a) Full or short form certified copies of vital records may be made by mechanical, electronic, or other duplicative processes.

(b) Each certified copy issued shall be certified as a true copy by the officer in whose custody the record is entrusted and shall include the date issued, the name of the issuing officer, the registrar's signature or an authorized facsimile thereof, and the seal of the issuing office. Local registrars shall issue certified copies only on forms approved by the State Registrar. Local registrars may issue certified copies using the seal of the State of Utah when authorized by the State Registrar.

(c) Verification of the facts contained in a vital record may be furnished by the State Registrar to any federal, state, county, or municipal government agency or to any other agency representing the interest of the registrant, subject to the limitations as indicated in (a) above. Such verifications shall be on forms prescribed and furnished by the State Registrar or on forms furnished by the requesting agency and acceptable to the State Registrar; or, the State Registrar may authorize the verification in other ways when it shall prove in the best interests of the State. Such verifications may only be used for the official purposes of the requesting agency.

(d) When the State Registrar finds evidence that a certificate was registered through misrepresentation or fraud, the State Registrar shall have authority to withhold the issuance of a certified copy of such certificate until a court determination of the facts has been made.

**KEY: vital statistics, copy process**

**1989**

**26-2-26**

**Notice of Continuation March 21, 2018**

**R436. Health, Center for Health Data, Vital Records and Statistics.**

**R436-15. Fees.**

**R436-15-1. Fees for Copies and Searches.**

(1) No request for a vital statistics record shall be searched and certified copy issued until the required fee is received, unless specific approval has been obtained from the State Registrar or is otherwise provided for by statute or rule.

(2) The vital statistics fee schedule shall be approved by the Utah legislature as part of the Department of Health's annual budget.

**KEY: vital statistics, fees**

**1989**

**26-1-6**

**Notice of Continuation March 21, 2018**



**R436. Health, Center for Health Data, Vital Records and Statistics.**

**R436-16. Violation of Rules.**

**R436-16-1. Penalties.**

The penalties for violation of rules R436-1 through R436-15 are provided in Sections 26-23-3 through 26-23-8.

**KEY: vital statistics, penalties**

**1993 26-23-3 through 26-23-8**  
**Notice of Continuation March 21, 2018**

**R436. Health, Center for Health Data, Vital Records and Statistics.****R436-17. Review and Approval of Research Requests.****R436-17-1. Purpose and Authority.**

(1) This rule sets forth procedures for the review and approval of research requests received by the Bureau of Vital Records and Health Statistics.

(2) Authority for this rule is found in Sections 26-2-3 and 26-2-22.

**R436-17-2. Definitions.**

In addition to the definitions in Section 26-2-2, "Institutional Review Board" or "IRB" means a multi-disciplinary committee which reviews proposed research involving human subjects.

**R436-17-3. Requests for Access to Records for Research.**

(1) If the research does not involve the use of any personal identifying information from the vital records, the State Registrar shall provide the researcher with the requested statistical information upon receipt of the written request and payment of the associated costs.

(2) If the research involves the use of personal identifying information, the request must be in writing and must be signed by the researcher. In addition:

(a) The request must outline the research protocol to be used.

(b) If the research involves a follow-back or follow-up study, the request must describe who is to be contacted, how, by whom, and what questions will be asked. If a survey is planned, a copy of the survey must be submitted. Approval by an Institutional Review Board must be included with the request.

(c) If the research involves linking data files, the variables to be used to determine the match must be identified.

(d) The researcher and all persons who may have access to the identifying information in the vital records shall sign a Researcher's Confidentiality Agreement, which is available from the Bureau of Vital Records and Health Statistics.

(e) The researcher may not use or allow other persons to use the vital records information for any purpose other than the approved research.

(f) The State Registrar shall review all research requests upon receipt at which time one of the following outcomes may occur:

(i) The request is approved and the researcher is notified in writing of the approval and of the associated costs.

(ii) The request is given tentative approval and the researcher:

(A) is notified in writing of the approval and associated costs;

(B) discusses and resolves technical concerns identified by the State Registrar. (iii) The request is not approved and the researcher is:

(A) notified in writing the reasons for the disapproval;

(B) notified of the areas of concern with the request;

(C) allowed to address the areas of concern and resubmit the request.

(D) notified that the decision to deny may be appealed to the Executive Director of the Department of Health.

**R436-17-4. Approval by Institutional Review Board.**

(1) The State Registrar may require approval by an Institutional Review Board before authorizing a researcher access to the vital records.

(2) The IRB shall deny a research proposal if:

(a) it violates any federal or state law;

(b) the risks to the subjects outweighs the benefits to them or society;

(c) unnecessary risks are created;

(d) selection of subjects is inequitable;

(e) procedures for obtaining and documenting informed consent are inadequate;

(f) payment or other offered inducements are likely to influence subjects' judgment;

(g) the study is poorly or improperly designed such that meaningful conclusions cannot be derived.

**R436-17-5. Confidentiality Requirements.**

Researchers shall abide by the confidentiality requirements specified in the Researcher's Confidentiality Agreement. Failure to observe the confidentiality requirements shall result in the loss of privilege to access vital records for research purposes and may also result in civil court action pursuant to Section 26-23-5. Vital records information may only be used for the designated research and must be destroyed at the conclusion of the study, or returned to the State Registrar. If the researcher destroys the vital records the State Registrar shall be informed in writing. The information may not be used for other research unless authorized by the State Registrar.

**KEY: vital statistics, research  
1993**

**Notice of Continuation March 21, 2018**

**26-2-3**

**26-2-22**

**R527. Human Services, Recovery Services.****R527-920. Mandatory Disbursement to Oblige Through Electronic Funds Transfer.****R527-920-1. Authority and Purpose.**

(1) Section 62A-11-107 authorizes the Office of Recovery Services/Child Support Services (ORS/CSS) to adopt, amend and enforce rules. Section 62A-11-704 authorizes ORS/CSS to make rules to allow exceptions to mandatory disbursements by electronic funds transfer.

(2) The purpose of this rule is to outline the procedures for establishing electronic funds transfers to obligees and to specify appropriate exceptions to the requirement for ORS/CSS to make disbursements by electronic funds transfer as allowed in Section 62A-11-704.

**R527-920-2. Procedures.**

(1) ORS/CSS will notify obligees that have enforceable support orders of the available options for receiving electronic funds transfers. Written information about electronic funds transfer options will be sent to the best available addresses for eligible obligees.

(2) Written information about electronic funds transfer options will be sent at the following points in time if an obligee has not already arranged for electronic funds transfers:

(a) When Section 62A-11-704, mandating disbursement through electronic funds transfers, is implemented by ORS/CSS;

(b) When a new case is opened with ORS/CSS that is accompanied by an enforceable support order;

(c) When a first-time support order is established for an open case with ORS/CSS;

(d) When an established account for receiving electronic funds transfers is no longer appropriate for future transfers; or,

(e) When a previously-selected method for receiving electronic funds transfers will no longer be offered by ORS/CSS.

(3) Written information about electronic funds transfer options will be sent to obligees that have previously enrolled in this service in the following situations:

(a) When a previously-established account for receiving electronic funds transfers is no longer available to the obligee for future transfers; or,

(b) When a previously-selected method for receiving electronic funds transfers will no longer be offered by ORS/CSS.

(4) Upon receiving the written information about electronic funds transfer options, each obligee will be allowed to select from the available options and return the form to ORS/CSS to indicate his or her preferred method for receiving electronic payments. If an obligee fails to indicate a preference or fails to provide the necessary information to establish the preferred method of electronic funds transfer within sixty days of the date on the written notice, ORS/CSS has the option of enrolling that obligee in a plan to receive payments in an account that may be accessed through the use of an electronic access card.

(5) Payments will be disbursed by paper checks while the method of electronic funds transfer is established.

**R527-920-3. Exceptions.**

(1) Exceptions to mandatory disbursements through electronic funds transfer are allowed as follows:

(a) For a period of no more than 60 days after a case is opened with an enforceable support order;

(b) For a period of no more than 60 days after a first-time support order is established;

(c) For a period of no more than 60 days while an obligee changes the account to be used for receiving future electronic funds transfers; or,

(d) For an indefinite time period if an obligee resides in a

foreign country and an electronic funds transfer cannot be facilitated;

(2) The ORS or ORS/CSS Director may approve additional exceptions to mandatory disbursements through electronic funds transfers on a case-by-case basis if the obligee presents a request in writing and can demonstrate that electronic funds transfers would result in an undue hardship to that obligee. The ORS or ORS/CSS Director will determine the duration of the exception based on the individual circumstances.

(3) Disbursements through electronic funds transfer will not be mandatory for ORS/CSS if technical problems prevent successful electronic disbursement within the federally-mandated disbursement time frames found in 45 CFR 302.32.

**KEY: electronic funds transfer, child support****June 27, 2008****Notice of Continuation March 23, 2018****62A-1-111****62A-11-107****62A-11-704**

**R590. Insurance, Administration.****R590-94. Rule Permitting Smoker/Nonsmoker Mortality Tables For Use In Determining Minimum Reserve Liabilities and Nonforfeiture Benefits.****R590-94-1. Authority.**

This rule is promulgated by the Insurance Commissioner pursuant to Section 31A-2-201, 31A-22-408.

**R590-94-2. Purpose.**

The purpose of this rule is to permit the use of mortality tables that reflect differences in mortality between smokers and nonsmokers in determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits for plans of insurance with separate premium rates for smokers and nonsmokers.

**R590-94-3. Definition.**

A. As used in this rule, "1980 CSO Table, with or without Ten-Year Select Mortality Factor" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, incorporated in the 1980 NAIC Amendments to the Model Standard Valuation Law and Standard Nonforfeiture Law for Life Insurance, and referred to in those models as the Commissioner's 1980 Standard Ordinary Mortality table, with or without Ten-Year Select Mortality Factors. The same select factors will be used for both smokers and nonsmokers tables.

B. As used in this rule, "1980 CET Table" means that mortality table consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, incorporated in the 1980 NAIC Amendments to the Model Standard Nonforfeiture Law for Life Insurance, and referred to in those models as the Commissioner's 1980 Extended Term Insurance Table.

C. As used in this rule, "1958 CSO Table" means that mortality table developed by the Society of Actuaries Special Committee on New Mortality tables, incorporated in the NAIC Model Standard Nonforfeiture Law for Life Insurance, and referred to in that model as the Commissioners 1958 Standard Ordinary Mortality Table.

D. As used in this rule, "1958 CET Table" means that mortality table developed by the Society of Actuaries Special Committee on New Mortality Tables, incorporated in the NAIC Model Standard Nonforfeiture Law for Life Insurance, and referred to in that model as the Commissioners 1958 Extended Term Insurance Table.

E. As used in this rule, the phrase "smoker and nonsmoker mortality tables" refers to the mortality tables with separate rates of mortality for smokers and nonsmokers derived from the tables defined in A through D of this section which were developed by the Society of Actuaries Task Force on Smoker/Nonsmoker Mortality and the California Insurance Department staff and recommended by the NAIC Technical Staff Actuarial Group. These tables are available from the Insurance Department.

F. As used in this rule, the phrase "composite mortality tables" refers to the mortality tables defined in A through D of this section as they were originally published with rates of mortality that do not distinguish between smokers and nonsmokers.

**R590-94-4. Alternate Tables.**

A. For any policy of insurance delivered or issued for delivery in this state after July 1, 1985, and before January 1, 1989, at the option of the company and subject to the conditions stated in sections 5 of this rule:

(1) the 1958 CSO Smoker and Nonsmoker Mortality Tables may be substituted for the 1980 CSO Table, with or without Ten-Year Select Mortality Factors, and

(2) the 1958 CET Smoker and Nonsmoker Mortality Tables may be substituted for the 1980 CET Table for use in determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

Provided that for any category of insurance issued on female lives with minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits determined using the 1958 CSO or 1958 CET Smoker and Nonsmoker Mortality Tables, these minimum values may be calculated according to an age not more than six years younger than the actual age of the insured.

Provided further that the substitution of the 1958 CSO or 1958 CET Smoker and Nonsmoker Mortality Tables is available only if made for each policy of insurance on a policy form delivered or issued for delivery on or after the operative date for that policy form and before a date not later than January 1, 1989.

B. For any policy of insurance delivered or issued for delivery in this state after July 1, 1985, at the option of the company and subject to the conditions stated in section 5 of this rule:

(1) the 1980 CSO Smoker and Nonsmoker Mortality Tables, with or without Ten-Year Select Mortality Factors, may be substituted for the 1980 CSO Table, with or with our Ten-Year Select Mortality Factors, and

(2) the 1980 CET Smoker and Nonsmoker Mortality tables may be substituted for the 1980 CET Table for use in determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

**R590-94-5. Conditions.**

For each plan of insurance with separate rates for smokers and nonsmokers an insurer may:

A. use composite mortality tables to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits;

B. use smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by Section 31A-17-511, U.C.A., and use composite mortality tables to determine the basic minimum reserves, minimum cash surrender values and amounts of paid-up nonforfeiture benefits; or

C. use smoker and nonsmoker mortality to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

**R590-94-6. Separability.**

If any provision of this rule or the application of 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 may not be affected.

**KEY: insurance law  
1988**

**Notice of Continuation March 14, 2018**

**31A-2-201  
31A-22-408**

**R590. Insurance, Administration.****R590-154. Unfair Marketing Practices Rule; Misleading Names.****R590-154-1. Authority.**

This rule is adopted 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, Section 31A-23a-402, which provides that the commissioner may find certain practices to be misleading, deceptive, unfairly discriminatory, or unreasonably restrain competition, and to prohibit them by rule, and Subsection 31A-23a-110(2), which provides that a licensee may do business under a name other than the licensee's legal name by notifying the commissioner.

**R590-154-2. Purpose and Scope.**

(1) The purpose of this rule is to provide guidance to all licensees regarding unfair marketing practices.

(2) This rule applies to all insurance producers, limited lines producers, consultants and insurers licensed under Title 31A, Utah Insurance Code.

**R590-154-3. Definitions.**

(1) "Licensee" means, as used in this rule, all individual producers, all agency producers, all individual limited line producers, all agency limited line producers, all individual consultants, all agency consultants, and all insurers.

**R590-154-4. Findings.**

The commissioner finds that each of the practices prohibited in this rule constitute misleading, deceptive or unfairly discriminatory practices or unreasonably restrain competition, except as specifically allowed in this rule.

**R590-154-5. Licensee Name.**

(1) A licensee licensed under the Utah Insurance Code shall not use any name that is:

- (a) misleading or deceptive;
- (b) likely to be mistaken for another licensee already in business; or
- (c) implies association or connection with any other organization where actual bona fide association or connection does not exist.

(2) "Insurance consulting," "insurance consultants" or similar words shall only be used if the licensee is licensed as a consultant.

(3) A licensee shall be licensed using the licensee's legal name.

(4)(a) Section 31A-23a-110(2) permits a licensee to use an assumed name by notifying the commissioner.

(b) In order to give notice of an assumed name as required by Section 31A-23a-110(2), the licensee shall comply with R590-244-13.

(5) A licensee may use its legal name, or an assumed name provided the commissioner is properly notified of the assumed name.

**R590-154-6. Sale, Solicitation, or Negotiation of Insurance; Consultation.**

(1) A licensee shall not, orally or in writing, fail to disclose that the licensee is an insurance licensee.

(2) A licensee shall not use or imply license types or lines of authority not held by the licensee.

(3) An individual licensee may only use the name of an agency licensee if the individual licensee is designated to act under the agency's license.

(4) An individual licensee may not sell, solicit, or negotiate insurance; or consult or advise for an agency licensee unless the individual licensee is designated to act under the agency's license.

**R590-154-7. Claiming or Representing Department Approval.**

(1) A licensee may not represent, either directly or indirectly, that the department, the commissioner, or any employee of the department, has approved, reviewed, or endorsed any marketing program, insurance product, insurance company, practice or act.

(2) A licensee may report the fact of the filing of any form, financial report, or other document with the department, or of licensure, examination or other action involving the department, or the commissioner but may not misrepresent their effect or import.

**R590-154-8. Bartering for Insurance.**

Any licensee bartering for the sale of insurance or an annuity contract shall fully document the receipt of goods, services or other thing of value, establishing the value of the thing received and how the value was established, from whom received, the date received, and the premium cost of the insurance or annuity contract bartered for, and shall retain said documentation for three years following the expiration of the policy period or bartering transaction, whichever is longer. Any licensee bartering for the sale of an insurance or annuity contract shall disclose at the time of application to the insurer said bartering arrangement.

**R590-154-9. Prohibited Insurance Sales Tie-Ins.**

Multi-level marketing programs, investment programs, memberships, or other similar programs, designed or represented to produce or provide funds to pay all or any part of the cost of insurance constitutes an illegal inducement. This does not preclude the provision of insurance through a bona fide employee benefits program.

**R590-154-10. Commissions or Consulting Fees.**

A licensee shall not give or offer to give a premium reduction by means of commission or consulting fee back to the insurer for any purpose, including competition, unless the reduction is for expense savings and is justified by a reasonable standard and with reasonable accuracy. The insurer's underwriting files must document the savings in order to enable the commissioner to verify compliance. This documentation must demonstrate legitimate expense savings realized by the insurer and its producer.

**R590-154-11. Prohibited Financing Arrangements.**

A licensee may not obtain or arrange for third party financing of premium without the knowledge and consent of the insured.

**R590-154-12. Acting as A Licensee in Other Jurisdictions.**

A resident licensee may not sell, solicit, or negotiate insurance or advise or consult about insurance in another jurisdiction unless licensed or permitted by law to do so in that jurisdiction.

**R590-154-13. Use of Comparative Information.**

(1) Every insurer marketing insurance in the State of Utah shall establish written marketing procedures to assure that any comparison of insurance contracts, annuities or insurance companies by its producers will be fair and accurate.

(2) A licensee may not use any published rating information regarding an insurer in connection with the marketing of any insurance contract or annuity unless that person also provides at the same time an explanation of what the rating means as defined by the rating service.

**R590-154-14. Disclosure of Insurer in Group Insurance.**

Every certificate of insurance or booklet describing

coverage of a group insurance policy shall prominently state on the cover of the certificate or booklet the legal name and address of the actual insurer.

**R590-154-15. Enforcement Date.**

The commissioner shall begin enforcing the revised provisions of this rule on the rule's effective date.

**R590-154-16. Severability.**

If any provision of this rule or the application to any person or situation is 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 provision of this rule are declared to be severable.

**KEY: insurance, unfair marketing practices, misleading names**

**January 15, 2016**

**Notice of Continuation March 14, 2018**

**31A-2-201**

**31A-23a-402**

**31A-23a-110**

**R634. Natural Resources, Administration.****R634-3. Compensatory Mitigation Program.****R634-3-1. Authority and Purpose.**

(1) Under authority of Utah State Code Section 79-2-501 et. seq., this rule establishes the State of Utah's Compensatory Mitigation Program, including procedures for implementing the program to mitigate for permanent disturbances to greater sage-grouse (hereafter sage-grouse) habitat in Utah.

(2) This rule incorporates the conservation strategies contained in the "Conservation Plan for Greater Sage-grouse in Utah".

(3) Sage-grouse habitat in Utah is naturally fragmented due to topography, encroachment of conifer trees, fire, and invasive weeds such as cheat grass. Human-related activities have also contributed to habitat fragmentation. Research conducted on sage-grouse in Utah has clearly demonstrated that the species is space-limited and responds positively when new habitat is created. This compensatory mitigation program will be used to increase space (i.e., habitat) for greater sage-grouse, connect disjointed habitat by creating corridors, and protect occupied habitat. Acres of habitat lost and created will be the measure used to guide the implementation and track the success of the program in Utah. Other programs in Utah, including the Watershed Restoration Initiative, Sage-grouse Initiative and the Grazing Improvement Program, conduct projects to improve the quality of the habitat. The lessons learned from those programs will guide the implementation of this rule.

**R634-3-2. Program Goals.**

(1) The Compensatory Mitigation Program seeks to offset the impacts of permanent disturbances to sage-grouse habitat in Utah by

(a) encouraging responsible economic development through avoiding and minimizing permanent disturbance within sage-grouse habitat, when possible, and thereby maintaining the distribution of sagebrush habitats within Sage-grouse Management Areas (SGMAs) in Utah; and

(b) providing Compensatory Mitigation resulting in an increase to or protection of habitat to offset the impacts from Permanent Disturbance in sage-grouse habitats within Utah.

(2) The Program strives to be consistent, where practical, with county plans for Sage-grouse that include a compensatory mitigation strategy.

**R634-3-3. Definitions.**

(1) "Agreement Fee" means a sum of money set by the Legislature and paid by a Credit Provider upon entering into a Term Mitigation Agreement or Conservation Bank Agreement with the Department to offset the Department's costs in administering the Agreement.

(2) "Application Fee" means a sum of money set by the Legislature and paid by an applicant to the Department to offset the cost of processing a compensatory mitigation application submitted to the Department.

(3) "Area of Permanent Disturbance" means the area within a spatial polygon circumscribing the actual permanently disturbed area directly impacting sage-grouse or its habitat.

(4) "Baseline" means the pre-existing condition of a defined project area, prior to commencing any Credit Generation Project.

(5) "Bank Manager" means the person(s) or entity responsible for managing the Bank Property and implementing the terms and requirements contained in the Conservation Bank Agreement for the long-term conservation of sage-grouse habitat.

(6) "Bank Property" means permanently protected real property included in or devoted to the development of a Conservation Bank.

(7) "Compensatory Mitigation" means the restoration or

establishment of sage-grouse habitat or permanent protection of existing occupied habitat to offset the unavoidable adverse impacts which remain following permanent disturbance to sage grouse habitat.

(8) "Compensatory Mitigation Program" means the sage-grouse habitat mitigation program created by Title 79, Chapter 2, Part 5 of the Utah Code and this Rule.

(9) "Conservation Bank" means a site or suite of sites of at least 640 contiguous acres established under a Conservation Bank Agreement with the Department that provides ecological functions and services for sage-grouse, expressed as Credits that are conserved and managed in perpetuity and used to offset impacts to sage-grouse habitat expressed as Debits, occurring elsewhere.

(10) "Conservation Bank Agreement" means the legal document for the establishment, operation and use of a conservation bank.

(11) "Conservation Easement" means an easement, covenant, restriction, or condition in a deed, will, or other instrument signed by or on behalf of the record owner(s) of the underlying real property and is an interest in land that runs with the land benefited or burdened by the easement for the purpose of preserving and maintaining land as sage-grouse habitat or Corridors. To be valid, a Conservation Easement must comply with the "Land Conservation Easement Act" in Utah State Code, Title 57 Chapter 18, as amended, which terms and requirements are incorporated herein by reference.

(12) "Corridor" means an area of land that facilitates sage-grouse movement between two or more areas of Occupied Habitat containing less than 1% canopy cover in conifers and at least 15% ground cover in perennial grasses, shrubs, and forbs, and is at least 100 acres in size with a width of at least 2000 feet.

(13) "Credit" means an acre of Functional Habitat or Corridor lands created or restored or an acre of Occupied Habitat preserved by a Credit Provider that may be transferred to a Credit Buyer to offset impacts of Permanent Disturbances and which represents the value in Compensatory Mitigation activities.

(14) "Credit Buyer" means any person who purchases Credits to offset the impacts of permanent disturbance to sage-grouse habitat.

(15) "Credit Exchange Service" means a tool created by the Department to track the development, maintenance and transfer of Credits.

(16) "Credit Generation Project" means any planned project implemented by a Credit Provider or a designee within any SGMA to create or restore Functional Habitat or Corridors or preserve Occupied Habitat to generate Credits.

(17) "Credit Maintenance" means the actions required to ensure that Credit acreage continues to operate as Functional Habitat, Corridors or Occupied Habitat for the duration of the disturbance it was intended to offset.

(18) "Credit Provider" means any person or entity that creates or restores Functional Habitat or Corridor(s) or preserves occupied habitat to generate Credits to be transferred utilizing the Credit Exchange Service.

(19) "Credit Transfer Fee" means a sum of money set by the Legislature and paid by a Credit Buyer to the Department when a Credit Provider transfers Credits to a Credit Buyer to offset the Department's costs in administering this Program.

(20) "Debit" means an acre of sage-grouse habitat permanently disturbed in a SGMA for which Compensatory Mitigation is applicable.

(21) "Department" means the Utah Department of Natural Resources, the agency responsible for administering the Compensatory Mitigation Program.

(22) "Durability" means the ability for mitigation measures to remain effective for a period of time that is at least as long as

the impacts from the permanent disturbance that the mitigation is designed to offset.

(23) "Functional Habitat" means any sage-grouse habitat, created through a Credit Generation Project, contiguous with existing Occupied Habitat, and which includes a live sagebrush canopy cover of at least 10% and no more than 1% canopy cover of conifer trees over 0.5 meters in height.

(24) "Habitat" means the aggregation of Seasonal Habitats used by sage-grouse during their yearly life-cycle.

(25) "In-lieu Fee" means money provided to the State, at the direction of a regulatory agency, to be used for restoration and enhancement of sage-grouse habitat, with the goal to create or restore Functional Habitat that satisfies Compensatory Mitigation requirements to offset Permanent Disturbance.

(26) "Mitigation Ratio" means the ratio of Credits needed by a Credit Buyer or produced by the State to offset any Permanent Disturbance within sage-grouse habitat. Where a regulatory agency is involved, the agency establishes the mitigation ratio but it is recommended that any person causing Permanent Disturbance to an acre of sage-grouse habitat should provide four acres of Functional Habitat, Protected Habitat, or Corridors as a proper Mitigation Ratio to offset indirect impacts from disturbance and account for differences in habitat quality without conducting a detailed analysis of either factor.

(27) "Occupied Habitat" means any Habitat utilized by Sage-grouse during any portion of their annual lifecycle.

(28) "Permanent Disturbance" means a human caused action that results in a loss of sage-grouse Habitat for a period of five or more years and includes all areas where the direct effects of the action could be expected to disrupt the common activities of sage-grouse for a period of five years or more.

(29) "Plan" means the current Conservation Plan for Greater Sage-grouse in Utah.

(30) "Program Administrator" means the Executive Director of the Department, or their designee, with authority to establish, operate and manage the Compensatory Mitigation Program.

(31) "Project Area" means the geographic boundary of any Credit Generation Project.

(32) "Protected Habitat" means an area of Occupied Habitat that is preserved from Permanent Disturbance through a Conservation Easement for at least 20 years and is maintained as suitable habitat for the length of the easement.

(33) "Remedial Action" means any corrective measures which a Credit Provider is required to take to ameliorate any injury or adverse impact to Credits or Transferred Credits to ensure long-term Durability.

(34) "Reserve Pool" means a pool of Credits, managed by the Program Administrator or a Bank Manager, intended to cover risks of potential Reversals on any Project Area.

(35) "Reversal" means a Compensatory Mitigation Credit that does not persist for the full duration of the Permanent Disturbance.

(36) "SGMA" means Sage-grouse Management Areas as identified in the Plan.

(37) "Seasonal Habitat" means all habitats utilized by sage-grouse for survival during some portion of its life cycle, including leks, nesting, brood rearing, late brood rearing, transitional corridors, and winter habitat.

(38) "Service Area" means any SGMA within the State of Utah.

(39) "SITLA Lands" means lands owned or managed by the Utah School and Institutional Trust Lands Administration.

(40) "State Lands" means lands owned or managed by any State of Utah agency other than SITLA.

(41) "Term Mitigation Agreement" means an agreement between the Department and any person(s) owning or controlling property within any SGMA, where the landowner conducts a Credit Generation Project for the benefit of sage-

grouse, and which actions result in the creation of Credits to be transferred to Credit Buyers to offset Permanent Disturbances to sage-grouse Habitat.

(42) "Transfer" means the conveyance of Credits from one person or entity to another to offset impacts from Permanent Disturbance.

(43) "Transferred Credit" means any Credit transferred within the Department's Credit Exchange Service to offset impacts from Permanent Disturbance.

(44) "Verification" means the process used to confirm that Compensatory Mitigation Program rules have been followed through standardized reporting and monitoring.

(45) "Verifier" means any person or entity that has been accredited by the Department and certifies or monitors Functional Habitat, Corridors or Protected Habitat following Credit Generation Projects utilizing the scientific methods and guidelines approved by the Department.

#### **R634-3-4. State Sponsored Compensatory Mitigation Program.**

(1) Compensatory Mitigation for Impacts to Private, SITLA and other State Lands.

(a) To meet the mitigation requirements in the Utah Conservation Plan for Greater Sage-grouse, the Department will:

(i) Generate four acres of Functional Habitat or Corridors in SGMAs for every one acre of Permanent Disturbance on private or SITLA Lands in any SGMA; and

(ii) For every one acre of Permanent Disturbance on State Lands, other than SITLA lands, in any SGMA, the Department will work with other state agencies to generate four acres of Functional Habitat or Corridors.

(2) Determination of Disturbance.

(a) In consultation with county governments and other state agencies, the Department will determine the number of acres of permanent disturbances within all SGMAs on private, SITLA and State Lands every three years, or whenever information becomes available to the Department.

(3) State Credit Generation Projects.

(a) The Department will identify potential Credit Generation Projects within non-functional habitat in any SGMA. Prior to initiation of any Credit Generation Projects on SITLA, State Lands or federal lands, the Department will assess the Project Area to document the Baseline acres of Functional Habitat present within the Project Area before treatment. After conducting any necessary pre-project planning and assessments, the Department will conduct Credit Generation Projects to generate Credits.

(b) The Department will consult with the concerned county government(s) and other appropriate agencies before conducting the project.

(c) The Department will meet annually with federal agencies with jurisdiction over federal lands to identify potential Credit Generation Projects that may be completed on federal lands utilizing non-federal dollars. Credit Generation Projects will only be initiated after compliance with any necessary federal planning and permitting requirements. After conducting any necessary pre-project planning and assessments, the Department will conduct Credit Generation Projects to generate Credits.

(4) Verification and Tracking of Credits.

(a) Upon completion of any Credit Generation Project on SITLA, State Lands or federal lands, the Department will assess the Project Area utilizing a Verifier to certify the number of Credits generated on the Project Area. Once Credits are certified by the Department, it will track the Credits utilizing the Credit Exchange Service as provided in Section 3-7(1).

(b) Credits generated by the Department will offset Permanent Disturbance on private, SITLA and other State



Lands. Credits generated by the Department will not be transferred to Credit Buyers except as provided in 3-4(7).

(5) Monitoring and Maintenance.

(a) The Department will monitor the condition of each Credit utilizing the monitoring and assessment guidelines it adopts pursuant to Section 3-7(5).

(b) If results from monitoring and assessment demonstrate that Credits produced by the Department no longer provide Functional Habitat or Corridors, then the Department may conduct habitat maintenance projects to restore the Credits, or it may create additional Credits to replace them.

(6) Duration, Durability and Reversals. State Assurance.

(a) The Department will ensure that any Credits generated by the Department to offset permanent disturbance in any SGMA will be maintained for the duration of any direct impacts from Permanent Disturbance on those lands and tracked using the Credit Exchange Service.

(b) In the event of a Reversal to any Credits generated by the Department, the Department will apply additional replacement Credits from other Credit Generation Projects in any SGMA throughout the State. Any actions taken under this Section will be tracked in the Credit Exchange Service.

(7) Federal Agency Use of State Generated Credits.

(a) If a federal agency would like to utilize Credits generated by the State to offset Permanent Disturbance on federal lands, the Department may enter into a written agreement with the federal agency outlining the federal agencies' need and use of Credits to offset Permanent Disturbances on federal lands.

(b) Any federal agency may authorize the use of in-lieu payments from a person permanently disturbing habitat to offset the Department's cost to generate, monitor, and maintain the Credits. Upon payment of the in-lieu fee to the Department, the federal agency will provide a written receipt stating that the compensatory mitigation requirements are satisfied and allow a project causing permanent disturbance to habitat to proceed on federal lands.

**R634-3-5. Term Mitigation Credit Program.**

(1) Application; Minimum Qualifications. Any person desiring to enter into a Term Mitigation Agreement with the Department to create Credits to mitigate the impacts of disturbances to sage-grouse habitat within Utah, must:

(a) Own or control and manage at least 100 contiguous acres adjacent to Occupied Habitat in any SGMA in Utah identified in the Plan that is not Functional Habitat or a Corridor, but with completion of a Credit Generation Project may become Functional Habitat or a Corridor or own, manage and control at least 100 acres of Occupied Habitat that may become Protected Habitat.

(b) File a completed application with the Department, which, at a minimum, shall include:

(i) name of the owner(s) of the surface and mineral rights on the property;

(ii) legal description of the proposed Project Area and the total number of acres owned by the applicant;

(iii) the number of acres on which Credits will be generated and what action is proposed to generate Credits;

(iv) the term of years the person will maintain the Credits on the property, after completing any Credit Generation Project on the property as identified in the Term Mitigation Agreement;

(v) if a habitat protection project, a draft of the conservation easement; and

(vi) the Application Fee.

(c) Upon receiving any completed application, the Department will make a habitat suitability determination identifying whether the proposed Credit Generation Project will likely result in Functional Habitat or Corridor(s) on the property or Protected Habitat and identify the number of potential Credits

which may result from the creation of Functional Habitat, Corridors, or Protected Habitat. In the event another person owns the mineral rights on an applicant's property, the Department may request a mineral report for the property.

(d) The Department may deny any application that is incomplete or does not meet the guidelines outlined in this Section.

(e) The Department will consult with the concerned county government(s) and other appropriate agencies before approving the application.

(2) Establishment of Term Mitigation Agreement.

(a) If the Department determines that an applicant's property is suitable for generating Credits, it may enter into a Term Mitigation Agreement with the property owner, identifying, at a minimum:

(i) the scope of work necessary to create and maintain Credits on the Property;

(ii) the entity or person(s) responsible to perform any Credit Generation Projects;

(iii) a management plan identifying maintenance and verification duties for the landowner or a third-party entity;

(iv) the years duration for the Credits;

(v) an option clause for renewing the agreement for an additional term of years;

(vi) the legal or financial mechanisms utilized by the landowner to provide assurances to the Department that the Credits generated on the landowner's property will be in place for the duration of the agreement; and

(vii) for split-estate properties, the Department may require the owner(s) of a mineral estate to co-sign the Term Mitigation Agreement and provide a written guarantee that the mineral estate will not be developed during the term of the agreement.

(b) In no event shall the term of a Term Mitigation Agreement be less than twenty (20) years, which starts when the credit generation project is verified.

(3) Credit Generation Projects

(a) Prior to initiation of any Credit Generation Project, the Department will assess the Project Area to Verify the number of acres of Functional Habitat, Corridors and Occupied Habitat present on the Project Area before the landowner conducts any Credit Generation Projects.

(b) After conducting any necessary pre-project assessments, a Credit Provider or its designees will complete any Credit Generation Projects as outlined in the Term Mitigation Agreement.

(4) Verification; Tracking of Credits.

(a) Once the Credit Generation Projects are completed, as identified in the Term Mitigation Agreement, a Verifier will inspect the Credit Generation Project area, determine the number of Credits generated on the property, and provide a report to the Department and to the landowner identifying the number of Credits available on the property that may be transferred to a Credit Buyer utilizing the Credit Exchange Service.

(b) Prior to entering the Credits in the Credit Exchange Service, the Department shall collect the Agreement Fee from the Credit Provider to offset any costs of administering the Term Mitigation Agreement and issue a Certificate of Credits to the owner.

(c) Upon certifying the Credits, the Department will track the Credits in the Credit Exchange Service identified in Section 3-7(1).

(5) Assessment and Monitoring of Credits.

(a) Credits generated under this Section will be monitored by the Credit Provider and the Department, as outlined in the Term Mitigation Agreement, to ensure that Credits continue to serve as Functional Habitat, Corridors, or Protected Habitat for sage-grouse throughout the duration of the Term Mitigation

Agreement.

(b) Credits will be monitored using the Department's Monitoring and Credit Maintenance Policies developed under Section 3-7(5). The Program Administrator may utilize monitoring results to amend the Credit maintenance requirements outlined in the Term Mitigation Agreement.

(6) Durability and Assurances.

(a) Prior to the Department listing any Credits on the Credit Exchange Service, the Credit Provider shall provide the Department with financial and/or legal assurances that the Credits developed will be protected for the duration of the Term Mitigation Agreement. Financial assurances may include Letters of Credit, Performance or Guarantee Bonds, Escrow Agreements, endowments or Causality Insurance coverage to offset any losses or reverses to the Credits on the property. Legal assurances may include permanent or term easements, deed restrictions, and contractual guarantees.

(7) Credit Expiration; Renewal of Exchange Agreements.

(a) All Credits generated or transferred under this Section will automatically expire at the end of the term set out in the Term Mitigation Agreement regardless of whether or not the Credit was transferred. Upon expiration of any Credit, the Department will remove the Credit from the Credit Exchange Service.

(b) The Term Mitigation Agreement can be renewed for an additional term as outlined in the agreement. Prior to reissuing the Credits in the Credit Exchange Service, the Department or a Verifier will confirm that the Credits remain as Functional Habitat or Corridors.

(c) In the event the Department or any person terminates the Term Mitigation Agreement prior to the terms outlined in the agreement, the person providing the Credit Generation Project shall pay the Department its actual costs to obtain or create replacement Credits to complete the remaining years listed in the agreement.

(8) Federal Agency Use of Term Credits.

(a) Any federal regulatory agency that directs Credit Buyers to purchase Term Credits from the Credit Exchange Service is encouraged but not required to utilize the Mitigation Ratios recommended herein, including mitigating at four acres for every one acre of Permanent Disturbance.

(b) Any federal regulatory agency may place additional requirements on a Credit Buyer for maintaining, monitoring, verifying or providing additional assurances for Credits utilized to offset disturbances to sage-grouse habitat on federal land. The federal agency, or a Credit Buyer will be responsible for any additional monitoring or verification requirements developed by a federal agency.

#### **R634-3-6. Conservation Banks.**

(1) Jurisdiction.

(a) The Department has jurisdiction over the creation and regulation of Conservation Banks for Sage-grouse in Utah. Any person desiring to operate a Conservation Bank and transfer Credits generated by the Conservation Bank must first receive authorization from the Department.

(2) Application; Minimum Qualifications.

(a) Any person desiring to establish a Conservation Bank in Utah to create and protect in perpetuity Functional Habitat, Corridors or Protected Habitat to generate Credits to mitigate for the impacts of Permanent Disturbance to sage-grouse habitat within Utah, must:

(i) own, manage and control at least 640 contiguous acres of land that is not Functional Habitat, Corridor(s) or Protected Habitat that can be made into Functional Habitat, Corridors and/or Protected Habitat in any SGMA in Utah;

(ii) file a completed application with the Department, which shall include:

(A) the name and address of property owner(s);

(B) legal description and number of acres included in the proposed Bank Property;

(C) title search of property identifying current owner(s) and title holder(s) and a list of any existing liens on the property;

(D) list of any mineral owners of the property and a mineral title report if a split estate is involved;

(E) name and address of Bank Manager;

(F) a proposed property management plan, including identified Credit Generation Projects and monitoring and maintenance activities to take place on the bank; and

(g) the applicable Application Fee.

(b) The Department may reject any bank application that is incomplete or does not meet the requirements of this Section.

(3) Establishment of Conservation Bank Agreement.

(a) The Department may review any completed application and determine whether the property identified in the application may be eligible to operate as a Conservation Bank.

(b) The Department will consult with the concerned county government(s) and other appropriate agencies before approving the application.

(c) Upon review and preliminary approval of the application, the Department will provide a written notice of contingent bank approval to the applicant and shall identify the total number of Credits potentially available on the property upon completion of any Credit Generation Projects.

(i) No split-estate property shall receive informal approval unless the applicant provides a mineral report and written guarantee from the owner(s) of the mineral estate that mineral owners, or their lessees or assigns, will not occupy or disturb the surface in any way for mineral exploration or development while the Conservation Bank Agreement is in place. Such written guarantee shall be recorded, and shall run with the land and be binding on successors and assigns of the mineral owner for the term of the Agreement.

(d) After the applicant receives the notice of contingent bank approval, the applicant and the Department may enter into a Conservation Bank Agreement which will, at a minimum, identify:

(i) the Bank Manager;

(ii) the legal description of the Bank Property;

(iii) a property management plan identifying any habitat enhancement and maintenance activities to be conducted by Bank Manager to generate Credits on the Bank Property;

(iv) the Bank Manager's monitoring and reporting requirements and schedule;

(v) any Remedial Actions and adaptive management strategies to be taken in case of a Reversal;

(vi) the amount and type of legal or financial assurances the Bank Manager provides for the conservation and maintenance of the Conservation Bank and Credits;

(vii) a means by which the bank or bank property may be transferred to a third party; and

(e) Prior to executing the Conservation Bank Agreement or transferring Credits on the Credit Exchange Service, the owner of the Conservation Bank shall grant a Conservation Easement, record a deed restriction, or place the property in an irrevocable trust ensuring the perpetual protection of the property for the benefit of sage-grouse and the protection of sage-grouse habitat.

(f) Once the Conservation Bank Agreement is executed, recorded in the county registry and the Agreement Fee is received, the Department will issue a Certificate of Credits to the Bank Manager for the number of acres of Occupied Habitat placed under perpetual protection by the Bank in 3-6(3)(e).

(f) The Conservation Bank Agreement may be implemented in phases, as needed and appropriate, to generate and transfer Credits on a periodic basis, and may be modified or amended by mutual agreement between the Bank and the

Department.

(4) Credit Generation Projects.

(a) Prior to initiating any Credit Generation Projects, the Bank Manager or the Department will survey the Project Area to verify the number of acres of existing Functional Habitat or Corridors present and report the survey results to the Department.

(b) Once the Conservation Bank Agreement is fully executed by all parties and the survey results in subsection (1) are reported to the Department, the Bank Manager may begin Credit Generation Projects utilizing the plans and procedures identified in the Conservation Bank Agreement. The Bank Manager shall provide written notification to the Department whenever Credit Generation Projects are completed on the Bank Property.

(5) Verification and Tracking Credits.

(a) Upon completion of any Credit Generation Projects, as identified in the Conservation Bank Agreement, a Verifier will inspect the Credit Generation Project area to determine the number of acres of Functional Habitat or Corridor that exist on the Bank Property using the scientific methods approved or developed by the Department. When the Verifier determines that Functional Habitat or Corridors exist following Credit Generation Projects, the Verifier will provide a report to the DNR and to the Bank Manager identifying the number of Credits available on the property to be potentially transferred to a Credit Buyer through the Credit Exchange Service.

(b) Upon Verifying the Credits and receiving payment of the Agreement Fee, the Department will issue a Certificate of Credits to the Bank Manager and track the Credits on the Credit Exchange Service as identified in Section 3-7(1).

(6) Management and Monitoring Duties.

(a) The Bank Manager shall manage the Bank Property in accordance with the management plans prescribed in the Conservation Bank Agreement.

(b) The Bank Manager shall be responsible for monitoring and maintaining the condition of the Credits on the Bank Property and shall collect data as prescribed in the Conservation Bank Agreement, in accordance with the Department's Monitoring and Credit Maintenance policies and procedures.

(c) The Bank Manager or a designee will submit an annual assessment and monitoring report to the Department utilizing the reporting guidelines developed by the Department.

(7) Conservation Bank Agreement Revisions.

(a) The Bank Manager and the Department shall meet and confer upon request of either party to consider revisions to the Conservation Bank Agreement which may be necessary to better conserve the habitat and conservation values of the Bank Property.

(8) Compliance Inspection.

(a) The Department may conduct any necessary assessment, monitoring and verification of the Bank Property to Verify that Credits generated continue to qualify as Functional Habitat, Corridors or Protected Habitat; to recommend Remedial Action, as needed; or for any other purpose determined necessary by the Department to assess compliance with the Conservation Bank Agreement.

(b) In the event the Department or any person terminates the Conservation Bank Agreement prior to the terms outlined in the agreement, the Conservation Bank shall pay the Department its actual costs to obtain or create replacement Credits for any Transferred Credits to complete the remaining years listed in the agreement.

**R634-3-7. Administration.**

The Compensatory Mitigation Program and associated systems to generate and track Credits shall be administered by the Department.

(1) Credit Exchange Service.

(a) The Department shall monitor and track generated and transferred Credits using the Credit Exchange Service which will include the following information:

(i) Credits. Upon Completion of any Credit Generation Project, the Department will track:

(A) the number of Credits generated under each mitigation system herein;

(B) the dates the Credits were Verified and certified by the Department or a trained Verifier;

(C) the types of Habitat(s) created by the Credit(s), if the information is available;

(D) the name and address of each Credit Provider; and

(E) the duration or term for maintaining a Credit.

(ii) Transferred Credits. The Department will track information relating to each Transferred Credit including:

(A) name of Credit Buyer;

(B) the number of Credits transferred to the Credit Buyer;

(C) date of transfer;

(D) duration and term the Credit expires, if applicable.

(iii) Expiration of Credit. If the term of a Credit expires, the Department will notify the Buyer of the Credit, the Credit Provider and the involved regulatory agency, if applicable, that the Credit has expired and remove the Credit from the tracking system.

(2) Procedure for Transferring Credits.

(a) A Credit Buyer may negotiate the acquisition price for a Credit with any Credit Provider listed on the Credit Exchange Service.

(b) Once an agreement on transfer is finalized between the Credit Provider and Credit Buyer, the Credit Provider shall notify the Department within 7 days.

(c) Once the Department receives notice of the agreement from a Credit Provider, the Department will send the Credit Buyer an invoice identifying the Credit Transfer Fee to be paid by the Credit Buyer to the Department.

(d) The Credit Buyer shall pay the Credit Transfer Fee to the Department within 30 days of the Department sending the invoice. Upon receipt of the Credit Transfer Fee, the Department will transfer the agreed upon Credits to the Credit Buyer.

(e) The Department shall track Credits transferred to any Credit Buyer using the Credit Exchange Service.

(f) Any Credit Buyer may purchase additional Credits to offset future planned development projects anticipated to cause a Permanent Disturbance to sage-grouse habitat.

(g) Once a Credit Buyer acquires a Transferred Credit, the Credit Buyer of the Transferred Credit may not be transfer or sell the Transferred Credit to any other person or entity.

(h) If the term of a Transferred Credit expires and the Credit has not expired, notify the Credit Buyer, the Credit Provider and the involved regulatory agency, if applicable, that the Transferred Credit has expired and the Department will return the Credit to the Credit Provider in the tracking system.

(i) For the purposes of transfer of credits, a Conservation Bank that uses Credits to offset its own Debits will be considered the Credit Buyer.

(3) Fee Schedule.

(a) The Department will annually develop a fee schedule to cover the cost of the Compensatory Mitigation Program and submit to the Legislature, including:

(i) The Application Fee to offset the cost of processing a compensatory mitigation application submitted to the Department from a potential Credit Provider.

(ii) The Agreement Fee to offset the cost of administering Term Mitigation Agreements and Conservation Banking Agreements.

(iii) The Credit Transfer Fee to offset the operation and maintenance costs of the Credit Exchange Service.

(4) Verification and Monitoring Guidelines; Certification.

(a) All Credits must be certified by the Department or by a Verifier prior to being tracked and transferred on the Credit Exchange Service to ensure that Credits are Functional Habitat, Corridors, or Protected Habitat for sage-grouse.

(b) The Department will accredit any person interested in serving as a Verifier. Accreditation will occur after a person attends a verification training provided by the Department, or a designee, and after a person demonstrates proficiency implementing the Department's monitoring and assessment guidelines.

(c) Verifiers will act as a designee to the Program Administrator to certify Credits upon completion of any Credit Generation Projects.

(d) Upon completion of any property verification activities, the Verifier will provide a written Verification report to the Program Administrator identifying a summary of the verification activities completed, summary of the number of acres of Functional Habitat, Corridors, or Protected Habitat in the Credit Generation Project area and an estimate of the number of Credits available. The Department may add additional criteria to the report needed to carry out this rule.

(5) Monitoring and Assessment Guidelines; Scientific Method.

(a) The Credit Provider, or a designee, is responsible for monitoring and maintaining Credits utilizing the methods identified by the Department throughout the lifetime of the Credit to ensure that each Credit serves as viable Functional Habitat or Corridors for sage-grouse.

(b) The Department, and any trained Verifier, will utilize existing range trend monitoring guidelines or other scientifically approved methods identified by the Department to identify Credit Maintenance activities to be undertaken by a Credit Provider or their designee.

(c) The Department's monitoring and assessment guidelines will be reviewed, at a minimum, every three years to ensure they are consistent with current scientific literature and methods.

(6) Reserve Pool.

(a) All Credits generated by the Department will be maintained on the Credit Exchange Service to serve as a Reserve Pool to off-set losses from Reversals to any Credits generated under this Program.

(7) Adaptive Management.

(a) The DNR will monitor compensatory mitigation efforts and employ new scientific findings into this Compensatory Mitigation Program following adaptive management strategies, as such information becomes available.

**KEY: Sage Grouse, mitigation  
March 26, 2018**

**79-2-501**

**R651. Natural Resources, Parks and Recreation.****R651-407. Off-Highway Vehicle Advisory Council.****R651-407-1. Appointment and Description of Vehicle Advisory Council Membership.**

The board will appoint an twelve-member off-highway vehicle advisory council representing off-highway vehicle users in the state. One member will be from each of the following interests: the Bureau of Land Management; the U.S.D.A. Forest Service; the Utah School and Institutional Trust Lands Administration; snowmobiling; motorcycling; all-terrain vehicle usage; four-wheel drive vehicle usage; off-highway vehicle dealers; off-highway vehicle safety; a youth member; and two members-at-large.

**KEY: off-highway vehicles****July 23, 2012****41-22-10(1)****Notice of Continuation March 13, 2018**

**R653. Natural Resources, Water Resources.****R653-9. Electronic Meetings.****R653-9-1. Electronic Meetings.**

(1)(a) Utah Code Section 52-4-207 authorizes a public body to convene or conduct an electronic meeting provided written procedures are established for such meetings. This rule establishes procedures for conducting Board of Water Resources (Board) meeting by electronic means.

(b) An electronic meeting is a public meeting convened or conducted by means of a conference using electronic communications.

(2) The following provisions govern any meeting at which one or more Board members appear telephonically or electronically pursuant to Section 52-4-207:

(a) If one or more Board members participate in a public meeting electronically or telephonically, public notices of the meeting shall specify:

(i) the Board members participating in the meeting electronically and how they will be connected to the meeting.

(ii) the anchor location where interested persons and the public may attend, monitor, and participate in the open portions of the meeting;

(iii) the meeting agenda; and

(iv) the date and time of the meeting.

(b) Written or electronic notice of the meeting and the agenda shall be posted or provided no less than 24 hours prior to the meeting:

(i) at the anchor location;

(ii) on the Utah Public Notice website; and

(iii) to at least one newspaper of general circulation within the state or to a local media correspondent.

(c) A request to hold an electronic meeting must be made by a Board member and approved by the chair, or vice chair in the chair's absence.

(d) Notice of the possibility of an electronic meeting shall be given to Board members at least 24 hours before the meeting, and the notice shall describe how a Board member may participate in the meeting electronically or telephonically.

(e) When notice is given of the possibility of a Board member appearing electronically or telephonically, any Board member may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the Board.

(i) At the commencement of the meeting, or at such time as any Board member initially appears electronically or telephonically, the chair shall identify for the record all those who are appearing telephonically or electronically.

(ii) Votes by members of the Board who are not at the physical location of the meeting shall be confirmed by the chair.

(f) The anchor location, unless otherwise designated in the notice, shall be at the Division of Water Resources, Room 314, 1594 West North Temple, Salt Lake City, Utah.

(i) The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected.

(ii) The anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

**KEY: electronic meetings  
March 2, 2018**

**52-4-207**

**R657. Natural Resources, Wildlife Resources.****R657-33. Taking Bear.****R657-33-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, of the Utah Code, the Wildlife Board has established this rule for taking and pursuing bear.

(2) Specific dates, areas, number of permits, limits and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking and pursuing bear.

**R657-33-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Accompany" means at a distance within which visual contact and verbal communication are maintained without the assistance of any electronic device.

(b) "Bait" means any lure containing animal, mineral or plant materials.

(c) "Baiting" means the placing, exposing, depositing, distributing or scattering of bait to lure, attract or entice bear on or over any area.

(d) "Bear" means *Ursus americanus*, commonly known as black bear.

(e) "Canned hunt" means that a bear is treed, cornered, held at bay or its ability to escape is otherwise restricted for the purpose of allowing a person who was not a member of the initial hunting party to arrive and take the bear.

(f) "Compensation" means anything of economic value in excess of \$100 that is paid, loaned, granted, given, donated, or transferred to a dog handler for or in consideration of pursuing bear for any purpose.

(g) "Control permit" means a permit issued in response to bear depredation to commercial crops pursuant to R657-33-23(4).

(h) "Cub" means a bear less than one year of age.

(i) "Draw-lock" means a mechanical device used to hold and support the draw weight of a conventional or compound bow at any increment of draw until released by the archer using a trigger mechanism attached to the device.

(j) "Dog handler" means the person in the field that is responsible for transporting, releasing, tracking, controlling, managing, training, commanding and retrieving the dogs involved in the pursuit. The owner of the dogs is presumed the dog handler when the owner is in the field during pursuit.

(k) "Evidence of sex" means the teats, and sex organs of a bear, including a penis, scrotum or vulva.

(l) "Green pelt" means the untanned hide or skin of a bear.

(m) "Harvest-objective hunt" means any hunt that is identified as harvest-objective in the hunt table of the guidebook for taking bear.

(n) "Harvest-objective permit" means any permit valid on harvest-objective units.

(o) "Harvest-objective unit" means any unit designated as harvest-objective in the hunt table of the guidebook for taking bear.

(p) "Immediate family member" means a landowner's or lessee's spouse, child, son-in-law, daughter-in-law, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, stepchild, and grandchild.

(q)(i) "Limited entry hunt" means any hunt listed in the hunt table, published in the guidebook of the Wildlife Board for taking bear, which is identified as a limited entry hunt for bear.

(ii) The Wildlife Board may authorize certain limited entry hunts that span multiple seasons, identified in the guidebook for taking bear as multi-season limited entry hunts.

(iii) "Limited entry hunt" does not include harvest objective hunts or pursuit only.

(r) "Limited entry permit" means any permit obtained for

a limited entry hunt, including conservation permits, expo permits, and sportsman permits.

(s) "Private lands" means any lands that are not public lands, excluding Indian trust lands.

(t) "Public lands" means any lands owned by the state, a political subdivision or independent entity of the state, or the United States, excluding Indian trust lands, that are open to the public for purposes of engaging in pursuit.

(u) "Pursue" means to chase, tree, corner or hold a bear at bay with dogs.

(v) "Restricted pursuit unit" means a bear pursuit unit where pursuit is allowed only by a dog handler who:

(i) possesses a pursuit permit issued for that particular pursuit unit;

(ii) possesses or is accompanied by a person who possesses a limited entry bear permit for the unit, and the pursuit occurs within the area and during the season established for the limited entry bear permit; or

(iii) is engaged in pursuit for compensation as provided in R657-33-26(2).

(w)(i) "Valid application" means:

(A) it is for a species for which the applicant is eligible to possess a permit;

(B) there is a hunt for that species regardless of estimated permit numbers; and

(C) there is sufficient information on the application to process the application, including personal information, hunt information, and sufficient payment.

(ii) Applications missing any of the items in Subsection (i) may still be considered valid if the application is corrected before the deadline through the application correction process.

(x) "Waiting period" means a specified period of time that a person who has obtained a bear permit must wait before applying for any other bear permit.

(y) "Written permission" means written authorization from the owner or person in charge to enter upon private lands and must include:

(i) the name and signature of the owner or person in charge;

(ii) the address and phone number of the owner or person in charge;

(iii) the name of the dog handler given permission to enter the private lands;

(iv) a brief description of the pursuit activity authorized;

(v) the appropriate dates; and

(vi) a general description of the property.

**R657-33-3. Permits for Taking Bear.**

(1)(a) To harvest a bear, a person must first obtain a valid limited entry bear permit or a harvest objective bear permit for a specified hunt unit as provided in the guidebook of the Wildlife Board for taking bear.

(b) Any person who obtains a limited entry bear permit or a harvest objective bear permit which allows the use of dogs may pursue bear without a pursuit permit while hunting during the season and on the unit for which the take permit is valid, provided the person is the dog handler.

(2)(i) A person may not apply for or obtain more than one bear permit per year, except:

(ii) if the person is unsuccessful in the drawing administered by the division under R657-62, the person may purchase a permit available outside of the drawing; and

(iii) a person may acquire more than one bear control permit as described in R657-33-23(4).

(3) Any bear permit purchased after the season opens is not valid until three days after the date of purchase.

(4) Residents and nonresidents may apply for and receive limited entry bear permits, and may purchase harvest objective bear permits and bear pursuit permits.

(5)(a) A person must complete a mandatory orientation course prior to applying for or obtaining a limited entry, harvest objective, or bear pursuit permit.

(b) The orientation course is not required to receive a bear control permit under R657-33-23(4).

(6) To obtain a limited entry, harvest objective, or bear pursuit permit, a person must possess a valid Utah hunting or combination license.

#### **R657-33-4. Permits for Pursuing Bear.**

(1)(a) To pursue bear without a limited entry or harvest objective bear permit, the dog handler must:

(i) obtain a valid bear pursuit permit from a division office or through the drawing administered pursuant to R657-62; or

(ii) possess the documentation and certifications required in R657-33-26(2) to pursue bear for compensation.

(b) A bear pursuit permit or exemption therefrom does not allow a person to kill a bear.

(2) Residents and nonresidents may purchase bear pursuit permits consistent with the requirements of this rule and the guidebooks of the Wildlife Board.

(3) To obtain a bear pursuit permit, a person must possess a valid Utah hunting or combination license.

#### **R657-33-5. Hunting Hours.**

Bear may be taken or pursued only between one-half hour before official sunrise through one-half hour after official sunset.

#### **R657-33-6. Firearms and Archery Equipment.**

(1) For limited entry and harvest objective hunts identified as an "any legal weapon hunt" in the Wildlife Board's guidebook for taking bear, a person may use the following to take bear:

(a) any firearm not capable of being fired fully automatic, except a firearm using a rimfire cartridge;

(b) archery equipment meeting the following requirements:

(i) the minimum bow pull is 30 pounds at the draw or the peak, whichever comes first;

(ii) arrowheads used have two or more sharp cutting edges that cannot pass through a 7/8 inch ring;

(iii) expanding arrowheads cannot pass through a 7/8 inch ring when expanded; and

(iv) arrows must be a minimum of 20 inches in length from the tip of the arrowhead to the tip of the nock; and

(c) a crossbow meeting the following requirements:

(i) a minimum draw weight of 125 pounds;

(ii) a positive mechanical safety mechanism; and

(iii) an arrow or bolt that is at least 16 inches long with:

(A) a fixed broadhead that is at least 7/8 inch wide at the widest point; or

(B) an expandable, mechanical broadhead that is at least 7/8 inch wide at the widest point when the broadhead is in the open position.

(3) Arrows and bolts carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(4)(a) A person who has obtained a limited entry bear archery permit may not use, possess, or be in control of a firearm, crossbow, or draw-lock while in the field during an archery bear hunt.

(b) "Field" for purposes of this subsection, means a location where the permitted species of wildlife is likely to be found, but does not include a hunter's established campsite or the interior of a fully enclosed automobile or truck.

(c) The provisions of Subsection (a) do not apply to:

(i) a person lawfully hunting upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the archery bear hunt;

(iii) livestock owners protecting their livestock; or

(iv) a person licensed to carry a concealed weapon in

accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife.

#### **R657-33-7. Traps and Trapping Devices.**

(1) Bear may not be taken with a trap, snare or any other trapping device, except as authorized by the division.

(2) Bear accidentally caught in any trapping device must be released unharmed.

(3)(a) Written permission must be obtained from a division representative to remove the carcass of a bear from any trapping device.

(b) The carcass shall remain the property of the state of Utah and must be surrendered to the division.

#### **R657-33-8. State Parks.**

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated by the Division of Parks and Recreation in Section R651-614.

(2) Hunting with a rifle, handgun or muzzleloader in park areas designated open is prohibited within one mile of all area park facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps and developed beaches.

(3) Hunting with shotguns, crossbows, and archery tackle is prohibited within one quarter mile of the above stated areas.

#### **R657-33-9. Prohibited Methods.**

(1) Bear may be taken or pursued only during open seasons and using methods prescribed in this rule and the guidebook of the Wildlife Board for taking and pursuing bear. Otherwise, under the Wildlife Resources Code, it is unlawful for any person to possess, capture, kill, injure, drug, rope, trap, snare, or in any way harm or transport bear.

(2) After a bear has been pursued, chased, treed, cornered, legally baited or held at bay, a person may not, in any manner, restrict or hinder the animal's ability to escape.

(3) A person may not engage in a canned hunt.

(4) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles.

#### **R657-33-10. Spotlighting.**

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found is probable cause of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed weapon to hunt or take wildlife.

#### **R657-33-11. Party Hunting.**

A person may not take a bear for another person.

#### **R657-33-12. Use of Dogs.**

(1) Dogs may be used to take or pursue bear only during authorized hunts as provided in the guidebook of the Wildlife Board for taking bear.

(2) A dog handler may pursue bear in a unit and during a season permitting the use of dogs, provided he or she possesses:



(a) a valid limited entry or harvest objective bear permit issued to the dog handler;

(b) a valid bear pursuit permit; or

(c) the documentation and certifications required in R657-33-26(2) to pursue bear for compensation.

(3) When dogs are used to pursue a bear, the licensed hunter intending to take the bear must be present when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

(4) When dogs are used to take a bear and there is not an open pursuit season, the dog handler must have:

(a) a limited entry or harvest objective bear permit authorizing the use of dogs issued to the dog handler for the unit being hunted;

(b)(i) a valid bear pursuit permit; and

(ii) be accompanied, as provided in Subsection (3), by a hunter possessing a limited entry or harvest objective bear permit authorizing the use of dogs for the unit being hunted; or

(c)(i) the documentation and certifications required in R657-33-26(2) to pursue bear for compensation; and

(ii) be accompanied, as provided in Subsection (3), by a paying client possessing a limited entry or harvest objective bear permit authorizing the use of dogs for the unit being hunted.

(5) A dog handler may pursue bear under:

(a) a bear pursuit permit only during the season and in the areas designated by the Wildlife Board in guidebook open to pursuit;

(b) a limited entry or harvest objective bear permit authorizing the use of dogs only during the season and in the area designated by the Wildlife Board in guidebook for that permit; or

(c) the pursuit for compensation provisions in this rule only during the seasons and in the areas designated by the Wildlife Board in guidebook open to pursuit.

(6) When dogs are used to pursue or take a bear, no more than eight dogs may be used in the field at one time while pursuing during the summer pursuit seasons as established by the Wildlife Board in guidebook.

#### **R657-33-13. Certificate of Registration Required for Bear Baiting.**

(1) A certificate of registration for baiting must be obtained before establishing a bait station.

(2) Certificates of registration for bear baiting are issued only to holders of limited entry permits authorizing the use of bait, as provided in the guidebook of the Wildlife Board for taking bear.

(3) A certificate of registration may be obtained from the division office within the region where the bait station will be established.

(4) A new certificate of registration must be obtained prior to moving a bait station. All materials used as bait must be removed from the old site prior to the issuing of a new certificate of registration.

(5) The following information must be provided to obtain a certificate of registration for baiting: a 1:24000 USGS quad map with the bait location marked, or the Universal Transverse Mercator (UTM) or latitude and longitude coordinates of the bait station, including the datum, type of bait used and written permission from the appropriate landowner for private lands.

(6)(a) Any person interested in baiting on lands administered by the Bureau of Land Management must verify that the lands are open to baiting before applying for and receiving a certificate of registration for bear baiting.

(b) Information on areas that are open to baiting on National Forests must be obtained from district offices.

(c) Areas generally closed to baiting stations by these federal agencies include:

(i) designated Wilderness Areas;

(ii) heavily used drainages or recreation areas; and

(iii) critical watersheds.

(d) The division shall send a copy of the certificate of registration to the private landowner or appropriate district office of the land management agency that manages the land where the bait station will be placed, as identified by the hunter on the application for a certificate of registration.

(e) Issuance of a certificate of registration for baiting does not authorize an individual to bait if it is otherwise unlawful to bait under the regulations of the applicable land management agency.

(7) A handling fee must accompany the application.

(8) Only hunters listed on the certificate of registration may hunt over the bait station and the certificate of registration must be in possession while hunting over the bait station.

(9) Any person tending a bait station must be listed on the certificate of registration.

#### **R657-33-14. Use of Bait.**

(1)(a) A person who has obtained a limited entry bear archery permit may use archery tackle only, even when hunting bear away from the bait station.

(b) A person who has obtained a limited entry bear permit for a season and hunt unit that allows baiting may use firearms and archery equipment as provided in R657-33-6.

(c) Bear lured to a bait station may only be taken using firearms and archery equipment approved by the Wildlife Board and described in the guidebook for taking bear.

(d) A person may establish or use no more than two bait stations. The bait stations may only be used during an open season.

(e) Bear lured to a bait station may not be taken with dogs.

(f) Bait may not be contained in or include any metal, glass, porcelain, plastic, cardboard, or paper.

(g) The bait station must be marked with a sign provided by the division and posted within 10 feet of the bait.

(2)(a) Bait may be placed only in areas open to hunting and only during the open seasons.

(b) All materials used as bait must be removed within 72 hours after the close of the season or within 72 hours after the person or persons, who are registered for that bait station harvest a bear.

(3) A person may use nongame fish as bait, except those listed as prohibited in Rule R657-13 and the guidebook of the Wildlife Board for Taking Fish and Crayfish. No other species of protected wildlife may be used as bait.

(4)(a) Domestic livestock or its parts, including processed meat scraps, may be used as bait.

(b) A person using domestic livestock or their parts for bait must have in possession:

(i) a certificate of brand inspection, bill of sale, or other proof of ownership or legal possession.

(5) Bait may not be placed within:

(a) 100 yards of water or a public road or designated trail;

(b) 1/2 mile of any permanent dwelling or campground; or

(c) any area identified as potentially increasing nuisance bear activity by the division.

(6) Violations of this rule and the guidebook of the Wildlife Board for taking and pursuing bear concerning baiting on federal lands may be a violation of federal regulations and prosecuted under federal law.

#### **R657-33-15. Tagging Requirements.**

(1) The carcass of a bear must be tagged in accordance with Section 23-20-30.

(2) The carcass of a bear must be tagged with a temporary possession tag before the carcass is moved from or the hunter leaves the site of kill.

(3) A person may not hunt or pursue bear after the notches

have been removed from the tag or the tag has been detached from the permit.

(4) The temporary possession tag:

(a) must remain attached to the pelt or unskinned carcass until the permanent possession tag is attached; and

(b) is only valid for 48 hours after the date of kill.

(5) A person may not possess a bear pelt or unskinned carcass without a valid permanent possession tag affixed to the pelt or unskinned carcass. This provision does not apply to a person in possession of a properly tagged carcass or pelt within 48 hours after the kill, provided the person was issued and is in possession of a valid permit.

**R657-33-16. Evidence of Sex and Age.**

(1) Evidence of sex must remain attached to the carcass or pelt of each bear until a permanent tag has been attached by the division.

(2) The pelt and skull must be presented to the division in an unfrozen condition to allow the division to gather management data.

(3) The division may seize any pelt not accompanied by its skull.

**R657-33-17. Permanent Tag.**

(1) Each bear must be taken by the permit holder to a conservation officer or division office within 48 hours after the date of kill to have a permanent possession tag affixed to the pelt or unskinned carcass.

(2) A person may not possess a green pelt after the 48-hour check-in period, ship a green pelt out of Utah, or present a green pelt to a taxidermist if the green pelt does not have a permanent possession tag attached.

**R657-33-18. Transporting Bear.**

Bear that have been legally taken may be transported by the permit holder provided the bear is properly tagged and the permittee possesses a valid permit.

**R657-33-19. Exporting Bear from Utah.**

(1) A person may export a legally taken bear or its parts if that person has a valid permit and the bear is properly tagged with a permanent possession tag.

(2) A person may not ship or cause to be shipped from Utah, a bear pelt without first obtaining a shipping permit issued by an authorized division representative.

**R657-33-20. Donating.**

(1) A person may donate protected wildlife or their parts to another person in accordance with Section 23-20-9.

(2) A written statement of donation must be kept with the protected wildlife or parts showing:

(a) the number and species of protected wildlife or parts donated;

(b) the date of donation;

(c) the permit number of the donor and the permanent possession tag number; and

(d) the signature of the donor.

(3) A green pelt of any bear donated to another person must have a permanent possession tag affixed.

(4) The written statement of donation must be retained with the pelt.

**R657-33-21. Purchasing or Selling.**

(1) Legally obtained tanned bear hides may be purchased or sold.

(2) A person may not purchase, sell, offer for sale or barter a green pelt, gall bladder, tooth, claw, paw or skull of any bear.

**R657-33-22. Waste of Wildlife.**

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts in accordance with Section 23-20-8.

(2) The skinned carcass of a bear may be left in the field and does not constitute waste of wildlife, however, the division recommends that hunters remove the carcass from the field.

**R657-33-23. Livestock and Commercial Crop Depredation.**

(1) If a bear is harassing, chasing, disturbing, harming, attacking or killing livestock, or has committed such an act within the past 72 hours:

(a) the livestock owner, an immediate family member or an employee of the owner on a regular payroll, and not hired specifically to take bear, may kill the bear;

(b) a landowner or livestock owner may notify the division of the depredating bear and the division may:

(i) authorize a local hunter to take a bear using a valid permit; or

(ii) request that the offending bear be removed by Wildlife Services specialist, supervised by the USDA Wildlife Program; or

(c) the livestock owner may notify a Wildlife Services specialist of the depredation, and that specialist or another agency employee may take the depredating bear.

(2) Depredating bear may be taken at any time by a Wildlife Services specialist while acting in the performance of the person's assigned duties and in accordance with procedures approved by the division.

(3) A depredating bear may be taken by those persons authorized in Subsection (1)(a) with:

(a) any weapon authorized for taking bear; or

(b) snares only with written authorization from the director of the division and subject to all the conditions and restrictions set out in the written authorization.

(i) The option in Subsection (3)(b) may only be authorized in the case of chronic depredation verified by Wildlife Services or division personnel where numerous livestock have been killed by a depredating bear.

(4)(a) The division may issue one or more control permits to an owner or lessee of private land to remove a bear causing damage to cultivated crops on cleared and planted land provided the following conditions are satisfied:

(i) the landowner or lessee contacts the appropriate division office within 72 hours of the damage occurring or provides documentation of previous chronic damage incidents;

(ii) the damaged cultivated crop is raised and utilized by the landowner or lessee for commercial gain and with a reasonable expectation of generating a profit;

(iii) at least 5 acres of the private land is placed in agricultural use pursuant to Section 59-2-502 and eligible for agricultural use valuation as provided in Sections 59-2-503 and 59-2-504;

(iv) the division confirms that the private land where the cultivated crop occurs has experienced chronic recurring damage from bears, or that there will likely be chronic recurring damage if offending bears are not immediately removed;

(v) the landowner, an immediate family member, or an employee of the owner on a regular payroll, and not hired specifically to take bear, receives the control permit from the division to remove the bear prior to initiating such action; and

(vi) the bear removal is otherwise in accordance with Utah law.

(b) The division may issue control permits described in Subsection (4)(v) to identify restrictions necessary and to balance the threat to commercial crops on cleared and planted land and the wildlife resource, such as:

(i) locations on the landowner or lessee's private property where offending bears may be taken;

(ii) the total number of control permits that may be issued;

and

- (iii) reporting requirements to the division.
- (c) Nothing herein mandates the division to issue control permits for a landowner or lessee to remove bears from their private property in lieu of:
  - (i) the landowner or lessee taking nonlethal preventative measures in protecting their private property; and
  - (ii) the division undertaking wildlife management techniques as they deem appropriate.
- (5)(a) Any bear taken pursuant to Subsections (1)(a) and (4) shall:
  - (i) be delivered to a division office or employee within 48 hours; and
  - (ii) remain the property of the state, except the division may sell a bear damage permit to a person who has killed a depredating bear if that person wishes to maintain possession of the bear.
- (b) A person may only retain one bear carcass annually under this Section.
- (6)(a) Hunters interested in taking depredating bear as provided in Subsection (1)(b) may contact the division.
- (b) Hunters will be contacted by the division to take depredating bear as needed.

#### **R657-33-24. Questionnaire.**

Each permittee who receives a questionnaire should return the questionnaire to the division regardless of success. Returning the questionnaire helps the division evaluate population trends, determine harvest success and other valuable information.

#### **R657-33-25. Taking Bear.**

- (1)(a) A person who has obtained a bear permit, excluding limited entry archery bear permit, may use any legal weapon to take one bear during the season and within the hunt unit(s) specified on the permit.
- (b) A person who has obtained a limited entry bear archery permit may use only archery tackle to take on bear during the season and within the hunt units(s) specified on the permit.
- (c) Harvest objective permits may be purchased on a first-come, first-served basis as provided in the guidebook of the Wildlife Board for taking bear.
- (2)(a) A person may not take or pursue a cub, or a sow accompanied by cubs.
- (b) Any bear, except a cub or a sow accompanied by cubs, may be taken during the prescribed seasons.
- (3) Limited entry permits may be obtained by following the application procedures provided in this rule and the guidebook of the Wildlife Board for taking and pursuing bear.
- (4) Season dates, closed areas, harvest objective permit areas and limited entry permit areas are published in the guidebook of the Wildlife Board for taking and pursuing bear.

#### **R657-33-26. Bear Pursuit.**

- (1)(a) Except as provided in rule R657-33-3(1)(b) and Subsection (2), bear may be pursued only by persons who have obtained a bear pursuit permit.
- (b) The bear pursuit permit does not allow a person to:
  - (i) kill a bear; or
  - (ii) pursue bear for compensation.
- (c) A person may pursue bear for compensation only as provided in Subsection (2).
- (d) To obtain a bear pursuit permit, a person must possess a Utah hunting or combination license.
- (2)(a) A person may pursue bear on public lands for compensation, provided the dog handler:
  - (i) receives compensation from a client or customer to pursue bear;
  - (ii) is a licensed hunting guide or outfitter under Title 58,

Chapter 79 of the Utah Code and authorized to pursue bear;

- (iii) possesses on his or her person the Utah hunting guide or outfitter license;
- (iv) possesses on his or her person all permits and authorizations required by the applicable public lands managing authority to pursue bear for compensation; and
- (v) is accompanied by the client or customer at all times during pursuit.
- (b) A person may pursue bear on private lands for compensation, provided the dog handler:
  - (i) receives compensation from a client or customer to pursue bear;
  - (ii) is accompanied by the client or customer at all times during pursuit; and
  - (iii) possesses on his or her person written permission from all private landowners on whose property pursuit takes place.
- (c) A person who is an employee or agent of the Division of Wildlife Services may pursue bear on public lands and private lands while acting within the scope of their employment.
- (3) A pursuit permit is not required to pursue bear under Subsection (2).
- (4)(a) A person pursuing bear for compensation under subsections (2)(a) and (2)(b) shall comply with all other requirements and restrictions in statute, rule and the guidebooks of the Wildlife Board regulating the pursuit and take of bear.
- (b) Any violation of, or failure to comply with the provisions of Title 23 of the Utah Code, this rule, or the guidebooks of the Wildlife Board may be grounds for suspension of the privilege to pursue bear for compensation under this subsection, as determined by a division hearing officer.
- (5) Except as provided in Subsection (6), a bear pursuit permit authorizes the holder to pursue bear with dogs on any unit open to pursuing bear during the seasons and under the conditions prescribed by the Wildlife Board in guidebook.
- (6) The Wildlife Board may establish or designate in guidebook restricted pursuit units as determined necessary or convenient to better manage wildlife resources, including to protect wildlife, curtail over-utilization of resources, reduce conflict with other recreational activities, reduce conflict with private and public land activities, and protect wildlife habitat.
  - (a) Bear may not be pursued on a restricted pursuit unit unless the dog handler:
    - (i) possesses a pursuit permit issued for the particular restricted pursuit unit;
    - (ii) possesses or is accompanied by a person who possesses a limited entry or harvest objective bear permit allowing the use of dogs, and the pursuit occurs within the area and during the season established by the respective permit; or
    - (iii) is engaged in pursuit for compensation as provided in Subsection (2), and pursuit occurs within the area and during the season established for the:
      - (A) paying client's limited entry or harvest objective bear permit allowing the use of dogs; or
      - (B) restricted pursuit unit.
  - (b) A pursuit permit issued for a restricted pursuit unit authorizes the holder to pursue bear on:
    - (i) the particular restricted pursuit unit for which the permit is issued; and
    - (ii) any other bear pursuit unit not designated as a restricted pursuit unit.
  - (c) Notwithstanding Subsection (6)(a)(i), when two or more dog owners are in the field pursuing bear together with a single pack of eight dogs or less on a restricted pursuit unit, only one must possess a restricted pursuit unit permit, provided the dog owners accompany the person possessing the restricted pursuit unit permit at all times.
    - (i) A dog owner pursuing bear on a restricted pursuit unit

may leave the pursuit permit holder to retrieve dogs that separate from the pack, provided the dog owner;

(A) takes reasonable steps to keep the pack together before and during pursuit;

(B) separates from the pursuit permit holder exclusively to retrieve stray dogs and does not attempt to actively pursue bear during the retrieval process; and

(C) immediately releases any bear incidentally treed or held at bay by the stray dogs.

(7) Pursuit permits may be obtained at division offices, through the Internet and at license agents.

(a) The division may distribute pursuit permits for restricted pursuit units:

(i) through its offices, license agents, or online resources on a first-come, first-served basis; or

(ii) through a random drawing.

(8) A person may not:

(a) take or pursue a female bear with cubs;

(b) repeatedly pursue, chase, tree, corner or hold at bay the same bear during the same day;

(c) individually or in combination with another person, use more than eight dogs in the field to pursue a bear during the summer pursuit season as established by the Wildlife Board in guidebook; or

(d) possess a firearm or any device that could be used to kill a bear while pursuing bear.

(i) The weapon restrictions set forth in Subsection (d) do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing or attempting to utilize the concealed weapon to injure or kill bear.

(9) If eligible, a person who has obtained a bear pursuit permit may also obtain a limited entry or harvest objective bear permit.

(10) Season dates, closed areas and bear pursuit permit areas are published in the guidebook of the Wildlife Board for taking and pursuing bear.

#### **R657-33-27. Limited Entry Bear Permit Application Information.**

(1) Limited entry bear permits are issued pursuant to R657-62-19.

#### **R657-33-28. Waiting Period.**

(1) Any person who obtains a limited entry permit may not apply for a permit in a division drawing for a period of two years.

(2) Individuals who obtain a conservation permit, sportsman permit, control permit, or harvest objective permit for bear are not subject to a waiting period.

#### **R657-33-29. Harvest Objective General Information.**

(1) Harvest objective permits are valid only for the open harvest objective management units and for the specified seasons published in the guidebook of the Wildlife Board for taking bear.

(2) Harvest objective permits are not valid in a specified unit after the harvest objective has been met for that harvest objective unit.

#### **R657-33-30. Harvest Objective Permit Sales.**

(1) Harvest objective permits are available on a first-come, first-served basis beginning on the date published in the guidebook of the Wildlife Board for taking bear.

(2) Any bear permit purchased after the season opens is not valid until three days after the date of purchase.

(3) A person must possess a valid hunting or combination license to obtain a harvest objective permit.

#### **R657-33-31. Harvest Objective Unit Closures.**

(1) Prior to hunting in a harvest objective unit, a hunter must call 1-888-668-5466 or visit the division's website to verify that the bear hunting unit is still open. The phone line and website will be updated each day by 12 noon. Updates become effective the following day thirty minutes before official sunrise.

(2) Harvest objective units are open to hunting until:

(a) the bear harvest objective for that harvest objective unit is met and the division closes the area; or

(b) the end of the hunting season as provided in the guidebook of the Wildlife Board for taking bear.

(3) Upon closure of a harvest objective unit, a hunter may not take or pursue bear except as provided in Section R657-33-26.

#### **R657-33-32. Harvest Objective Unit Reporting.**

(1) Any person taking a bear with a harvest objective permit must report to the division, within 48 hours, where the bear was taken and have a permanent tag affixed pursuant to Section R657-33-17.

(2) Failure to accurately report the correct harvest objective unit where the bear was killed is unlawful.

(3) Any conviction for failure to accurately report, or aiding or assisting in the failure to accurately report as required in Subsection (1) shall be considered probable cause evidence of a knowing, intentional or reckless violation for purposes of permit suspension.

#### **R657-33-33. Fees.**

The permit fees and handling fees must be paid pursuant to Rule R657-42-8(5).

#### **R657-33-34. Drawings and Remaining Permits.**

Remaining limited entry bear permits are issued pursuant to R657-62.

#### **R657-33-35. Bonus Points.**

Bonus points are accrued and used pursuant to R657-62-8 and R657-62-19.

#### **R657-33-36. Refunds.**

(1) Unsuccessful applicants will not be charged for a permit.

(2) The handling fees and hunting or combination license fees are nonrefundable.

#### **R657-33-37. Duplicate License and Permit.**

Whenever any unexpired license, permit, tag or certificate of registration is destroyed, lost or stolen, a person may obtain a duplicate in accordance with R657-42.

#### **KEY: wildlife, bear, game laws**

**March 26, 2018**

**Notice of Continuation November 28, 2017**

**23-14-18**

**23-14-19**

**23-13-2**

**R657. Natural Resources, Wildlife Resources.****R657-62. Drawing Application Procedures.****R657-62-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for drawing applications and procedures.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the respective guidebooks of the Wildlife Board.

**R657-62-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Application" means a form required by the Division which must be completed by a person and submitted to the Division in order to apply for a hunting permit.

(b) "Landowner" means any individual, family or corporation who owns property in Utah and whose name appears on the deed as the owner of eligible property or whose name appears as the purchaser on an executed contract for sale of eligible property.

(c) "Limited entry hunt" means any hunt listed in the hunt tables published by the Wildlife Board and is identified as a premium limited entry hunt or limited entry hunt. "Limited entry hunt" does not include cougar pursuit or bear pursuit.

(d) "Limited entry permit" means any permit obtained for a limited entry hunt, including conservation permits, expo permits and sportsman permits.

(e)(i) "Valid application" means an application:

(A) for a permit to take a species for which the applicant is eligible to possess;

(B) for a permit to take a species regardless of estimated permit numbers;

(C) for a certificate of registration; and

(D) containing sufficient information, as determined by the division, to process the application, including personal information, hunt information, and sufficient payment.

(ii) Applications missing any of the items in Subsection (i) may be considered valid if the application is timely corrected through the application correction process.

(f) "Waiting period" means a specified period of time that a person who has obtained a permit must wait before applying for the same permit type.

(g) "Once-in-a-lifetime hunt" means any hunt listed in the hunt tables published by the Wildlife Board and is identified as once-in-a-lifetime, and does not include general or limited entry hunts.

(h) "Once-in-a-lifetime permit" means any permit obtained for a once-in-a-lifetime hunt by any means, including conservation permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

**R657-62-3. Scope of Rule.**

(1) This rule sets forth the procedures and requirements for completing and filing applications to receive the following hunting permits and/or certificates of registrations:

(a) Dedicated Hunter certificate of registrations;

(b) limited-entry deer;

(c) limited-entry elk;

(d) limited-entry pronghorn;

(e) once-in-a-lifetime;

(f) public cooperative wildlife management unit;

(g) general season deer and youth elk;

(h) limited entry bear;

(i) bear pursuit;

(j) antlerless big game;

(k) sandhill crane;

(l) sharp-tail and greater sage grouse;

(m) swan

(n) cougar;

(o) sportsman; and

(p) turkey.

**R657-62-4. Residency Restrictions.**

(1) Only a resident may apply for or obtain a resident permit or resident certificate of registration and only a nonresident may apply for or obtain a nonresident permit or nonresident certificate of registration.

(2)(a) To apply for a resident permit or certificate of registration, a person must be a resident at the time of purchase.

(b) The posting date of the drawing shall be considered the purchase date of a permit or certificate of registration issued through a drawing.

**R657-62-5. Hunting on Private Lands.**

(1) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. The division does not guarantee access and cannot restore lost opportunity, bonus points, or permit fees when access is denied. Hunters should contact private landowners for permission to access their land prior to applying for a permit. The Division does not have the names of landowners where hunts occur.

**R657-62-6. Applications.**

(1)(a) Applications are available at the division's internet address, and must be completed and submitted online by the date prescribed in the respective guidebook of the Wildlife Board.

(b) The permit fees and handling fees must be paid with a valid debit or credit card.

(c) Any license, permit or certificate of registration issued to a person is invalid where full payment is not remitted to and received by the division.

(d) A person who applies for or obtains a permit or certificate of registration must notify the division of any change in mailing address, residency, telephone number, email address, and physical description.

**R657-62-7. Group Applications.**

(1) When applying as a group all applicants in the group with valid applications and who are eligible to possess the permit or certificate of registration applied for shall receive a permit or certificate of registration where the group is successful in the drawing.

(2) Group members must apply for the same hunt choices.

(3) When applying as a group, if the available permit or certificate of registration quota is not large enough to accommodate the group size, the group application will not be considered.

**R657-62-8. Bonus Points.**

(1) Bonus points are used to improve odds for drawing permits.

(2)(a) A bonus point is awarded for:

(i) each valid unsuccessful application when applying for limited-entry permits; or

(ii) each valid application when applying for bonus points.

(b) Bonus points are awarded by species for;

(i) limited-entry deer including cooperative wildlife management unit buck deer and management buck deer;

(ii) limited-entry elk including cooperative wildlife management unit bull elk and management bull elk;

(iii) limited-entry pronghorn including cooperative wildlife management unit buck pronghorn;

(iv) once-in-a-lifetime species including cooperative

wildlife management units;

- (v) limited entry bear;
- (vi) restricted bear pursuit;
- (vii) antlerless moose;
- (viii) ewe Rocky Mountain bighorn sheep;
- (xi) ewe desert bighorn sheep;
- (x) cougar; and
- (xi) turkey.

(3)(a) A person may not apply in the drawing for both a permit and a bonus point for the same species.

(b) A person may not apply for a bonus point if that person is ineligible to apply for a permit for the respective species.

(c) Group applications will not be accepted when applying for bonus points.

(d) A person may apply for bonus points only during the applicable drawing application for each species.

(4)(a) Fifty percent of the permits for each hunt unit will be reserved for applicants with the greatest number of bonus points.

(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points for each species.

(c) If reserved permits remain, the reserved permits will be designated by a random number to eligible applicants with the next greatest number of bonus points for each species.

(d) The procedure in Subsection (c) will continue until all reserved permits are issued or no applications for that species remain.

(e) Any reserved permits remaining and any applicants who are not selected for reserved permits will be returned to the applicable drawing.

(5)(a) Each applicant receives a random drawing number for:

- (i) each species applied for; and
- (ii) each bonus point for that species.

(6) Bonus points are forfeited if a person obtains a permit through the drawing for that bonus point species including any permit obtained after the drawing.

(7) Bonus points are not forfeited if:

(a) a person is successful in obtaining a conservation permit, expo permit, sportsman permit, or harvest objective bear permit;

(b) a person obtains a landowner or a cooperative wildlife management unit permit from a landowner; or

(c) a person obtains a poaching-reported reward permit.

(8) Bonus points are not transferable.

(9) Bonus points are averaged and rounded down when two or more applicants apply together on a group application.

(10)(a) Bonus points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain electronic copies of applications from 1996 to the current drawings for the purpose of researching bonus point records.

(c) Any requests for researching an applicant's bonus point records must be submitted within the time frames provided in Subsection (b).

(d) Any bonus points on the division's records shall not be researched beyond the time frames provided in Subsection (b).

(e) The division may void or otherwise eliminate any bonus point obtained by fraud, deceit, misrepresentation, or in violation of law.

#### **R657-62-9. Preference Points.**

(1) Preference points are used in the applicable drawings to ensure that applicants who are unsuccessful in the drawing will have first preference in the next year's drawing.

(2)(a) A preference point is awarded for:

- (i) each valid, unsuccessful application applying for a

general buck deer, antlerless deer, antlerless elk, doe pronghorn, Sandhill Crane, Sharp-tailed grouse, Greater sage grouse or Swan permit; or

(ii) each valid application when applying only for a preference point in the applicable drawings.

(b) Preference points are awarded by species for:

- (i) general buck deer;
- (ii) antlerless deer;
- (iii) antlerless elk;
- (iv) doe pronghorn;
- (v) Sandhill Crane;
- (vi) Sharp-tailed Grouse;
- (vii) Greater sage grouse; and
- (viii) Swan.

(3)(a) A person may not apply in the drawing for both a preference point and a permit for the species listed in (2)(b).

(b) A person may not apply for a preference point if that person is ineligible to apply for a permit.

(c) Preference points shall not be used when obtaining remaining permits.

(4) Preference points for the applicable species are forfeited if a person obtains a general buck deer, antlerless deer, antlerless elk, doe pronghorn, Sandhill Crane, Sharp-tailed grouse, Greater sage grouse or Swan permit through the drawing.

(5) Preference points are not transferable.

(6) Preference points are averaged and rounded down when two or more applicants apply together on a group application.

(7)(a) Preference points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain copies of electronic applications from 2000 to the current applicable drawings for the purpose of researching preference point records.

(c) Any requests for researching an applicant's preference point records must be submitted within the time frames provided in Subsection (b).

(d) Any preference points on the division's records shall not be researched beyond the time frames provided in Subsection (b).

(e) The division may eliminate any preference point obtained by fraud, deceit, misrepresentation, or in violation of law.

#### **R657-62-10. Dedicated Hunter Preference Points.**

(1) Preference points are used in the dedicated hunter certificate of registration drawing to ensure that applicants who are unsuccessful in the drawing will have first preference in the next year's drawing.

(2) A preference point is awarded for:

- (a) each valid unsuccessful application;
- (b) each valid application when applying only for a preference point in the dedicated hunter drawing.

(3)(a) A person may not apply in the drawing for both a preference point and a certificate of registration.

(b) A person may not apply for a preference point if that person is ineligible to apply for a certificate of registration.

(4) Preference points are forfeited if a person obtains a certificate of registration through the drawing.

(5)(a) Preference points are not transferable.

(b) Preference points shall only be applied to the Dedicated Hunter drawing.

(6) Preference points are averaged and rounded down to the nearest whole point when two or more applicants apply together on a group application.

(7)(a) Preference points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain copies of electronic applications from 2011 to the current applicable drawing for the

purpose of researching preference point records.

(c) Any requests for researching an applicant's preference point records must be requested within the time frames provided in Subsection (b).

(d) Any preference points on the division's records shall not be researched beyond the time frames provided in Subsection (b).

(e) The division may eliminate any preference points earned that are obtained by fraud, deceit or misrepresentation.

**R657-62-11. Corrections, Withdrawals and Resubmitting Applications.**

(1)(a) If an error is found on the application, the applicant may be contacted for correction.

(b) The division reserves the right to correct or reject applications.

(2)(a) An applicant may withdraw their application from the permit or certificate of registration drawing by the date published in the respective guidebook of the Wildlife Board.

(b) An applicant may resubmit their application, after withdrawing a previous application, for the permit or certificate of registration drawing by the date published in the respective guidebook of the Wildlife Board.

(c) Handling fees, hunting or combination license fees and donations will not be refunded. Resubmitted applications will incur a handling fee.

(3) To withdraw an entire group application, all applicants must withdraw their individual applications.

**R657-62-12. Drawing Results.**

Drawing results will be made available by the date prescribed in the respective guidebook of the Wildlife Board.

**R657-62-13. License, Permit, Certificate of Registration and Handling Fees.**

(1) Unsuccessful applicants will not be charged for a permit or certificate of registration.

(2) The handling fees and hunting or combination license fees are nonrefundable.

(3) All license, permit, certificate of registration and handling fees must be paid with a valid debit or credit card.

**R657-62-14. Permits Remaining After the Drawing.**

(1) Any permits remaining after the drawing are available on the date published in the respective guidebook of the Wildlife Board on a first-come, first-served basis from division offices, participating license agents and through the division's internet site.

**R657-62-15. Waiting Periods for Permits Obtained After the Drawing.**

(1) Waiting periods do not apply to the purchase of remaining permits sold over the counter except as provided in Section 2.

(2) Waiting periods are incurred as a result of purchasing remaining permits after the drawing. If a remaining permit is purchased in the current year, waiting periods will be in effect when applying in the drawing in following years.

**R657-62-16. Dedicated Hunter Certificates of Registration.**

(1)(a) Applicants for a dedicated hunter certificate of registration must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Rule R657-38.

(b) Each prospective participant must complete Dedicated Hunter program orientation course annually before submitting an application.

(2) Group applications are accepted. Up to four applicants may apply as a group.

**R657-62-17. Lifetime License Permits.**

(1) Lifetime License permits shall be issued pursuant to Rule R657-17.

**R657-62-18. Big Game.**

(1) Permit Applications

(a) Limited entry, Cooperative Wildlife Management Unit, Once-in-a-Lifetime, Management Bull Elk, Management Buck Deer, General Buck Deer, and Youth General Any Bull Elk permit applications.

(i) A person must possess or obtain a valid hunting or combination license to apply for or obtain a big game permit.

(ii) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Rule R657-5.

(iii) A person may obtain only one permit per species of big game, including limited entry, cooperative wildlife management unit, once-in-a-lifetime, conservation, landowner and general permits, except antlerless permits as provided in the Antlerless Addendum and permits as provided in Rule R657-42.

(b) A resident may apply in the big game drawing for the following permits:

(i) only one of the following:

(A) buck deer - limited entry and cooperative wildlife management unit;

(B) bull elk - limited entry and cooperative wildlife management unit; or

(C) buck pronghorn - limited entry and cooperative wildlife management unit; and

(ii) only one once-in-a-lifetime permit, including once-in-a-lifetime cooperative wildlife management unit permits.

(c) A nonresident may apply in the big game drawing for the following permits:

(i) all of the following:

(A) buck deer - limited entry;

(B) bull elk - limited entry;

(C) buck pronghorn - limited entry; and

(D) all once-in-a-lifetime species.

(ii) Nonresidents may not apply for cooperative management units through the big game drawing.

(d) A resident or nonresident may apply in the big game drawing by unit for:

(i) a statewide general archery buck deer permit; or

(ii) for general any weapon buck deer; or

(iii) for general muzzleloader buck deer; or

(iv) a dedicated hunter certificate of registration.

(2) Youth

(a) For purposes of this section "youth" means any person 17 years of age or younger on July 31.

(b) Youth applicants who apply for a general buck deer permit

(i) will automatically be considered in the youth drawing based upon their birth date.

(ii) 20% of general buck deer permits in each unit are reserved for youth hunters.

(iii) Up to four youth may apply together for youth general deer permits.

(iv) Preference points shall be used when applying.

(v) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the general buck deer drawing.

(c) Youth applicants who apply for a management buck deer permit

(i) will automatically be considered in the youth drawing based upon their birth date.

(ii) 30% of management buck deer permits in each unit are reserved for youth hunters.

(iii) Bonus points shall be used when applying

(iv) Any reserved permits remaining and any youth

applicants who were not selected for reserved permits shall be returned to the management buck deer drawing.

(3) Senior

(a) For purposes of this section "senior" means any person 65 years of age or older on the opening day of the management buck deer archery season published in the guidebook of the Wildlife Board for taking big game.

(b) Senior applicants who apply for a management buck deer permit

(i) will automatically be considered in the senior drawing based upon their birth date.

(ii) 30% of management buck deer permits in each unit are reserved for senior hunters.

(iii) Bonus points shall be used when applying.

(c) Any reserved permits remaining and any senior applicants who were not selected for reserved permits shall be returned to the management buck deer drawing.

(4) Drawing Order

(a) Permits for the big game drawing shall be drawn in the following order:

(i) limited entry, cooperative wildlife management unit and management buck deer;

(ii) limited entry, cooperative wildlife management unit and management bull elk;

(iii) limited entry and cooperative wildlife management unit buck pronghorn;

(iv) once-in-a-lifetime;

(v) general buck deer - lifetime license;

(vi) general buck deer - dedicated hunter;

(vii) general buck deer - youth;

(viii) general buck deer; and

(ix) youth general any bull elk.

(b) Any person who draws one of the following permits is not eligible to draw a once-in-a-lifetime permit:

(i) limited entry, Cooperative Wildlife Management unit or management buck deer;

(ii) limited entry, Cooperative Wildlife Management unit or management bull elk; or

(iii) a limited entry or Cooperative Wildlife Management unit buck pronghorn.

(c) If any permits listed in Subsection (a)(i) through (a)(iii) remain after the big game drawing after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(5) Groups

(a) Limited Entry

(i) Up to four people may apply together for limited entry deer, elk or pronghorn; or resident cooperative wildlife management unit permits.

(b) Group applications are not accepted for management buck deer or bull elk permits.

(c) Group applications are not accepted for Once-in-a-lifetime permits.

(d) General season

(i) Up to four people may apply together for general deer permits.

(ii) Up to two youth may apply together for youth general any bull elk permits.

(iii) Up to four youth may apply together for youth general deer permits.

(6) Waiting Periods

(a) Deer waiting period.

(i) Any person who draws or obtains a limited entry, management or cooperative wildlife management unit buck deer permit through the big game drawing process may not apply for or receive any of these permits again for a period of two seasons.

(ii) A waiting period does not apply to:

(A) general archery, general any weapon, general

muzzleloader, conservation, sportsman, poaching-reported reward permits; or

(B) cooperative wildlife management unit or limited entry landowner buck deer permits obtained through the landowner.

(b) Elk waiting period.

(i) Any person who draws or obtains a limited entry, management or cooperative wildlife management unit bull elk permit through the big game drawing process may not apply for or receive any of these permits for a period of five seasons.

(ii) A waiting period does not apply to:

(A) general archery, general any weapon, general muzzleloader, conservation, sportsman, poaching-reported reward permits; or

(B) cooperative wildlife management unit or limited entry landowner bull elk permits obtained through the landowner.

(c) Pronghorn waiting period.

(i) Any person who draws or obtains a buck pronghorn or cooperative wildlife management unit buck pronghorn permit through the big game drawing may not apply for or receive any of these permits thereafter for a period of two seasons.

(ii) A waiting period does not apply to:

(A) conservation, sportsman, poaching-reported reward permits; or

(B) cooperative wildlife management unit or limited entry landowner buck pronghorn permits obtained through the landowner.

(d) Once-in-a-lifetime species waiting period.

(i) Any person who draws or obtains a permit for any bull moose, bison, Rocky Mountain bighorn sheep, desert bighorn sheep or Rocky Mountain goat may not apply for or receive an once-in-a-lifetime permit for the same species in the big game drawing or sportsman permit drawing.

(ii) A person who has been convicted of unlawfully taking a once-in-a-lifetime species may not apply for or obtain a permit for that species.

(e) Cooperative Wildlife Management Unit and landowner permits.

(i) Waiting periods and once-in-a-lifetime restrictions do not apply to purchasing limited entry landowner or cooperative wildlife management unit permits obtained through a landowner, except as provided in Subsection (ii).

(ii) Waiting periods are incurred and applied for the purpose of applying in the big game drawing as a result of obtaining a cooperative wildlife management unit bull moose permit through a landowner.

**R657-62-19. Black Bear.**

(1) Permit and Pursuit Applications.

(a) For the purposes of this section, "restricted bear pursuit permit" means a permit issued in a division drawing that authorizes an individual to pursue bear using trained dogs, consistent with the restrictions found in Utah Admin. Code R657-33.

(b) A person must possess or obtain a valid hunting or combination license in order to apply for or obtain a limited entry bear permit or restricted bear pursuit permit.

(c) A person may not apply for or obtain more than one bear permit and restricted bear pursuit permit distributed pursuant to this rule within the same calendar year.

(d) A person may simultaneously possess both a limited entry bear permit and a restricted pursuit permit.

(e) Limited entry bear permits and restricted pursuit permits are valid only for the hunt unit and for the specified season designated on the permit.

(f)(i) Applicants may select up to three hunt unit choices when applying for limited entry bear or restricted bear pursuit permits. Hunt unit choices must be listed in order of preference.

(ii) Applicants must specify in the application a specific season for their limited entry or restricted bear pursuit permit.



(g) Any person intending to use bait during their bear hunt must obtain a certificate of registration as provided in Sections R657-33-13 and 14.

(h) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Sections 23-19-22.5, 23-19-11 and 23-20-20.

(2) Group applications are not accepted.

(3) Waiting periods.

(a) Any person who obtains a limited entry bear permit through the division drawing, may not apply for a permit thereafter for a period of two years.

(b) Any person who obtains a limited entry restricted bear pursuit permit through the division drawing, may not apply for a permit thereafter for a period of two years.

(4) A person must complete a mandatory orientation course prior to applying for any bear permit offered through a division drawing or obtaining bear permits as described in R657-33-3(5).

#### **R657-62-20. Antlerless Species.**

(1) Permit Applications.

(a) A person must possess or obtain a valid hunting or combination license in order to apply for or obtain an antlerless permit.

(b) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in rule R657-5.

(c) A person may apply in the drawing for and draw the following permits, except as provided in Subsection (d):

(i) antlerless deer;

(ii) antlerless elk;

(iii) doe pronghorn;

(iv) antlerless moose, if available;

(v) ewe Rocky Mountain bighorn sheep, if available; and

(vi) ewe desert bighorn sheep, if available.

(d)(i) Any person who has obtained a buck pronghorn permit, bull moose permit, ram Rocky Mountain bighorn sheep permit, or a ram desert bighorn sheep permit may not apply in the same year for a doe pronghorn permit, antlerless moose permit, ewe Rocky Mountain bighorn sheep permit, or a ewe desert bighorn sheep permit, respectively, except for permits remaining after the drawing as provided in R657-62-15.

(ii) A resident may apply for an antlerless moose, ewe Rocky Mountain bighorn sheep, or ewe desert bighorn sheep in the antlerless drawing, but may not apply for more than one of those permits in a given year.

(iii) A nonresident may apply for all antlerless species in a given year.

(e) Applicants may select up to five hunt choices when applying for antlerless deer, antlerless elk and antlerless pronghorn.

(f) Applicants may select up to two hunt choices when applying for antlerless moose.

(g) Applicants may select up to two hunt choices when applying for ewe bighorn sheep permits.

(h) Hunt unit choices must be listed in order of preference.

(i) A person may not submit more than one application in the antlerless drawing per species. (2) Youth applications.

(a) For purposes of this section, "youth" means any person 17 years of age or younger on July 31.

(b) Twenty percent of the antlerless deer, elk and doe pronghorn permits are reserved for youth hunters.

(c) Youth applicants who apply for an antlerless deer, elk, or doe pronghorn permit as provided in this Subsection, will automatically be considered in the youth drawing based upon their birth date.

(3) Drawing Order

(a) Permits are drawn in the order listed in the guidebook of the Wildlife Board for taking big game.

(b) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the antlerless drawing.

(c) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(4) Group Applications

(a) Up to four hunters can apply together for antlerless deer, antlerless elk and doe pronghorn

(b) Group applications are not accepted for antlerless moose or ewe bighorn sheep permits.

(c) Youth hunters who wish to participate in the youth drawing must not apply as a group.

(5) Waiting Periods

(a) Antlerless moose waiting period.

(i) Any person who draws or obtains an antlerless moose permit or a cooperative wildlife management unit antlerless moose permit through the antlerless drawing process, may not apply for or receive an antlerless moose permit thereafter for a period of five seasons.

(ii) A waiting period does not apply to cooperative wildlife management unit antlerless moose permits obtained through the landowner.

(b) Ewe bighorn sheep waiting period.

(i) Any person who draws or obtains a ewe bighorn sheep permit through the antlerless drawing process may not apply for or receive a permit for the same species of ewe bighorn sheep for a period of five seasons.

#### **R657-62-21. Sandhill Crane, Sharp-Tailed and Greater Sage Grouse.**

(1) Permit applications.

(a) A person may obtain only one Sandhill Crane permit each year.

(b) A hunting or combination license is required when taking Sandhill Crane, Sharp-Tailed and Greater Sage Grouse and may be purchased when applying for the permit.

(c) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Utah Code 23-19-24, 23-19-11 and 23-20-20.

(d) Applicants may select up to four hunt choices. Hunt unit choices must be listed in order of preference.

(2) Youth applications.

(a) For purposes of this section, "youth" means any person 17 years of age or younger on July 31 for the purpose of obtaining Sandhill Crane, Sharp-tailed grouse and Greater Sage grouse permits.

(b) Fifteen percent of the Sandhill Crane, Sharp-tailed grouse and Greater sage grouse permits are reserved for youth hunters.

(c) Youth applicants who apply for a Sandhill Crane, Sharp-tailed grouse or Greater sage grouse permit as provided in this Subsection, will automatically be considered in the youth drawing based upon their birth date.

(3) Group applications.

(a) Up to four people may apply together.

(b) Youth hunters who wish to participate in the youth drawing must not apply as a group.

(4) Waiting Periods do not apply.

#### **R657-62-22. Swan.**

(1) Permit applications.

(a) A person may obtain only one swan permit each year.

(i) A person may not apply more than once annually.

(b) A Utah hunting or combination license is required when hunting Swan and may be purchased when applying for the permit.

(c) The division shall issue no more than the number of

swan permits authorized by the U.S. Fish and Wildlife Service each year.

(d) A person must complete a one-time orientation course before applying for a swan permit, except as provided under Subsection R657-9-6 (3)(b).

(i) Remaining swan permits available for sale shall be issued only to persons having previously completed the orientation course.

(e) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Utah Code 23-19-24, 23-19-11 and 23-20-20.

(2) Youth applications.

(a) For purposes of this section, "youth" means any person 17 years of age or younger on July 31st of the year in which the youth hunting day is held, as provided in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

(b) Fifteen percent of the Swan permits are reserved for youth hunters.

(c) Youth who apply for a swan permit will automatically be considered in the youth permit drawing based on their birth date.

(3) Group applications.

(a) Up to four people may apply together in a Group Application.

(b) Up to four youth may apply together in a Group Application.

(4) Waiting period does not apply.

#### **R657-62-23. Cougar.**

(1) Permit Applications

(a) A person must possess or obtain a valid hunting or combination license to apply for or obtain a cougar limited entry permit.

(b) A person may not apply for or obtain more than one cougar permit for the same year.

(c) Limited entry cougar permits are valid only for the limited entry management unit and for the specified season provided in the hunt tables of the proclamation of the Wildlife Board for taking cougar.

(d) Applicants may select up to three management unit choices when applying for limited entry cougar permits. Management unit choices must be listed in order of preference.

(e) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation shall be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(f) Any limited entry cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

(g) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Utah Code 23-19-22.5, 23-19-11 and 23-20-20.

(2) Group applications are not accepted.

(3) Waiting periods.

(a) Any person who draws or purchases a limited entry cougar permit valid for the current season may not apply for a permit thereafter for a period of three seasons.

(b) Waiting periods are not incurred as a result of purchasing cougar harvest objective permits.

#### **R657-62-24. Sportsman.**

(1) Permit applications.

(a) One sportsman permit is offered to residents for each of the following species:

- (i) desert bighorn (ram);
- (ii) bison (hunter's choice);
- (iii) buck deer;
- (iv) bull elk;
- (v) Rocky Mountain bighorn (ram);

(vi) Rocky Mountain goat (hunter's choice);

(vii) bull moose;

(viii) buck pronghorn;

(ix) black bear;

(x) cougar; and

(xi) wild turkey.

(b) Bonus points shall not be awarded or utilized when applying for or obtaining sportsman permits.

(2) Group applications are not accepted.

(3) Waiting Periods.

(a) Any person who applies for or obtains a Sportsman Permit is subject to all waiting periods and exceptions as applicable to the species pursuant to Rule R657-41.

(b) Once-in-lifetime waiting periods.

(i) If you have obtained a once-in-a-lifetime permit through the sportsman drawing you are ineligible to apply for that once-in-a-lifetime species through the big game drawing.

(ii) If you have obtained a once-in-a-lifetime permit through the big game drawing you are ineligible to apply for that once-in-a-lifetime species through the sportsman drawing.

(c) Limited Entry waiting periods.

(i) Waiting periods do not apply to Sportsman deer, elk, pronghorn, bear or cougar.

(ii) Waiting period will not be incurred for receipt of a Sportsman deer, elk, pronghorn, bear or cougar.

#### **R657-62-25. Turkey.**

(1) Permit applications.

(a) A person must possess a valid hunting or combination license in order to apply for or obtain a wild turkey permit.

(b) A person may obtain only one limited entry or general spring wild turkey permit each year. A person may obtain wild turkey conservation permits in addition to obtaining one limited entry or spring wild turkey permit as well as a fall general season permit.

(c) Applicants may select up to five hunt choices when applying for limited entry turkey permits. Hunt unit choices must be listed in order of preference.

(d) A turkey permit allows a person, using any legal weapon as provided in Section R657-54-7, to take one bearded turkey within the area and season specified on the permit.

(2) Group applications.

(a) Up to four people may apply together in a Group Application.

(b) Youth hunters who wish to participate in the youth drawing must not apply as a group.

(3) Waiting period does not apply.

(4) Youth permits

(a) Up to 15 percent of the limited entry permits and fall general season permits are available to youth hunters.

(b) For purposes of this section "youth" means any person who is 17 years of age or younger on July 31.

(c) Youth who apply for a turkey permit will automatically be considered in the youth permit drawing based on their birth date.

(d) Bonus points shall be used when applying for youth turkey permits.

(e) Youth who are successful in obtaining a limited entry turkey permit but unsuccessful in harvesting a bird during the limited entry hunt season, may use the limited entry turkey permit to participate in the youth 3-day turkey hunt and the spring general season turkey hunt provided no more than one bird is harvested.

#### **KEY: wildlife, permits**

**March 26, 2018  
Notice of Continuation April 14, 2014**

**23-14-18  
23-14-19**

**R710. Public Safety, Fire Marshal.****R710-5. Automatic Fire Sprinkler System Inspecting and Testing.****R710-5-1. Purpose.**

The purpose of this rule is to establish the minimum rules to provide regulation to those who inspect and test Automatic Fire Sprinkler Systems.

**R710-5-2. Authority.**

This rule is authorized by Section 53-7-204.

**R710-5-3. Definitions.**

(1) "Annual" means a period of one year or 365 calendar days.

(2) "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority.

(3) "Board" means Utah Fire Prevention Board.

(4) "Certificates of Registration" means a written document issued by the SFM to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

(5) "NFPA" means National Fire Protection Association.

(6) "NICET" means National Institute for Certification in Engineering Technologies.

(7) "SFM" means State Fire Marshal or authorized deputy.

**R710-5-4. Certificates of Registration.**

(1) No person shall engage in the inspecting and testing of automatic fire sprinkler systems without first receiving a certificate of registration issued by the SFM as required in Section 53-7-225.5.

(2) The following groups are exempted from the requirements of this part:

(a) the AHJ that is performing the initial installation acceptance testing of the automatic fire sprinkler system or ongoing inspections to verify compliance with the adopted NFPA standards and these rules; or

(b) the building owner or designee that performs additional periodic inspections beyond the annual inspection required in Section R710-5-7(2), to satisfy requirements set by company policy, insurance, or risk management.

(3) Application for a certificate of registration to inspect and test automatic fire sprinkler systems shall be made in writing to the SFM on forms provided the SFM and signed by the applicant.

(a) The SFM or his deputies may request picture identification of the applicant for a certificate of registration.

(b) The applicant shall indicate on the application which of the four technician levels the applicant will apply for:

- (i) Technician I;
- (ii) Technician II
- (iii) Technician III; or
- (iv) Master Technician.

(c) The application for a certificate of registration shall be accompanied with proof of public liability insurance from the certificate holder or employing concern.

(i) A public liability insurance carrier showing coverage of at least \$100,000 for each incident, and \$300,000 in total coverage shall issue the public liability insurance.

(ii) The certificate of registration holder shall notify the SFM within 30 days after the public liability insurance coverage required is no longer in effect for any reason.

(4) The SFM shall require all applicants for a certificate of registration as a technician to complete the following:

- (a) Technician I shall:
  - (i) pass a written examination on wet pipe sprinkler systems, antifreeze sprinkler systems, and standpipes; and
  - (ii) complete the manipulative skills task book;

(b) Technician II shall:

- (i) pass all the requirements listed for Technician I;
- (ii) pass a written examination on dry pipe sprinkler systems, deluge sprinkler systems, preaction sprinkler systems, combined dry pipe-preaction systems, fire pumps, and water storage tanks; and

(iii) complete the manipulative skills task book;

(c) Technician III shall:

- (i) pass all the requirements listed for Technician I and II;
- (ii) pass a written examination on water spray fixed systems, foam-water sprinkler systems, and foam-water spray systems; and

(iii) complete the manipulative skills task book; and

(d) Master Technician shall:

- (i) have successfully completed and be certified as NICET III in Inspection and Testing of Water-based Systems; and
- (ii) complete the manipulative skills task book.

(5) Examinations will be given according to the following requirements:

(a) all certification examinations given are open book examinations, the applicant is allowed to use the statute, the administrative rule, and the NFPA standard that applies to the certification examination. Any other materials to include cellular telephones are prohibited in the examination room;

(b) completion of the certification examination will not be allowed if it appears to the test administrator that the applicant has not prepared to take the examination;

(c) each certification examination taken has a time limit of two hours to completion;

(d) to successfully pass the written examination, the applicant must obtain a minimum grade of 70%;

(e) leaving the office or testing location before the completion of the examination voids the examination and will require the examination to be retaken by the applicant;

(f) if there are different levels of proficiency in the subject matter, the lower proficiency level will be fully completed before the next higher proficiency will be administered; and

(g) to successfully complete the manipulative skills task book, all required skill tasks shall be signed as completed by a person duly qualified or certified in that skill.

(6) As required in Subsection R710-5-4(4)(d), those applicants that have successfully completed the requirements of NICET III, in Inspection and Testing of Water-based Systems, and that corresponds to the work to be performed by the applicant, shall have the requirement for initial written examination waived, after appropriate documentation is provided to the SFM by the applicant.

(7) Following receipt of the properly completed application and successful completion of required testing, the SFM shall issue a certificate of registration.

(8) Original certificates of registration shall be valid for one year from the date of application. Thereafter, each certificate of registration shall be renewed annually and renewals shall be valid for one year from issuance.

(9) Application for renewal shall be made as directed by the SFM.

(10) Every holder of a valid certificate of registration shall take a re-examination every three years, from date of original certificate, to comply with the provisions of Section R710-5-4 as follows:

(a) the re-examination to comply with the provisions of Section 3.3 of these rules shall consist of an open book examination for each level of certification, to be mailed to the certificate holder at least 60 days before the renewal date;

(b) the re-examination will consist of questions that focus on changes in the last three years to the adopted NFPA standards, the statute, and the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the board or the SFM;

(c) the certificate holder is responsible to complete the re-examination and return it to the SFM in sufficient time to renew; and

(d) the certificate holder is responsible to return to the SFM the correct renewal fees to complete that certificate renewal.

(11) The SFM may refuse to renew any certificate of registration pursuant to R710-5-8(2). The applicant shall, upon such refusal, have the same rights as are granted by Section R710-5-8.

(12) The holder of a certificate of registration shall submit such certificate for inspection, upon request of the AHJ.

(13) Every certificate of registration shall indicate the type of act or acts to be performed and for which the applicant has qualified as follows:

(a) Technician I: A person who is engaged in the inspection and testing of wet pipe sprinkler systems, antifreeze sprinkler systems, and standpipes;

(b) Technician II: A person who is engaged in the inspection and testing of dry pipe sprinkler systems, deluge sprinkler systems, preaction sprinkler systems, combined dry pipe-preaction systems, fire pumps and water storage tanks;

(c) Technician III: A person who is engaged in the inspection and testing of foam-water sprinkler systems, foam-water spray systems, and water spray fixed systems; and

(d) Master Technician: A person who has obtained NICET III certification in Inspection and Testing of Water-based Systems.

(14) Any change in home address of any holder of a valid certificate of registration shall be reported in writing, by the registered person to the SFM within 30 days of such change.

(15) A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate, which has been lost or destroyed.

(16) No certificate of registration shall be issued to any person who is under 18 years of age.

(17) Restrictive Use.

(a) A certificate of registration may be used for identification purposes only as long as such certificate remains valid.

(b) Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a certificate of registration has qualified shall be permissible by such applicant.

(18) Right to Contest.

(a) Every person who takes an examination for a certificate of registration shall have the right to contest the validity of individual questions of such examination.

(b) Every contention as to the validity of individual questions of an examination shall be made within 48 hours after taking said examination.

(c) The decision as to the action to be taken on the submitted contention shall be made by the SFM, and such decision shall be final.

(d) The decision made by the SFM, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

(19) Certificates of Registration shall not be transferable. The person to whom issued shall carry individual certificates of registration.

(20) Every certificate shall be identified by a number, delineated as AFS-(number). Such number shall not be transferred from one person to another.

(21) New or existing employees desiring to attain a Certificate of Registration may perform the various acts required while under the constant direct supervision of a person holding a valid certificate of registration for a period not to exceed 60 days from the initial date of employment or beginning service in the field.

#### **R710-5-5. Service Tags.**

(1) Size and Color.

(a) Tags shall be not more than five and one-half inches in height, nor less than four and one-half inches in height, and not more than three inches in width, nor less than two and one-half inches in width.

(b) Tags may be produced in any color except red or a variation of red.

(c) A red tag shall be used to indicate the system fails to ensure a reasonable degree of protection for life and property from fire through inspecting and testing of automatic fire sprinkler systems as required in NFPA, Standard 25, and the requirements of these rules.

(i) After placing the red tag on the system, the certified person shall notify the AHJ and provide the AHJ with a written copy of the noted deficiencies.

(2) The service tag shall be attached at the sprinkler riser for each system inspected or at other locations as needed to show compliance. The service tag shall be attached to the riser in such a position as to be conveniently inspected by the AHJ.

(3) Service tags shall bear the following information:

(a) provisions of Section 4.7;

(b) approved Seal of Registration of the SFM;

(c) certificate of registration "AFS" number of individual who performed or supervised the service or services performed;

(d) signature of individual whose certificate of registration number appears on the tag;

(e) concern's name;

(f) concern's address;

(g) type of service performed;

(h) type of system serviced; and

(i) date service is performed.

(4) The above information shall appear on one side of the service tag. All other desired printing or information shall be placed on the reverse side of the tag.

(5) Legibility.

(a) The certificate of registration number required in Section R710-5-5(3)(c), and the signature required in Section R710-5-5(3)(d), shall be printed or written distinctly.

(b) All information pertaining to date and type of service shall be indicated on the card by perforations in the appropriate space provided. Each perforation shall clearly indicate the desired information.

(6) A sample service tag is on file in the State Fire Marshal's Office for review.

(7) A new service tag shall be attached to a system each time a service is performed.

(8) The following wording shall be placed at the top or reinforced ring end of every tag: "DO NOT REMOVE, BY ORDER OF THE STATE FIRE MARSHAL".

(9) Removal.

(a) No person or persons shall remove a service tag except when further service is performed.

(b) No person shall deface, modify, or alter any service tag that is required to be attached to the system.

(c) A red tag can only be removed by written authority from the AHJ.

(10) Service tags may be printed for any number of years not to exceed eight years.

#### **R710-5-6. Seal of Registration.**

(1) The official seal of registration of the SFM shall consist of the following:

(a) the image of the State of Utah shall be in the center with an outer ring stating, "Utah State Fire Marshal";

(i) the top portion of the outer ring shall have the wording "Utah State";

(ii) the bottom portion of the outer ring shall have the wording "Fire Marshal"; and

(b) appending below the bottom portion and in a centered position, shall be a box provided for the displaying of the certification number assigned to the person.

(2) No person shall produce, reproduce, or use this seal in any manner or for any purpose except as herein provided.

(3) Certificate holders or concerns shall use the Seal of Registration on every service tag.

(4) No person or concern shall continue the use of the Seal of Registration in any manner or for any purpose after receipt of a notice in writing from the SFM to that effect, or upon the suspension or revocation of the certificate of registration.

(5) Every reproduction of the Seal of Registration and every letter and number placed thereon, shall be of sufficient size to render such seal, letter, and number distinct and clearly legible.

#### **R710-5-7. Amendments and Additions.**

(1) At the time of service, all servicing shall be done in accordance with the adopted NFPA standard, adopted statutes, and these rules.

(2) NFPA 25, Chapter 5, Section 5.1, Table 5.1 is amended as follows: On line 16 of the "Inspection" section, the "Obstruction Reference" is changed from 14.2.2 to 14.2.1.

(3) NFPA 25, Chapter 5, Section 5.1, Table 5.1 is amended as follows: On line one of the "Investigation" section, the "Obstruction Reference" is changed from 14.2.1 to 14.2.2.

(4) Frequency and Labels.

(a) Automatic fire sprinkler systems, standpipes, and fire pumps shall be inspected annually by a person holding a certificate of registration as required in Section 3.1 of these rules.

(b) Automatic fire sprinkler systems that pass the three-year and five-year inspection requirements as required in NFPA 25, Tables 5.1 and 13.1, shall have a label affixed to the riser indicating the specific inspection or inspections that was completed, the month and year those inspections was performed, the person who performed the inspection, and the person performing the inspections certificate of registration number.

(c) The label shall be affixed to the riser using a heatless process, shall be 3 in. X 5 in., shall have the official seal of registration of the SFM affixed to the label, shall be constructed of durable material, and shall be the self-destructive type when removal is attempted.

(5) Accepted Inspection Forms.

(a) Inspection forms listed in NFPA 25, Annex B, Section B.2, shall be used as the accepted inspection forms.

(b) Inspection form format shall be as required in NFPA 25, Annex B, Section B.1(4).

(c) A similar equivalent inspection form approved by the SFM may be used as the accepted forms for inspection, testing, and maintenance of water-based fire protection systems.

(d) A copy of the completed inspection forms shall be left in a water proof container affixed to the riser.

(6) Newly installed automatic fire sprinkler systems, standpipes, and fire pumps are exempt from the annual testing requirement required in Section 6.2 of these rules, for one year from the approval date of the initial installation acceptance testing.

#### **R710-5-8. Adjudicative Proceedings.**

(1) All adjudicative proceedings performed by the agency shall proceed informally as authorized by Sections 63G-4-202 and 63G-4-203.

(2) The issuance, renewal, or continued validity of a certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant or the person has committed any of the following violations:

(a) the applicant or person is not the real person in interest;

(b) the applicant or person provides material

misrepresentation or false statements on the application;

(c) the applicant or person refuses to allow inspection by the SFM, or his duly authorized deputies;

(d) the applicant or person for a certificate of registration does not have the proper equipment to conduct the operations for which application is made;

(e) the applicant or person for a certificate of registration does not possess the qualifications of skill or competence to conduct the operations for which application is made, as evidenced by failure to pass the examination pursuant to Section 3.3 of these rules;

(f) the applicant or person refuses to take the examination required by Section 3.3 of these rules;

(g) the applicant or person fails to pay the certification of registration, examination or other required fees as required in Section 8 of these rules;

(h) the applicant or person has been convicted of one or more federal, state or local laws;

(i) the applicant or person has been convicted of a violation of the adopted rules or been found by a board administrative proceeding to have violated the adopted rules;

(j) any offense or finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the applicant or person were granted a certificate of registration; or

(k) there are other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant or person to safely and competently engage in the practice of servicing fire sprinkler system equipment.

(3) A person whose certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the board if requested by that person within 20 days after receiving notice.

(4) All adjudicative proceedings, other than criminal prosecution, taken by the SFM to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with Section 63G-4-201.

(5) The board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The board shall be the final authority on the suspension or revocation of a certificate of registration.

(6) The board shall direct the SFM to issue a signed order to the parties involved giving the decision of the board within a reasonable time of the hearing pursuant to Section 63G-4-203.

(7) Reconsideration of the board decision may be requested in writing within 20 days of the date of the decision pursuant to Section 63G-4-302.

(8) After a period of three years from the date of revocation, the board shall review the submitted written application of a person whose certificate of registration has been revoked. After timely notice to all parties involved, the board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the board. After the hearing, the board shall direct the SFM to allow the person to complete the certification process or shall direct that the revocation be continued.

(9) Judicial review of all final board actions resulting from informal adjudicative proceedings shall be conducted pursuant to Section 63G-4-402.

#### **R710-5-9. Fees.**

(1) The required fee shall accompany the application for certificate of registration.

(a) Certificate of registration fees will be refunded if the application is denied.

(2) When a certificate of registration has expired for more than one year, an application shall be made for an original certificate as if the application was being made for the first time.

**KEY: automatic fire sprinklers**

August 23, 2016  
Notice of Continuation March 14, 2018

53-7-204

**R909. Transportation, Motor Carrier.****R909-1. Safety Regulations for Motor Carriers.****R909-1-1. Authority and Purpose.**

This Rule is enacted under the authority of Section 72-9-103 to enable the department to enforce the Federal Motor Carrier Safety Regulations as contained in Title 49, Code of Federal Regulations related to the operation of a motor carrier within the state, as required by Section 72-9-301.

**R909-1-2. Adoption of Federal Regulations.**

(1) Safety Regulations for Motor Carriers, 49 CFR Parts 350 through 384, Part 385.4, Parts 387 through 399, and Part 40, (October 1, 2014), as amended by the Federal Register through December 16, 2015, are incorporated by reference, except for 49 CFR Parts 391.11(b)(1) and 391.49 as they apply to intrastate drivers only. These requirements apply to all motor carrier(s) as defined in 49 CFR Part 390.5, excluding commercial motor vehicles which are designed or used to transport more than 8 and less than 15 passengers (including the driver) for compensation and Utah Code Section 72-9-102(2) engaged in intrastate commerce.

(2) Intrastate trucking operations in which the carriers operate double trailer combinations only are not required to comply with 49 CFR Part 380.203(a)(2).

(3) Exceptions to Part 391.41, Physical Qualification may be granted under the rules of Department of Public Safety, Driver's License Division, Section 53-3-303.5 for intrastate drivers under R708-34.

(4) Drivers involved wholly in intrastate commerce shall be at least 18 years old. However, if they are transporting placarded amounts of hazardous materials or carrying 16 or more passengers, including the driver, they must be 21 years old.

(5) Licensed child care providers operating a passenger vehicle with a seating capacity of not more than 30 passengers, and wholly in intrastate commerce, are exempt from 49 CFR Part 387 Subpart B but are subject to the minimum coverage requirements in Section 72-9-103.

**R909-1-3. Insurance for Private Intrastate/Interstate Motor Carriers.**

(1) "Private Motor Carrier" means a person who provides transportation of property or passengers by commercial motor vehicle and is not a for-hire motor carrier.

(2) All intrastate private motor carriers shall have a minimum amount of \$750,000 liability.

(3) All intrastate for-hire and private motor carriers transporting any quantities of oil listed in 49 CFR 172.101; hazardous waste, hazardous material and hazardous substances defined in 49 CFR 171.101, shall have \$1,000,000 minimum level of financial responsibility and a MCS-90 endorsement maintained at the principal place of business.

**R909-1-4. Implements of Husbandry.**

"Implements of Husbandry" is defined in Section 41-1a-102(23) and must comply with all provisions of Chapter 6, Title 41, Utah Code Annotated. Vehicles meeting this definition are exempt from 49 CFR Part 393 - Parts and Accessories Necessary for Safe Operations.

**KEY: trucks, transportation safety, implements of husbandry****March 28, 2018****Notice of Continuation August 30, 2016**

72-9-103

72-9-104

72-9-101

72-9-301

72-9-303

72-9-701

72-9-703

**R994. Workforce Services, Unemployment Insurance.**  
**R994-201. Definition of Terms in Employment Security Act.**  
**R994-201-101. General Definitions and Acronyms.**

These definitions are in addition to those defined in Section 35A-4-201.

(1) "Act" means the Utah Employment Security Act, and amendments thereto.

(2) "ALJ" means Administrative Law Judge.

(3) "Appeals Unit" means the Division of Adjudication.

(4) "Board" means the Workforce Appeals Board.

(5) Bona Fide Employment.

"Bona fide employment" is work that was an authentic employer-employee relationship entered into in good faith without fraud or deceit rather than an arrangement or report of non-existent work calculated to overcome a disqualification.

(6) Burden of Proof.

The person or party with the burden of proof has the initial responsibility to show that the fact at issue is worthy of belief. Burden of proof requires proof by a preponderance of the evidence.

(7) Calendar Quarter.

"Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(8) Claimant.

"Claimant" is an individual who has filed the necessary documents to apply for unemployment insurance benefits.

(9) Covered Employment.

"Covered employment" is employment subject to a state or federal unemployment insurance laws which can be used to establish monetary eligibility for unemployment insurance benefits. Active military duty in a full time branch of the US military service can be used if the ex-servicemember was honorably discharged and completed his or her first full term of service, or if the separation meets the requirements of 5 U.S.C. 8521(a)(1)(B)(ii)(I through (IV) and 20 CFR 614.

(10) Department.

"Department" means the Department of Workforce Services.

(11) Employment Center.

"Employment Center" means an office operated by the Department of Workforce Services.

(12) Itinerant Service.

"Itinerant service" means a service maintained by the Department of Workforce Services at specified intervals and at designated outlying points within the jurisdiction of an Employment Center.

(13) Local Office.

"Local office" means the Employment Center of any geographical area.

(14) MBA means maximum benefit amount.

(15) Person.

"Person" includes any governmental entity, individual, corporation, partnership, or association.

(16) Preponderance of Evidence.

A "preponderance of evidence" is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it, more convincing to the mind, evidence that best accords with reason or probability. Preponderance means more than weight; it denotes a superiority of reliability. Opportunity for knowledge, information possessed and manner of testifying determines the weight of testimony.

(17) Separation.

"Separation" means curtailment of employment to the extent that the individual meets the definition of "unemployed" as stated in Subsection 35A-4-207(1) with respect to any week.

(18) Transitional Claim.

A claim that is filed effective the day after the prior claim

ends provided an eligible weekly claim was filed for the last week of the prior claim.

(19) WBA means weekly benefit amount.

**KEY: unemployment compensation, definitions**  
**September 27, 2012** 35A-4-201  
**Notice of Continuation March 29, 2018**



**R994. Workforce Services, Unemployment Insurance.****R994-202. Employing Units.****R994-202-101. Legal Status of Employing Unit.**

The Department may, on its own motion or if requested by an employer, determine the legal status of an employing unit according to Section 35A-4-313. The determination will be based on the best available information including, registration forms, income tax returns, financial and business records, regulatory licenses, legal documents, and information from the involved parties. The Department's determination is subject to review and may be appealed according to rule R994-508, Appeal Procedures.

**(1) Sole Proprietorship.**

A sole proprietorship is a legal entity that is owned by one person. The sole proprietor is the employing unit. The sole proprietor's services are exempt from coverage pursuant to rule R994-208-103(10). The services of the sole proprietor's spouse, children under age 21, and parents are also exempt from coverage and those individuals are not entitled to unemployment benefits based on the compensation received from the sole proprietorship.

**(2)(a) Partnership.**

A partnership is a legal entity composed of two or more persons or business entities that agree to contribute money, assets, labor, or skills to the business. Each partner shares the profits, losses, and management of the business and each partner is personally and wholly liable for debts of the partnership. The partners are the employing unit. The partners' services are exempt from unemployment coverage and the partners are not entitled to unemployment benefits based on compensation received from the partnership pursuant to rule R994-208-103(11). The services of individuals working for partners who are also employing units, such as corporations and limited liability companies, are subject or exempt as provided under this section. If partners are added or one or more of the partners leaves the partnership, the partnership ceases to exist at the point the change occurs, and any remaining entity becomes a different employing unit. Rule R994-205-102(2) explains partnership family employment that is exempt from coverage.

**(b) Limited Partnership (LP) and Limited Liability Partnership (LLP).**

LPs and LLPs are partnerships composed of one or more general partners and one or more limited partners. The general partners manage the business and share fully in its profits and losses. Limited partners share in the profits of the business, but their losses are limited to the extent of their investment. The general partner's services are exempt from unemployment insurance coverage, but any payments to limited partners for services are wages subject to unemployment insurance contributions pursuant to rule R994-208-103(11).

**(3) Corporation.**

A corporation is a legal entity granted a state charter legally recognizing it as a separate entity having its own rights, privileges, and liabilities distinct from those of its owners. The corporation is the employing unit. Corporations must be registered and in good standing with the Utah Department of Commerce. If a corporation is not registered or is in an expired status, it is treated as a proprietorship or partnership, based upon the best available information.

**(a)** A change of ownership occurs when the corporate assets are sold or transferred according to successorship rule R994-303-106. The sale, transfer, or exchange of corporate stock is not a change of ownership except as specified in rule R994-304-101.

**(b)** All individuals employed by the corporation, including officers, are employees of the corporation. Compensation to officers who perform services for the corporation is considered wages. Payments to corporate employees of dividends, loans, property distributions, and expenses in lieu of compensation for

services may be reclassified as wages by the Department based on the extent and significance of the work performed and the documentation supporting the payments. This applies to all corporations regardless of income tax reporting status. The following payments to officers are generally not wages:

- (i) directors fees that are uniform and reasonable;
- (ii) reimbursement for expenses that are reasonable and documented. The Department may require receipts to document questionable expenses. Section R994-208-103, contains additional information on expense reimbursements;
- (iii) loans supported by notes and reasonable repayment schedules. Non-interest bearing notes that are payable upon demand with no payment schedule are considered wages if the officer is performing services for the corporation; or
- (iv) documented return of an investment where the officer has loaned money to, or invested money in, the corporation.

**(4) Limited Liability Company (LLC).**

A LLC is a legal entity that combines the limited liability protection of a corporation and the pass through taxation of a sole proprietorship or partnership. The LLC is the employing unit and must be registered and in good standing with the Utah Department of Commerce. A LLC that is not registered or is in an expired status is treated as a proprietorship or partnership, based upon the best available information.

**(a)** Members of a LLC are not employees of the LLC and payments to them are exempt from coverage provided all of the following criteria are met;

**(i)** the LLC is registered and in good standing with the Utah Department of Commerce,

**(ii)** the member has a bona fide ownership interest in the LLC and is listed in the articles of organization, the operating agreement, or federal income tax return, and

**(iii)** the LLC has not been approved by the IRS as an "eligible entity" which allows the LLC to file with the IRS as a corporation. Approval may be obtained by the IRS accepting a written application or form, or the IRS accepting the filing of a U.S. Corporation Income Tax Return or U.S. Income Tax Return for an S Corporation.

**(b)** A nonmember manager is an employee of the LLC.

**(c)** Legal actions, subpoenas, and court orders will be issued to a member or manager of record.

**(d)** Assessments and liens will be issued in the name of the LLC, and not against the members of record.

**(5) Trust.**

A trust is a legal entity created to transfer property to a trustee to hold and manage for the benefit and profit of designated persons. The trust is the employing unit. A trust instrument or document must exist in order for the entity to be recognized. If the trustee does not independently perform fiduciary and management responsibilities, the trustee is an employee of the trust.

**(6) Association.**

An association is an entity consisting of a collection or organization of persons or other legal entities that have joined together for a certain common objective. Payments to association members for business services such as accounting and maintenance are considered wages unless the member is exempt as an independent contractor as defined in Section R994-204-301, Independent Contractor. Documented expense reimbursements paid to members are not wages.

**(7) Joint Venture.**

A joint venture is a legal entity consisting of a one-time grouping of two or more persons or legal entities in a business undertaking. Unlike a partnership, a joint venture does not entail a continuing relationship among the parties. The exempt or employment status of proprietors, partners, LLC members, or corporate officers is not lost in the formation of the joint venture.

**(8) Estate.**

An estate is a legal entity consisting of the property of a living, deceased, or bankrupt person. An estate established to manage a person's business is the employing unit. The executor or administrator of the estate is not considered to be an employee of the estate.

**R994-202-102. Temporary Help Company.**

(1) "Temporary help services" means services consisting of an organization:

- (a) recruiting and hiring its own employees;
- (b) finding other organizations that need the services of those employees;
- (c) assigning those employees to perform work at or services for the other organizations to support or supplement the other organizations' workforces;
- (d) providing assistance in special work situations such as employee absences, skill shortages, seasonal workloads, or to perform special assignments or projects with a definite ending date; and
- (e) customarily attempting to reassign the employees to other organizations when they finish each assignment by a definite ending date.

(2) A company that provides all or substantially all of the client company's regular workers with no restrictions or limitation on the duration of employment, is not the employing unit for those workers and, therefore, the client company is considered the employing unit subject to all of the provisions of the Employment Security Act as an employer, unless the company is licensed as a Professional Employer Organization (PEO) pursuant to the provisions of Section 31A-40-101 et seq.

(3) Individuals and services exempt under the Act based on the nature of service or due to a specific exemption continue to be exempt if the individual is an employee of the temporary help services company or the services are rendered by an employee of the temporary help services company.

**R994-202-103. Common Paymaster.**

(1) A common paymaster relationship exists when two or more related corporations concurrently employ the same individual and one of the corporations compensates the individual for the concurrent employment. The Internal Revenue Service will recognize a common paymaster if the closely related corporations satisfy all of the following criteria:

- (a) each related company is a corporation;
- (b) there must be at least 50 percent common ownership of stock or interest, or there must be at least 50 percent common officers in the related companies, or 30 percent of the employees work for all of the related companies;
- (c) the reporting for any calendar year must be consistent with FUTA annual 940 reporting; and
- (d) the employee(s) must be performing concurrent service for some or all of the related companies.

(2) The Department does not allow or recognize common paymaster reporting as of March 1, 2005, even if the relationship is approved by the Internal Revenue Service. Each corporation is required to register with the Department and obtain a Utah Employer Registration Number.

**R994-202-104. Payrolling.**

(1) Payrolling is defined as the practice of an employing unit paying wages to the employees of another employer or reporting those wages on its payroll tax reports. Generally an employee is reportable by the employer:

- (a) who has the right to hire and fire the employee;
- (b) who has the responsibility to control and direct the employee; and
- (c) for whom the employee performs the service.

(2) Payrolling is not allowed. Exceptions to this provision are contained in the Professional Employer rule R994-202-106

and the Temporary Help Services rule R994-202-102.

**R994-202-105. Constructive Knowledge of Work Performed.**

(1) If an individual is hired to perform or assist in performing the work of an employee, the individual is deemed to be employed by the employer provided the employer had actual or constructive knowledge of the work performed by the individual. This is the case even when the individual who is hired to assist the employee is hired or paid by that employee.

(2) The employer must report and pay contributions for all actual and constructive employment.

(3) An employer has actual or constructive knowledge if:

- (a) The employer knows or should have known the employee hires an assistant;
- (b) The employer knows or should have known that the employee's duties require an assistant;

(c) The employer instructs the employee to perform duties without an assistant, but the employee disregards the instructions and hires an assistant. If the employer becomes aware of the situation and takes no action to discontinue the current or future working relationship between the employee and the assistant, the assistant is considered to be employed by the employer for both the past and future work performed. However, if the employer takes action to prevent the employee from hiring an assistant in the future, then the assistant is not considered employed by the employer for the work already performed; or

(d) The employer gives the employee the option of hiring an assistant. The employee hires an assistant but does not inform the employer of the hire.

**R994-202-106. Professional Employer Organizations (PEO).**

(1) Definitions.

(a) "Agent" means an individual or organization authorized to act on behalf of an employer.

(b) "Client" or "client company" means a person or entity that enters into a professional employer agreement with a PEO.

(c) "Co-employment relationship" means a relationship that is intended to be ongoing rather than temporary or project specific and whose rights, obligations and responsibilities of an employer are allocated pursuant to the professional employer agreement or Chapter 40 of the PEO Licensing Act.

(d) "Professional employer agreement" means a written contract by and between a client and a PEO that provides for the co-employment of a covered employee as defined in Section 31A-40-102.

(e) "Professional employer organization" or "PEO" means any organization engaged in the business of providing professional employer services. "Employee leasing company" and "Employee staffing company" are terms also used to describe a PEO.

(f) "Professional employer services" means the service of entering into a co-employment relationship under which all or a majority of the employees who provide a service to a client, or division or work unit of a client, are considered employees as defined in the PEO Licensing Act, Section 31A-40-101 et seq.

(g) "Covered employee" means an individual is a covered employee of a PEO if the individual is co-employed pursuant to a professional employer agreement subject to Section 31A-40-203.

(2) Before the employer is considered to be a PEO, it must comply with the requirements of the PEO Licensing Act, Sections 31A-40-101 through 31A-40-402 of the Utah Code. In the absence of such compliance, the Department may choose to hold each "client company" as the employing unit.

(3) A PEO that fails to qualify as an employer under Sections 31A-40-101 through 31A-40-402 of the PEO Licensing Act and as an employing unit under 35A-4-202(1), is

considered to be the agent of the client company. The client's workers are not the employees of the agent. The client company remains the employer of its workers for all purposes of the Employment Security Act. An employee not covered by a professional employment agreement remains the employee of the client company.

(4) Individuals and services exempt under the Employment Security Act based on the nature of service or due to a specific exemption continue to be exempt if the individual is an employee of a PEO or the services are rendered by an employee of a PEO. The exemptions for domestic and agricultural services contained in Section 35A-4-205 are taken into consideration for the PEO's clients in the aggregate, and not on an individual client basis.

(5) A PEO cannot elect reimbursable coverage even if the client company could independently qualify as a reimbursable employer.

(6) Reporting Requirements.

(a) Any entity conducting business as a PEO must register with the Department and complete all forms and reports required by the Department. Failure to file reports or pay contributions timely will result in the Department treating the client as a new employer without experience rating, unless the client is otherwise eligible for experience rating, beginning on the day the PEO failure occurred, as outlined in Section 31A-40-210 of the PEO Licensing Act:

(b) Within 30 days of the effective date of a contract with a client, a PEO must submit to the Department the following information:

(i) the effective date of the contract;

(ii) the client's name and address;

(iii) the client's Federal Employer Identification Number (FEIN) if registered with the IRS, and the client's Employer's Utah Registration Number if previously registered with this Department; and

(iv) the client's principal business activity.

(c) Within 30 days of the termination of a contract with a client, a PEO must submit to the Department the following information:

(i) the effective date of contract termination;

(ii) the client's name and address; and

(iii) the client's FEIN if registered with the IRS, and the client's Employer's Utah Registration Number if previously registered with this Department.

(7) The Department may directly contact a PEO or its clients in order to conduct investigations, audits and otherwise obtain information necessary for the administration of the Employment Security Act as permitted by Section 35A-4-312.

(8) The rules pertaining to "payrolling" in R994-202-104 do not apply to a PEO that is in compliance with the PEO Licensing Act, Sections 31A-40-101 through 31A-40-402.

**KEY: unemployment compensation, employment  
June 18, 2009 35A-4-202(1)  
Notice of Continuation March 29, 2018**

**R994. Workforce Services, Unemployment Insurance.****R994-208. Wages.****R994-208-101. Definition of Wages.**

Section 35A-4-208 defines "wages".

(1) Wages means all payments for employment including the cash value of all payments in any medium other than cash, except payments excluded under Subsection 35A-4-208(5) and Section R994-208-103. Wages are subject to the Act only if they are for services that are employment as defined in Section 35A-4-204.

(2) Wages are reportable by the employer in the quarter actually paid or constructively paid. Wages are constructively paid, as defined in 26 CFR 31.3301-4. Wages are constructively paid when they are credited to the account of or set apart for a worker so that they may be drawn upon by the worker at any time without any substantial limitation or restriction as to the time, manner, or condition upon which the payment is to be made. The payment must also be within the worker's control and disposition.

(3) Wages subject to the Act are taxable only to the extent of the yearly taxable wage base. Wages in excess of the taxable wage base are reportable but not taxable. The taxable wage base applies to wages paid to each worker in any calendar year and is established pursuant to Subsection 35A-4-208(2). The employer must report all wages subject to the Act and pay contributions on the taxable wages as specified in the contribution payment due date Section R994-302-102.

**R994-208-102. Wages Include.**

Wages include the following:

**(1) Payments for Personal Services.**

All payments by the hour, by the job, piece rate, salary, or commission are wages.

**(2) Meals, Lodging and Other Payments in Kind.**

Meals, lodging and payments in kind that are furnished to promote good will, to attract prospective workers, or as part of payment for services are wages except as noted in Section R994-208-103. The value of these payments in kind shall be determined as follows:

(a) If a cash value for payments in kind is agreed upon in any contract, the amount agreed upon shall be deemed to be the value of such payments in kind provided such value equals or exceeds the cash value prevailing under similar conditions in the locality.

(b) If a cash value for payments in kind is not agreed upon, the Department will determine the value on the basis of the cash value prevailing under similar conditions in the locality.

**(3) Tips and Gratuities.**

(a) Tips or gratuities accounted for by the worker to the employer are wages whether paid directly to the worker by the customer or by the employer.

(b) If a worker's only payment for services is tips or tips are used to supplement the worker's regular wages in order to meet the applicable federal or state minimum wage laws, the Department will determine the worker's wages. However, such wages will not be less than the applicable federal or state minimum wage.

(c) Wages also include any allocated tips calculated by the employer.

**(4) Payment for Services of Worker with Equipment.**

When a worker is hired with equipment, the fair value of the payment for the worker's services, as distinguished from an allowance for use of equipment, if specified in the contract of hire, will be considered "wages". The Department will determine the worker's wages based on the prevailing wages for similar work under comparable conditions if the contract of hire does not specify the worker's wages, or the value of wages agreed upon in the contract of hire is not a fair value.

**(5) Vacation Pay**

Vacation payments made by the employer during the employment relationship or upon termination of employment are wages.

**(6) Sick Pay.**

(a) Sick payments made by the employer during the employment relationship or upon termination of employment are wages.

(b) Sick pay is not wages if paid after the end of six calendar months following the calendar month the employee last worked for the employer.

(c) Sick pay, if paid by a third party such as an insurance company, is not wages reportable by the employer unless the third party notifies the employer of the sick pay payments. If the third party does not notify the employer of the sick pay payments, the third party is liable for the unemployment contributions due on these payments. These provisions regarding sick pay are established to comply with the Federal Unemployment Tax Act (FUTA) provisions. For reference, see Internal Revenue Code Section 3306(b).

**(7) Bonuses and Gifts.**

(a) Bonuses and gifts to employees are wages unless the value is so small that it would be unreasonable for the employer to account for it. The value of benefits such as store discounts, discounts at company cafeterias, and company picnics are not wages.

(b) The value of gifts such as a turkey, ham, or other item of nominal value at Christmas or other holidays are not wages. However, gifts of cash, gift certificates, or similar items that can easily be exchanged for cash, are wages.

**(8) Stock Payments.**

Payments of stock for services performed are wages. The value of the stock is its cash value at the time of transfer to the employee.

**(9) Stock options included as wages.**

There are three kinds of stock options: incentive stock options, employee stock purchase plan options, and non-statutory, also known as non-qualified stock options. There are wage implications only with respect to non-qualified stock options.

(a) Non-qualified stock options are defined by the Internal Revenue Service as those that do not meet all of the requirements of the Internal Revenue Code to qualify as incentive stock options or employee stock purchase plan options.

(b) A worker may receive an option as payment for services. The granting of the option is not wages.

(c) A worker exercises an option when the worker takes an action to buy the stock.

(d) The difference between the exercise price, the value of stock at the time the option is issued, and the fair market value of the stock at the time of exercise is called the spread. The amount of a positive spread at the time the option is exercised is wages.

**(10) Contributions to Deferred Compensation Plans.**

Contributions by either the employer or the worker to deferred compensation plans including 401(k) plans are wages. For reference, see Section 3306(r) of the Internal Revenue Code.

**(11) Residual Payments.**

Performers in the television, radio and motion picture industry may receive additional payments, termed "residuals" by the industry as a result of the re-use of a recording or the re-showing of a film or taped television production. Residuals are deferred compensation and are wages if the performer, at the time of the original performance, was an employee.

(a) Residual payments are reportable by the employer in the quarter they are paid.

(b) Residual payments are reportable by the claimant only for the weeks in which the service was originally performed.

(c) Since residual payments are reportable as wages by the employer and the claimant, they can be used for the purpose of establishing a monetary base for future unemployment benefits. These wages can be used to purge a disqualification made under the Utah Employment Security Act only if the original work was performed subsequent to the disqualification.

**R994-208-103. Wages Do Not Include.**

Wages do not include any of the following:

(1) Meals and Lodging Furnished for Employer's Convenience.

Meals and Lodging provided by an employer to a worker shall not be considered wages if excluded from the definition of wages by the Internal Revenue Service under the following conditions:

(a) they are provided at the employer's place of business; and

(b) in the case of lodging, the worker must accept the lodging as a condition of employment; and

(c) they are provided for the employer's convenience. Meals and lodging will be considered to be for the convenience of the employer if there is a good business reason for providing them including:

(i) To have workers available at all times or for emergency calls.

(ii) Workers have a short meal period.

(iii) Adequate eating and lodging facilities are not otherwise available.

(2) Expense Reimbursement.

Expense reimbursements are excluded from the definition of wages based upon the existence of an accountable plan as defined in Section 62 of the Internal Revenue Code.

(a) An accountable plan is any reimbursement or other expense allowance arrangement, including per diem allowances providing for ordinary and necessary expenses of traveling away from home, that meets all of the following requirements:

(i) There is a business connection. The expenses are paid or incurred by the worker in connection with the performance of services as an employee of the employer;

(ii) Information sufficient to substantiate the amount, time, and business purpose of the expenses must be submitted to the employer; and

(iii) Excess reimbursement amounts, as a result of advances, are returned to the employer.

(b) A nonaccountable plan is any plan that fails to meet any one or more of the requirements of an accountable plan. Reimbursements in a nonaccountable plan are wages.

(3) Insurance Premiums Paid by the Employer.

Insurance premiums for health or life insurance paid by the employer for workers generally or a class of workers are not wages under Subsection 35A-4-208(5)(a).

(4) Sick Pay Excluded as Wages.

The following provisions regarding sick pay are established to comply with the FUTA provisions contained in Section 3306(b) of the Internal Revenue Code.

(a) Sick pay is not wages if paid after the end of six months following the calendar month the worker last worked for the employer.

(b) Sick pay, if paid by a third party such as an insurance company, is not wages reportable by the employer unless the third party notifies the employer of such sick pay payments. If the third party does not notify the employer of the sick pay payments, the third party will be liable for the unemployment contributions due on these payments.

(c) Payments made to a worker that are received under a workers' compensation law are not wages.

(5) The Employer's Share of the Social Security Tax and Medicare Tax.

(6) Retirement Plan Payments Made by the Employer.

Payments made by the employer to retirement plans described in Section 3306(b)(5) of the Internal Revenue Code are not wages.

(7) Training Allowances.

Employment-related training allowances such as payments for expenses necessary for school including tuition, fees, books and travel expenses are not wages. However, payments for services performed as part of the training, such as on-the-job training, are wages.

(8) Corporate Payments Not Considered Wages.

(a) The following payments are not considered wages:

(i) Directors fees paid to directors of a corporation for attending Board of Directors' meetings, reviewing and studying reports, and establishing general company policies. Director services do not include managerial services or other services that are part of the routine activities of a corporation;

(ii) Distributions made to shareholders based on stock ownership;

(iii) Reimbursement for expenses that are reasonable and documented;

(iv) Loans supported by notes and reasonable repayment schedules. Non-interest bearing notes that are payable upon demand with no payment schedule are considered wages if the officer is performing services for the corporation; and

(v) Documented returns of investment where the officer has loaned or invested money in the corporation.

(b) If the amount of compensation, if any, paid to a corporate officer is inadequate given the nature, duration, frequency or significance of the service performed by that officer, other payments made to the officer may be reclassified as wages if there is a lack of documentation or insufficient document to support those other payments. This applies to all corporations regardless of income tax reporting status.

(9) Finder or Referral Fees.

A fee paid to an individual for the referral of a potential customer, provided that the transaction is in the nature of a single or infrequent occurrence and does not involve a continuing relationship with the person paying the fee, is not wages.

(10) Payments to Sole Proprietors.

Payments to sole proprietors, whether draws or payment for services, are not wages. The sole proprietor is the employing unit rather than an employee.

(11) Payments to Partners.

Payments to partners, including draws and payment for services, are not wages. The partners are the employing unit rather than employees. However, payments to limited partners are wages because they do not have the same rights and responsibilities as general partners.

(12) Supplemental Unemployment Benefits (SUB).

Supplemental Unemployment Benefits are not wages if they meet the requirements specified in Revenue Rulings 56-249, 58-128 and 60-330. Because of the complexity of the factors involved, employers should request a declaratory ruling from the Department on their specific SUB plan. The factors required are as follows:

(a) the benefits are paid only to unemployed former employees of the employer who is providing the SUB Plan;

(b) eligibility for benefits depends on the meeting of prescribed conditions subsequent to the termination of the employment relationship with the employer;

(c) eligibility for benefits is contingent upon the former employee's maintaining eligibility for state unemployment insurance benefits;

(d) the benefits ultimately paid are not attributable to the performance of any service by the recipient for the employer during the period of unemployment;

(e) no employee has any vested right, title, or interest in or to the funds from which the SUB benefits will be paid; and

(f) the funds for the payment of SUB benefits is either established as an independent trust fund administered by trustees, or as a separate account on the employer's general accounting records.

(13) Stock Options Excluded From Wages.

(a) There are three kinds of stock options: incentive stock options, employee stock purchase plan options, and non-statutory, also known as non-qualified stock options.

(b) Incentive Stock Options and Employee Stock Purchase Plan Options are defined by the Internal Revenue Code.

(c) Payments resulting from the exercise of an incentive stock option or an employee stock purchase plan option, or from any disposition of stock acquired by exercising such an option are not wages.

(14) Stipends.

Stipend payments are not wages. Stipends are payments in lieu of actual expense reimbursements that help cover the costs of expenses such as transportation, meals, and supplies associated with training, schooling, meetings, and volunteer activities.

**KEY: unemployment compensation, wages  
July 1, 2007  
Notice of Continuation March 29, 2018**

**35A-4-208**

**R994. Workforce Services, Unemployment Insurance.****R994-306. Charging Benefit Costs to Employers.****R994-306-101. Reduction in Force Separations.**

When a worker is separated due to a reduction of the workforce, regardless of business conditions requiring the separation, the worker is eligible for benefits and the employer is liable for charges. This is true even if the separation is the end of a temporary assignment or seasonal employment and both parties agreed to the arrangement at the time of hire.

**R994-306-201. Notice to Employers and Time Limitation for Protests.**

All base period employers and all employers for which a claimant worked after the base period but prior to when the claim is filed, shall be notified prior to the payment of benefits that a claim has been filed.

(a) All employers who receive this notice may protest payment of benefits to former employees and all contributing employers may request relief of charges.

(i) All protests and requests must be made in writing to the Department within ten days after the notice is issued and must state in detail the circumstances which are alleged by the employer to justify a denial of benefits to the claimant, or relief of charges to the employer.

(ii) If the employer's request for relief of charges would justify the relief requested but the employer fails to provide separation information within the time limits of the request or to make a timely protest against the payment of benefits, the employer's request to be relieved of those charges will be adjudicated pursuant to R994-306-202.

**R994-306-202. Relief of Charges Decisions.**

When an employer makes a written request for relief of charges, a decision is made as to the employer's liability for benefit costs.

(a) The employer is notified of the decision and if an appeal is not filed, the decision becomes final and binding on both the employer and the Department.

(b)(i) A request for relief of charges or appeal that is filed after the expiration of the applicable time limit may be considered by the Department if:

(A) the employer has good cause for the late request or appeal as provided in R994-508-104;

(B) relief of charges was denied due to a mistake as to the facts and the Department did not rely on the requesting or appealing employer's failure to submit correct information in determining a claimant's eligibility for benefits. However, the Department will not consider such a request after September 30 with respect to benefits paid in the fiscal year that ended the prior June 30, even if there was a mistake as to facts.

(c) If the Department fails to give the relief of charges granted by a previous decision, the employer must request a correction of this error in accordance with Section R994-303-103.

**R994-306-301. Benefit Cost Calculation Errors.**

(1) Employers will be notified of benefit costs as they accrue at the end of each quarter. The notice used is called the "Statement of Unemployment Benefit Costs" (Form 66). This statement notifies the employer of the amount of benefits paid during the preceding quarter and gives the employer an opportunity to advise the Department of any errors. Upon written request from the employer, corrections will be made for all quarters not yet used to determine the employer's contribution rate. The following are examples which may occur:

(a) The employer is charged for costs for which the Department should have granted relief in accordance with Section R994-307-101.

(b) The employer did not receive prior notice that a claim

had been filed or the determination of the claimant's eligibility and therefore did not have an opportunity to request relief of charges.

**R994-306-401. Annual Notice of Contribution Rate.**

(1) When the "Contribution Rate Notice" (Form 45) is issued at the end of the year, as per Subsection R994-303-103, the employer will have 30 days to protest the rate. When this decision, which establishes the contribution rate for the next year, becomes final it will not be changed even upon a showing of a mistake as to facts.

**KEY: unemployment compensation, rates****January 1, 2002****Notice of Continuation March 29, 2018****35A-4-303****35A-4-306****35A-4-405(2)(a)****35A-4-502(1)(b)**

**R994. Workforce Services, Unemployment Insurance.****R994-307. Social Costs -- Relief of Charges.****R994-307-101. Relief of Charges to Contributing Employers.**

(1) Under the following circumstances a written request is required for relief of charges:

(a) Separation Issues.

(i) Relief may be granted based only on the circumstance which caused the claim to be filed or a separation which occurred prior to the initial filing of the claim. If there is more than one separation from the same employer, charges or relief of charges will be based on the reason for the last separation occurring prior to the effective date of the claim. Separations occurring after the initial filing of a claim do not result in relief of charges on that claim, but may be the basis for relief of charges on a subsequent claim.

(A) The claimant voluntarily left work for that employer due to circumstances which would have resulted in a denial of benefits under Subsection 35A-4-405(1) of the Act.

(B) The separation from that employer would have resulted in an allowance of benefits made under the provisions of "equity and good conscience" under circumstances not caused or aggravated by the employer. For example: If the claimant quit because of a personal circumstance which was not the result of this employment the employer would be relieved of charges. However, if the quit was precipitated by a reduction in the claimant's hours of work, even though the change in working conditions was necessitated by economic conditions, the employer would NOT be relieved of charges.

(C) The claimant quit that employer for health reasons which were beyond reasonable control of the employer. Although the job may have caused or aggravated the health problems, the employer is eligible for relief if it was in compliance with industry safety standards.

(D) The claimant quit work for that employer not because of adverse working conditions, but solely due to a personal decision to accept work with another employer.

(E) The claimant quit work from that employer for personally compelling circumstances not within the employer's power to control or prevent.

(F) The claimant quit new work from that employer after a short trial period, and through no fault of the employer the new work was unsuitable as defined in Subsections 35-4-405(3)(c), (d), and (e).

(G) The claimant was discharged from that employer for circumstances which would have resulted in a denial of benefits under Section 35A-4-405(2) of the Act.

(H) The claimant was discharged for nonperformance due to medical reasons. The employer is eligible for relief:

(I) only if the employer complied with industry health and safety standards, and

(II) the non-performance was due to a chronic medical condition, and

(III) the medical circumstances are expected to continue. The medical problems may be attributed to the worker or to a dependent. A series of unrelated absences attributed to medical problems do not qualify as chronic without medical verification that the conditions will probably continue to cause absences.

(b) Non-Separation Issues.

(i) When the claimant worked for two or more employers during the base period and is separated from one or more of these employers, but continues in regular part-time work for one of those employers, the nonseparating, part-time employer will not be liable for benefit costs provided;

(A) the claimant earned wages from a nonseparating employer within seven days prior to the date when the claim was filed,

(B) the claimant is not working on an "on call" basis,

(C) the number of hours of work has not been reduced, and

(D) the nonseparating employer makes a request that it not be held liable for benefit costs within ten days of the first notification of the employer's potential liability.

(ii) The employer was previously charged for the same wages which are being used a second time to establish a new claim. For example, as the result of a change in the method of computing the base period, or overlapping base periods due to the effective date of the claim.

(iii) The claimant did not work for the employer during the base period.

(iv) The Department incorrectly used wages which were or should have been correctly reported by the employer in determining the claimant's weekly benefit amount or maximum benefit amount.

(c) The Department may, on its own motion, grant relief of charges without a written request if in the Department representative's discretion there is sufficient information in the record to justify relief.

(2) Under the following circumstances a written request is NOT required for relief of charges:

(a) All employers shall be relieved of benefit costs:

(i) resulting from the state's share of extended benefit payments;

(ii) which, during the same fiscal year, have been designated by the Department as benefit overpayments;

(iii) resulting from combined wage claims that are charged to Utah employers, which are insufficient when separately considered for a monetary claim under Utah law but have been transferred to a paying state;

(iv) resulting from payments made after December 31, 1985 to claimants who have been given Department approval to attend school. Relief is granted only for those benefit costs during the period of Department approval.

(b) An employer shall be relieved of benefit costs if the employer has terminated coverage.

**KEY: unemployment compensation, rates  
December 31, 2005  
Notice of Continuation March 29, 2018**

**35A-4-303**



**R994. Workforce Services, Unemployment Insurance.****R994-315. Centralized New Hire Registry Reporting.****R994-315-101. Authority.**

This rule is authorized by 35A-7-101 et seq. Utah Code Ann. 1953.

**KEY: new hire registry**

**August 8, 2007**

**Notice of Continuation March 29, 2018**

**35A-7-101 et seq.**

**U.S.C. 654(a) et seq.**

**Pub. L. No. 104-193**

**R994-315-102. Definitions.**

In addition to definitions included in 35A-7-102, this rule makes the following definition:

(1) Multi-state Employer: A multi-state employer is defined as an employer who has employees in two or more States and who transmits new hire reports magnetically or electronically.

**R994-315-103. Reporting Formats.**

Employers may submit information by paper, magnetic tape, cartridge, or diskette or electronically. Submittals should not be duplicated.

**(1) Paper**

Employers may mail or fax copies of any one of the following:

(a) the Utah New Hire Registry Reporting Form (form 6)

(b) the employee's W-4 (Employee's Withholding Allowance Certificate), the worksheet portions are not necessary.

(c) computer printouts or other printed information that provides all six of the mandatory data elements required by 35A-7-104 (1).

**(2) Magnetic Media**

Employers may submit their new hire information on magnetic tape, cartridge, or diskette. Magnetic media must be submitted according to specifications approved by the Department.

**(3) Electronic Media**

Employers may submit information by Internet on-line data entry or Internet electronic file transfer. Electronic Media must be submitted according to specifications approved by the Department.

**R994-315-104. Multi-state Employers.**

(1) Multi-state employers have the option to report all new hires to a single state, chosen by the employer, in which the employer has employees. To exercise this option, the employer must designate one state for reporting new hires, transmit the report magnetically or electronically, and notify the Secretary of Health and Human Services in writing.

The letter of request should include the following information:

(a) Employer Federal ID Number (FEIN).

(b) Any other FEIN's under which the employer does business.

(c) Employer Company name, address and telephone number.

(d) The state to which the employer will report all workers.

(e) A list of states in which the employer employs workers.

(f) Name and phone number of person responsible for providing data.

**R994-315-105. Waiver of Penalty for Failure to Report.**

(1) An employer that fails to report the hiring or re-hiring of an employee in a timely manner is subject to a civil penalty of \$25 for each such failure in accordance with Section 35A-7-106. The \$25 penalty will be waived if the employer can show good cause for failure to provide the required new hire report(s). Good cause may be established if the employer was prevented from filing a new hire report due to circumstances which were compelling and reasonable or beyond its immediate control. Payment of the \$25 penalty does not relieve the employer from the responsibility of filing the required new hire report(s).

**R994. Workforce Services, Unemployment Insurance.****R994-403. Claim for Benefits.****R994-403-101a. Filing a New Claim.**

(1) A new claim for unemployment benefits is made by filing with the Department of Workforce Services Claims Center. A new claim can be filed by telephone, completing an application at the Department's web site, or as otherwise instructed by the Department.

(2) The effective date of a new claim for benefits is the Sunday of the week in which the claim is filed, provided the claimant did not work full-time during that week, or is not entitled to earnings equal to or in excess of the WBA for that week. A claim for benefits can only be made effective for a prior week if the claimant can establish good cause for late filing in accordance with R994-403-106a.

(3) When a claimant files a new claim during the last week of a quarter and has worked less than full-time for that week, the Department will make the claim effective that week if it is advantageous to the claimant, even if the claimant has earnings for that week that are equal to or in excess of the WBA.

(4) Wages used to establish eligibility for a claim cannot be used on a subsequent claim.

**R994-403-102a. Cancellation of Claim.**

(1) Once a weekly claim has been filed and the claimant has been deemed monetarily eligible, the claim is considered to have been established, even if no payment has been made or waiting week credit granted. The claim then remains established for 52 weeks during which time another regular claim may not be filed against the state of Utah unless the claim is canceled.

(2) A claim may be canceled if the claimant requests that the claim be canceled and one of the following circumstances can be shown:

- (a) no weekly claims have been filed;
- (b) cancellation is requested prior to the issuance of the monetary determination;
- (c) the request is made within the same time period permitted for an appeal of the monetary determination and the claimant returns any benefits that have been paid;
- (d) the claimant had earnings, severance, or vacation payments equal to or greater than the WBA applicable to all weeks for which claims were filed;
- (e) the claimant meets the eligibility requirements for filing a new claim following a disqualification due to a strike in accordance with the requalifying provisions of Subsection 35A-4-405(4)(c);

(f) the claimant meets the requirements for cancellation established under the provisions for combined wage claims in R994-106-107; or

(g) the claimant has filed an unemployment compensation for ex-military (UCX) claim, and it is determined the claimant does not have wage credits under Title 5, chapter 85, U.S. Code.

(3) If a claimant is disqualified from the receipt of unemployment benefits because he or she was discharged for a crime in connection with work under R994-405-210, whether the claimant was deemed monetarily eligible or not, the claim will be established for 52 weeks and cannot be canceled even if the requirements of subsection (2) have been satisfied.

**R994-403-103a. Reopening a Claim.**

(1) A claim for benefits is considered "closed" when a claimant reports four consecutive weeks of earnings equal to or in excess of the WBA or does not file a weekly claim within 27 days from the last week filed. In those circumstances, the claimant must reopen the claim before benefits can be paid.

(2) A claimant may reopen the claim any time during the 52-week period after first filing by contacting the Claims Center. The effective date of the reopened claim will be the Sunday of the week in which the claimant requests reopening unless good

cause is established for failure to request reopening during a prior week in accordance with R994-403-106a.

**R994-403-104g. Using Unused Wages for a Subsequent Claim.**

(1) A claimant may have sufficient wage credits to monetarily qualify for a subsequent claim without intervening employment.

(2) With the exception of subsection (3), benefits will not be paid under Subsection 35A-4-403(1)(g) from the effective date of the claim and continuing until the week the claimant provides proof of covered employment equal to at least six times the WBA. Each of the following elements must be satisfied:

(a) the claimant must have performed work in covered employment after the effective date of the original claim, but not necessarily during the benefit year of the original claim;

(b) actual services must have been performed. Vacation, severance pay, or a bonus cannot be used to requalify; and

(c) the claimant must have earnings from covered employment, as defined in R994-201-101(9), equal to at least six times the WBA of the original or subsequent claim, whichever is lower.

(3) Intervening covered employment is not required if the claimant did not receive benefits during the preceding benefit year.

**R994-403-105a. Filing Weekly Claims.**

(1) Claims must be filed on a weekly basis. For unemployment benefit purposes, the week begins at 12:01 a.m. on Sunday and ends at midnight on Saturday. The claimant is the only person who is authorized to file weekly claims. The responsibility for filing weekly claims cannot be delegated to another person.

(2) Each weekly claim should be filed as soon as possible after the Saturday week ending date. If the claim has not been closed, the Department will allow 20 days after the week ending date to file a timely claim. A weekly claim filed 21 or more calendar days after the week ending date will be denied unless good cause for late filing is established in accordance with R994-403-106a.

**R994-403-106a. Good Cause for Late Filing.**

(1) Claims must be filed timely to insure prompt, accurate payment of benefits. Untimely claims are susceptible to errors and deprive the Department of its responsibility to monitor eligibility. Benefits may be paid if it is determined that the claimant had good cause for not filing in a timely manner.

(2) The claimant has the burden to establish good cause by competent evidence. Good cause is limited to circumstances where it is shown that the reasons for the delay in filing were due to circumstances beyond the claimant's control or were compelling and reasonable. Some reasons for good cause for late filing may raise other eligibility issues. Some examples that may establish good cause for late filing are:

(a) a crisis of several days duration that interrupts the normal routine during the time the claim should be filed;

(b) hospitalization or incarceration; or

(c) coercion or intimidation exercised by the employer to prevent the prompt filing of a claim.

(3) The Department is the only acceptable source of information about unemployment benefits. Relying on inaccurate advice from friends, relatives, other claimants or similar sources does not constitute good cause.

(4) Good cause for late filing cannot extend beyond 65 weeks from the filing date of the initial claim.

**R994-403-107b. Registration, Workshops, Deferrals - General Definition.**

(1) A claimant must register for work with the Department,

unless, at the discretion of the Department, registration is waived or deferred.

(2) The Department may require attendance at workshops designed to assist claimants in obtaining employment.

(3) Failure, without good cause, to comply with the requirements of Subsections (1) and (2) of this section may result in a denial of benefits. The claimant has the burden to establish good cause through competent evidence. Good cause is limited to circumstances where it is shown that the failure to comply was due to circumstances beyond the control of the claimant or which were compelling and reasonable. The proof of inability to register or report may raise an able or available issue.

(4) The denial of benefits begins with the Sunday of the week the claimant failed to comply and will continue through the Saturday prior to the week the claimant contacts the Department and complies by either registering for work, reporting as required, or scheduling an appointment to attend the next available workshop or conference. The denial can be waived if the Department determines the claimant complied within 7 calendar days of the decision date.

**R994-403-108b. Deferral of Work Registration and Work Search.**

(1) The Department may elect to defer the work registration and work search requirements. A claimant placed in a deferred status is not required to actively seek work but must meet all other availability requirements of the act. Deferrals are generally limited to the following circumstances:

(a) Labor Disputes.

A claimant who is unemployed due to a labor dispute may be deferred while an eligibility determination under Subsection 35A-4-405(4) is pending. If benefits are allowed, the claimant must register for work immediately.

(b) Union Attachment.

(i) A claimant who is a union member in good standing, is on the out-of-work list, or is otherwise eligible for a job referral by the union, and has earned at least half of his or her base period earnings through the union, may be eligible for a deferral. If a deferral is granted to a union member, it shall not be extended beyond the mid-point of the claim unless the claimant can demonstrate a reasonable expectation of obtaining employment through the union.

(ii) If the claimant is not in deferred status because the claimant did not earn at least 50 percent of his or her base period wage credits in employment as a union member, or the deferral has ended, the claimant must meet the requirements of an active, good faith work search by contacting employers in addition to contacts with the union. This work search is required even though unions may have regulations and rules which penalize members for making independent contacts to try to find work or for accepting nonunion employment.

(c) Employer Attachment.

A claimant who has an attachment to a prior employer and reasonable assurance of returning to full-time employment within ten weeks of filing or reopening a claim may have the work registration requirement deferred to the expected date of recall. A claimant is presumed to have reasonable assurance of employment if he or she previously worked for the employer and there has been no change in the conditions of his or her employment which would indicate severance of the employment relationship. The deferral should generally not extend longer than ten weeks. To extend beyond ten weeks, the claimant must have earned at least half of his or her base period earnings with the employer in question and the employer must submit a request to the department.

(d) Three Week Deferral.

A claimant who accepts a definite offer of full-time work to begin within three weeks, shall be deferred for that period.

(e) Seasonal.

A claimant may be deferred when, due to seasonal factors, work is not available in the claimant's primary base period occupation and other suitable work is not available in the area.

(f) Department approval.

If Department approval is granted under the elements of R994-403-202, the claimant will be placed in deferred status once the training begins and will not be required to register for work or to seek and accept work. The deferral also applies to break periods between successive terms as long as the break period is four weeks or less. A claimant must make a work search prior to the onset of training, even if the claimant has been advised that the training has been approved.

(2) Deferrals cannot be granted if prohibited by state or federal law for certain benefit programs.

**R994-403-109b. Profiled Claimants.**

(1) The Department will identify individuals who are likely to exhaust unemployment benefits through a profiling system and require that they participate in reemployment services. These services may include job search workshops, job placement services, counseling, testing, and assessment.

(2) In order to avoid disqualification for failure to participate in reemployment services, the claimant must show good cause for nonparticipation. Good cause is limited to circumstances where the claimant can show that the reasons for the delay in filing were due to circumstances beyond the claimant's control or were compelling and reasonable.

(3) Failure to participate in reemployment services without good cause will result in a denial of benefits beginning with the week the claimant refuses or fails to attend scheduled services and continuing until the week the claimant contacts the Employment Center to arrange participation in the required reemployment service.

(4) Some reasons for good cause for nonparticipation may raise other eligibility issues.

**R994-403-110c. Able and Available - General Definition.**

(1) The primary obligation of the claimant is to become reemployed. A claimant may meet all of the other eligibility criteria but, if the claimant cannot demonstrate ability, availability, and an active good faith effort to obtain work, benefits cannot be allowed.

(2) A claimant must be attached to the labor force, which means the claimant can have no encumbrances to the immediate acceptance of full-time work. The claimant must:

(a) be actively engaged in a good faith effort to obtain employment; and

(b) have the necessary means to become employed including tools, transportation, licenses, and childcare if necessary.

(3) The continued unemployment must be due to the lack of suitable job opportunities.

(4) The only exception to the requirement that a claimant actively seek work is if the Department has approved schooling under Section 35A-4-403(2) and the claimant meets the requirements of R994-403-107b.

(5) The only exception to the requirements that the claimant be able to work and actively seeking full-time work are that the claimant meets the requirements of R994-403-111c(6).

**R994-403-111c. Able.**

(1) The claimant must have no physical or mental health limitation which would preclude immediate acceptance of full-time work. A recent history of employment is one indication of a claimant's ability to work. If there has been a change in the claimant's physical or mental capacity since his or her last employment, there is a presumption of inability to work which the claimant must overcome by competent evidence. The

claimant must show that there is a reasonable likelihood that jobs exist which the claimant is capable of performing before unemployment insurance benefits can be allowed. Pregnancy is treated the same as other physical limitations.

(2) For purposes of determining weekly eligibility for benefits, it is presumed a claimant who is not able to work more than one-half the normal workweek will be considered not able to perform full-time work. The normal workweek means the normal workweek in the claimant's occupation. A claimant will be denied under this section for any week in which the claimant refuses suitable work due to an inability to work, regardless of the length of time the claimant is unable to work.

(a) Past Work History.

Benefits will not be denied solely on the basis of a physical or mental health limitation if the claimant earned base period wages while working with the limitation and is:

(i) willing to accept any work within his or her ability;

(ii) actively seeking work consistent with the limitation; and

(iii) otherwise eligible.

Under these circumstances, the unemployment is considered to be due to a lack of employment opportunities and not due to an inability to work.

(b) Medical Verification.

When an individual has a physical or mental health limitation, medical information from a competent health care provider is one form of evidence used to determine the claimant's ability to work. The provider's opinion is presumed to be an accurate reflection of the claimant's ability to work, however, the provider's opinion may be overcome by other competent evidence. The Department will determine if medical verification is required.

(3) Temporary Disability.

(a) Employer Attached.

A claimant is not eligible for benefits if the claimant is not able to work at his or her regular job due to a temporary disability and the employer has agreed to allow the claimant to return to the job when he or she is able to work. In this case, the claimant's unemployment is due to an inability to work rather than lack of available work. The claimant is not eligible for benefits even if there is other work the claimant is capable of performing with the disability. If a claimant is precluded from working due to Federal Aviation Administration regulations because of pregnancy, and the employer has agreed to allow the claimant to return to the job, the claimant is considered to be on a medical leave of absence and is not eligible for benefits.

(b) No Employer Attachment.

If the claimant has been separated from employment with no expectation of being allowed to return when he or she is again able to work, or the temporary disability occurred after becoming unemployed, benefits may be allowed even though the claimant cannot work in his or her regular occupation if the claimant can show there is work the claimant is capable of performing and for which the claimant reasonably could be hired. The claimant must also meet other eligibility requirements including making an active work search.

(4) Hospitalization.

A claimant is unable to work if hospitalized unless the hospitalization is on an out-patient basis or the claimant is in a rehabilitation center or care facility and there is independent verification that the claimant is not restricted from immediately working full-time. Immediately following hospitalization, a rebuttable presumption of physical inability continues to exist for the period of time needed for recuperation.

(5) Workers' Compensation.

(a) Compensation for Lost Wages.

A claimant is not eligible for unemployment benefits while receiving temporary total disability workers' compensation benefits.

(b) Subsequent Awards.

The Department may require that a claimant who is receiving permanent partial disability benefits from workers' compensation show that he or she is able and available for full-time work and can reasonably expect to obtain full-time work even with the disability.

(c) Workers' compensation disability payments are not reportable as wages.

(6) Physical or Mental Health Limitation.

(a) A claimant who is not able to work full-time due to a physical or mental health limitation, may be considered eligible under this rule if:

(i) the claimant's base period employment was limited to part-time because of the claimant's physical or mental health limitations;

(ii) the claimant's prior part-time work was substantial. Substantial is defined as at least 50 percent of the hours customarily worked in the claimant's occupation;

(iii) the claimant is able to work at least as many hours as he or she worked prior to becoming unemployed;

(iv) there is work available which the claimant is capable of performing; and

(v) the claimant is making an active work search.

(b) The Department may require that the claimant establish ability by competent evidence.

**R994-403-112c. Available.**

(1) General Requirement.

The claimant must be available for full-time work. Any restrictions on availability, such as lack of transportation, domestic problems, school attendance, military obligations, church or civic activities, whether self-imposed or beyond the control of the claimant, lessen the claimant's opportunities to obtain suitable full-time work.

(2) Activities Which Affect Availability.

It is not the intent of the act to subsidize activities which interfere with immediate reemployment. A claimant is not considered available for work if the claimant is involved in any activity which cannot be immediately abandoned or interrupted so that the claimant can seek and accept full-time work.

(a) Activities Which May Result in a Denial of Benefits.

For purposes of establishing weekly eligibility for benefits, a claimant who is engaged in an activity for more than half the normal workweek that would prevent the claimant from working, is presumed to be unavailable and therefore ineligible for benefits. The normal workweek means the normal workweek in the claimant's occupation. This presumption can be overcome by a showing that the activity did not preclude the immediate acceptance of full-time work, referrals to work, contacts from the Department, or an active search for work. When a claimant is away from his or her residence but has made arrangements to be contacted and can return quickly enough to respond to any opportunity for work, the presumption of unavailability may be overcome. The conclusion of unavailability can also be overcome in the following circumstances:

(i) Definite Offer of Work or Recall.

If the claimant has accepted a definite offer of full-time employment or has a date of recall to begin within three weeks, the claimant does not have to demonstrate further availability except as provided in subparagraphs (B) and (C) of this section and is not required to seek other work. Because the statute requires that a claimant be able to work, if a claimant is unable to work for more than one-half of any week due to illness or hospitalization, benefits will be denied.

(ii) Jury Duty or Court Attendance.

Jury duty or court attendance is a public duty required by law and a claimant will not be denied benefits if he or she is unavailable because of a lawfully issued summons to appear as

a witness or to serve on a jury unless the claimant:

- (A) is a party to the action;
- (B) had employment which he or she was unable to continue or accept because of the court service; or
- (C) refused or delayed an offer of suitable employment because of the court service.

The time spent in court service is not a personal service performed under a contract of hire and therefore is not considered employment.

- (b) Activities Which Will Result in a Denial of Benefits.
  - (i) Refusal of Work.

When a claimant refuses any suitable work, the claimant is considered unavailable. Even though the claimant had valid reasons for not accepting the work, benefits will not be allowed for the week or weeks in which the work was available. Benefits are also denied when a claimant fails to be available for job referrals or a call to return to work under reasonable conditions consistent with a previously established work relationship. This includes referral attempts from a temporary employment service, a school district for substitute teaching, or any other employer for which work is "on-call."

(ii) Failure to Perform All Work During the Week of Separation.

(A) Benefits will be denied for the week in which separation from employment occurs if the claimant's unemployment was caused because the claimant was not able or available to do his or her work. In this circumstance, there is a presumption of continued inability or unavailability and an indefinite disqualification will be assessed until there is proof of a change in the conditions or circumstances.

(B) If the claimant was absent from work during the last week of employment and the claimant was not paid for the day or days of absence, benefits will be denied for that week. The claimant will be denied benefits under this section regardless of the length of the absence.

- (3) Hours of Availability.
  - (a) Full-Time.

Except as provided in R994-403-111c(5), in order to meet the availability requirement, a claimant must be ready and willing to immediately accept full-time work. Full-time work generally means 40 hours a week but may vary due to customary practices in an occupation. If the claimant was last employed less than full-time, there is a rebuttable presumption that the claimant continues to be available for only part-time work.

- (b) Other Than Normal Work Hours.

If the claimant worked other than normal work hours and the work schedule was adjusted to accommodate the claimant, the claimant cannot continue to limit his or her hours of availability even if the claimant was working 40 hours or more. The claimant must be available for full-time work during normal work hours as is customary for the industry.

- (4) Type of Work and Wage Restrictions.

(a) The claimant must be available for work that is considered suitable based on the length of time he or she has been unemployed as provided in R994-405-306.

- (b) Contract Obligation.

If a claimant is restricted due to a contractual obligation from competing with a former employer or accepting employment in the claimant's regular occupation, the claimant is not eligible for benefits unless the claimant can show that he or she:

- (i) is actively seeking work outside the restrictions of the noncompete contract;
- (ii) has the skills and/or training necessary to obtain that work; and
- (iii) can reasonably expect to obtain that employment.

- (5) Employer/Occupational Requirements.

If the claimant does not have the license or special equipment required for the type of work the claimant wants to

obtain, the claimant cannot be considered available for work unless the claimant is actively seeking other types of work and has a reasonable expectation of obtaining that work.

- (6) Temporary Availability.

When an individual is limited to temporary work because of anticipated military service, school attendance, travel, church service, relocation, a reasonable expectation of recall to a former employer for which the claimant is not in deferral status, or any other anticipated restriction on the claimant's future availability, availability is only established if the claimant is willing to accept and is actively seeking temporary work. The claimant must also show there is a realistic expectation that there is temporary work in the claimant's occupation, otherwise the claimant may be required to accept temporary work in another occupation. Evidence of a genuine desire to obtain temporary work may be shown by registration with and willingness to accept work with temporary employment services.

- (7) Distance to Work.

- (a) Customary Commuting Patterns.

A claimant must show reasonable access to public or private transportation, and a willingness to commute within customary commuting patterns for the occupation and community.

- (b) Removal to a Locality of Limited Work Opportunities.

A claimant who moves from an area where there are substantial work opportunities to an area of limited work opportunities must demonstrate that the new locale has work for which the claimant is qualified and which the claimant is willing to perform. If the work is so limited in the new locale that there is little expectation the claimant will become reemployed, the continued unemployment is the result of the move and not the failure of the labor market to provide employment opportunities. In that case, the claimant is considered to have removed himself or herself from the labor market and is no longer eligible for benefits.

- (8) School.

(a) A claimant attending school who has not been granted Department approval for a deferral must still meet all requirements of being able and available for work and be actively seeking work. Areas that need to be examined when making an eligibility determination with respect to a student include reviewing a claimant's work history while attending school, coupled with his or her efforts to secure full-time work. If the hours of school attendance conflict with the claimant's established work schedule or with the customary work schedule for the occupation in which the claimant is seeking work, a rebuttable presumption is established that the claimant is not available for full-time work and benefits will generally be denied. An announced willingness on the part of a claimant to discontinue school attendance or change his or her school schedule, if necessary, to accept work must be weighed against the time already spent in school as well as the financial loss the claimant may incur if he or she were to withdraw.

(b) A presumption of unavailability may also be raised if a claimant moves, for the purpose of attending school, from an area with substantial labor market to a labor market with more limited opportunities. In order to overcome this presumption, the claimant must demonstrate there is full-time work available in the new area which the claimant could reasonably expect to obtain.

- (9) Employment of Youth.

Title 34, Chapter 23 of the Utah Code imposes limitations on the number of hours youth under the age of 16 may work. The following limitations do not apply if the individual has received a high school diploma or is married. Claimants under the age of 16 who do not provide proof of meeting one of these exceptions are under the following limitations whether or not in student status because they have a legal obligation to attend school. Youth under the age of 16 may not work:

(a) during school hours except as authorized by the proper school authorities;

(b) before or after school in excess of 4 hours a day;

(c) before 5:00 a.m. or after 9:30 p.m. on days preceding school days;

(d) in excess of 8 hours in any 24-hour period; or

(e) more than 40 hours in any week.

(10) Domestic Obligations.

When a claimant has an obligation to care for children or other dependents, the claimant must show that arrangements for the care of those individuals have been made for all hours that are normally worked in the claimant's occupation and must show a good faith, active work search effort.

#### **R994-403-113c. Work Search.**

(1) General Requirements.

Unless the claimant qualifies for a work search deferral pursuant to R994-403-108b, a claimant must make an active, good faith effort to secure employment each and every week for which benefits are claimed. Efforts to find work must be judged by the standards of the occupation and the community.

(2) Active.

An active effort to look for work means that the claimant must make a minimum of four new job contacts each week unless the claimant is otherwise directed by the unemployment division. Those contacts should be made with employers that hire people in the claimant's occupation or occupations for which the claimant has work experience or would otherwise be qualified and willing to accept employment. If the claimant fails to make four new job contacts during the first week filed, involvement in job development activities that are likely to result in employment will be accepted as reasonable, active job search efforts.

(3) Good Faith.

Good faith efforts are defined as those methods which a reasonable person, anxious to return to work, would make if desirous of obtaining employment. A good faith effort extends beyond simply making a specific number of contacts to satisfy the Department requirement.

#### **R994-403-114c. Claimant's Obligation to Prove Weekly Eligibility.**

The claimant:

(1) has the burden of proving that he or she is able, available, and actively seeking full-time work;

(2) must report any information that might affect eligibility;

(3) must provide any information requested by the Department which is required to establish eligibility;

(4) must immediately notify the Department if the claimant is incarcerated; and

(5) must keep a detailed record of his or her weekly job contacts so that the Department can verify the contact at any time for an audit or eligibility review. A detailed record includes the following information:

(a) the date of the contact,

(b) the name of the employer or other identifying information such as a job reference number,

(c) employer contact information such as the employer's mailing address, phone number, email address, or website address, and name of the person contacted if available,

(d) details of the position for which the claimant applied,

(e) method of contact, and

(f) results of the contact.

#### **R994-403-115c. Period of Ineligibility.**

(1) Eligibility for benefits is established on a weekly basis. If the Department has determined that the claimant is not able or available for work, and it appears the circumstances will likely

continue, an indefinite disqualification will be assessed, and the claimant must requalify by showing that he or she is able and available for work.

(2) If the Department has reason to believe a claimant has not made a good faith effort to seek work, or the Department is performing a routine audit of a claim, the Department can only require that the claimant provide proof of work search activities for the four weeks immediately preceding the Department's request. However, if the claimant admits he or she did not complete the work search activities required under this rule, the Department can disqualify a claimant for more than four weeks. The claimant will be disqualified for any week during which he or she fails to provide the information required under R994-403-114c(5).

(3) If the Department seeks verification of a job contact from an employer, the claimant will only be disqualified if the employer provides clear and convincing evidence that there was no contact.

(4) The claimant will be disqualified for all weeks in which it is discovered that the claimant was not able or available to accept work without regard to the four-week limitation.

#### **R994-403-116e. Eligibility Determinations: Obligation to Provide Information.**

(1) The Department cannot make proper determinations regarding eligibility unless the claimant and the employer provide correct information in a timely manner. Claimants and employers therefore have a continuing obligation to provide any and all information and verification which may affect eligibility.

(2) 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 claimant's eligibility.

#### **R994-403-117e. Claimant's Responsibility.**

(1) The claimant must provide all of the following:

(a) his or her correct name, social security number, citizenship or alien status, address and date of birth;

(b) the correct business name and address for each base period employer and for each employer subsequent to the base period;

(c) information necessary to determine eligibility or continuing eligibility as requested on the initial claim form, or on any other Department form including work search information. This includes information requested through the use of an interactive voice response system or the Internet;

(d) the reasons for the job separation from base period and subsequent employers when filing a new claim, requalifying for a claim, or any time the claimant is separated from employment during the benefit year. The Department may require a complete statement of the circumstances precipitating the separation; and

(e) any other information requested by the Department. The Claimant is required to return telephone calls and respond to requests that are made electronically, verbally, or by U.S. Mail. Generally, claimants will be given 48 hours, excluding hours during weekends or legal holidays, to respond to requests made verbally or electronically and five (5) full business days to respond to requests mailed through the U. S. Mail.

(2) Claimants are also required to report, at the time and place designated, for an in-person interview with a Department representative if so requested.

(3) By filing a claim for benefits, the claimant has given consent to the employer to release to the Department all information necessary to determine eligibility even if the information is confidential.

#### **R994-403-118e. Disqualification Periods if a Claimant Fails to Provide Information.**

(1) A claimant is not eligible for benefits if the Department does not have sufficient information to determine eligibility. Except as provided in subsection (5) of this section, a claimant who fails to provide necessary information without good cause is disqualified from the receipt of unemployment benefits until the information is received by the Department. Good cause is limited to circumstances where the claimant can show that the reasons for the delay in filing were due to circumstances beyond the claimant's control or were compelling and reasonable.

(2) If insufficient or incorrect information is provided when the initial claim is filed, the disqualification will begin with the effective date of the claim.

(3) If a potentially disqualifying issue is identified as part of the weekly certification process and the claimant fails to provide the information requested by the Department, the disqualification will begin with the Sunday of the week for which eligibility could not be determined.

(4) If insufficient or incorrect information is provided as part of a review of payments already made, the disqualification will begin with the week in which the response to the Department's request for information is due.

(5) The disqualification will continue through the Saturday prior to the week in which the claimant provides the information. The denial can be waived if the Department determines the claimant complied within 7 calendar days of the date the decision was issued.

**R994-403-119e. Overpayments Resulting from a Failure to Provide Information.**

(1) Any overpayment resulting from the claimant's failure to provide information, or based on incorrect information provided by the claimant, will be assessed as a fault overpayment in accordance with Subsection 35A-4-406(4) or as a fraud overpayment in accordance with Subsection 35A-4-405(5).

(2) Any overpayment resulting from the employer's failure to provide information will be assessed as a nonfault overpayment in accordance with Subsection 35A-4-406(5).

(3) If more than one party was at fault in the creation of an overpayment, the overpayment will be assessed as:

(a) a fraud or fault overpayment if the claimant was more at fault than the other parties; or

(b) a nonfault overpayment if the employer and/or the Department was more at fault, or if the parties were equally at fault.

**R994-403-120e. Employer's Responsibility.**

Employers must provide wage, employment, and separation information and complete all forms and reports as requested by the Department. The employer also must return telephone calls from Department employees in a timely manner and answer all questions regarding wages, employment, and separations.

**R994-403-121e. Penalty for the Employer's Failure to Comply.**

(1) A claimant has the right to have a claim for benefits resolved quickly and accurately. An employer's failure to provide information in a timely manner results in additional expense and unnecessary delay.

(2) If an employer or agent fails to provide adequate information in a timely manner without good cause, the ALJ will determine on appeal that the employer has relinquished its rights with regard to the affected claim and is no longer a party in interest. The employer's appeal will be dismissed and the employer is liable for benefits paid.

(3) The ALJ may, in his or her discretion, choose to exercise continuing jurisdiction with respect to the case and subpoena or call the employer and claimant as witnesses to determine the claimant's eligibility. If, after reaching the merits,

the ALJ determines to reverse the initial decision and deny benefits, the employer is not eligible for relief of charges resulting from benefits overpaid to the claimant prior to the date of the ALJ's decision.

(4) In determining whether to exercise discretion and reach the merits, the ALJ may take into consideration:

(a) the flagrancy of the refusal or failure to provide complete and accurate information. An employer's or agent's refusal to provide information at the time of the initial Department determination on the grounds that it wants to wait and present its case before an ALJ, for instance, will be subject to the most severe penalty;

(b) whether or not the employer or agent has failed to provide complete and accurate information in the past or on more than one case; and

(c) whether the employer is represented by counsel or a professional representative. Counsel and professional representatives are responsible for knowing Department rules and are therefore held to a higher standard.

**R994-403-122e. Good Cause for Failure to Comply.**

If the employer or claimant has good cause for failing to provide the information in the time frame requested, no disqualification or penalty will be assessed. Good cause is limited to circumstances where the claimant or employer can show that the reasons for the delay in filing were due to circumstances that were compelling and reasonable or beyond the party's control.

**R994-403-123. Obligation of Department Employees.**

Employees of the Department are obligated, regardless of when the information is discovered, to bring to the attention of the proper Department representatives any information that may affect a claimant's eligibility for unemployment insurance benefits or information affecting the employer's contributions.

**R994-403-201. Department Approval for School Attendance - General Definition.**

(1) Unemployment insurance is not intended to subsidize schooling. However, it is recognized that training may be a practical way to reduce chronic and persistent unemployment due to a lack of work skills, job obsolescence or foreign competition. Even though the claimant is granted Department approval, the claimant must still be able to work. With Department approval, a claimant meets the availability requirement based on his or her school attendance and successful performance. With the exception of very short-term training, Department approval is intended for classroom training as opposed to on-the-job training. Department approval is to be used selectively and judiciously. It is not to be used as a substitute for selective placement, job development, on-the-job training, or other available programs.

(2) If a claimant is ineligible under 35A-4-403(1)(c) due to school attendance, Department approval will be considered.

(3) Department approval will be granted when required by state or federal law for specific training programs.

**R994-403-202. Qualifying Elements for Approval of Training.**

All of the following nine elements must be satisfied for a claimant to qualify for Department approval of training. Some of these elements will be waived or modified when required by state or federal law for specific training programs.

(1) The claimant's unemployment is chronic or persistent, or likely to be chronic or persistent, due to any one of the following three circumstances:

(a) A lack of basic work skills. A lack of basic work skills may not be established unless a claimant:

(i)(A) has a history of repeated unemployment attributable

to lack of skills and has no recent history of employment earning a wage substantially above the federal minimum wage or

(B) qualifies for Department sponsored training because the claimant meets the eligibility requirements for public assistance;

(ii) has had no formal training in occupational skills;

(iii) does not have skills developed over an extended period of time by training or experience; and

(iv) does not have a marketable degree from an institution of higher learning; or

(b) a change in the marketability of the claimant's skills has resulted due to new technology, or major reductions within an industry; or

(c) inability to continue working in occupations using the claimant's skills due to a verifiable, permanent physical or emotional disability,

(2) a claimant must have a reasonable expectation for success as demonstrated by:

(a) an aptitude for and interest in the work the claimant is being trained to perform, or course of study the claimant is pursuing; and

(b) sufficient time and financial resources to complete the training.

(3) The training is provided by an institution approved by the Department.

(4) The training is not available except in school. For example, on-the-job training is not available to the claimant.

(5) The length of time required to complete the training should generally not extend beyond 24 months.

(6) The training should generally be vocationally oriented unless the claimant has no more than two terms, quarters, semesters, or similar periods of academic training necessary to obtain a degree.

(7) There is a reasonable expectation of employment following completion of the training. Reasonable expectation means the claimant will find a job using the skills and education acquired while in training pursuant to a fair and objective projection of job market conditions expected to exist at the time of completion of the training.

(8) A claimant did not leave work to attend school even if the employer required the training for advancement or as a condition of continuing employment.

(9) The schooling is full-time, as defined by the training facility.

#### **R994-403-203. Extensions of Department Approval.**

Initial approval shall be granted, for the school term beginning with the week in which the attendance began, or the effective date of the claim, whichever is later. The Department may extend the approval if the claimant establishes proof of:

(1) satisfactory attendance;

(2) passing grades;

(3) continuance of the same course of study and classes originally approved; and

(4) compliance with all other qualifying elements.

#### **R994-403-204. Availability Requirements When Approval is Granted.**

(1) The work search and registration requirements for a claimant who is granted Department approval are found in R994-403-108b(1)(f). Once the claimant is actually in training, benefits will not be denied when work is refused as satisfactory attendance and progress in school serves as a substitute for the availability requirements of the act.

(2) Absences from school will not necessarily result in a denial of benefits during those weeks the claimant can demonstrate he or she is making up any missed school work and is still making satisfactory progress in school. Satisfactory progress is defined as passing all classes with a grade level

sufficient to qualify for graduation, licensing, or certification, as appropriate.

(3) A disqualification will be effective with the week the claimant knew or should have known he or she was not going to receive a passing grade in any of his or her classes or was otherwise not making satisfactory progress in school. It is the claimant's responsibility to immediately report any information that may indicate a failure to maintain satisfactory progress.

(4) The claimant must attend school full-time as defined by the educational institution. If a claimant discontinues school attendance, drops or changes any classes before the end of the term, Department approval may be terminated immediately. However, discontinuing a class that does not reduce the school credits below full-time status will not result in the termination of Department approval. Department approval may be reinstated during any week a claimant demonstrates, through appropriate verification, the claimant is again attending class regularly and making satisfactory progress.

(5) Notwithstanding any other provisions of this section, if the claimant was absent from school for more than one-half of the workweek due to illness or hospitalization, the claimant is considered to be unable to work and unemployment benefits will be denied for that week. A claimant has the responsibility to report any sickness, injury, or other circumstances that prevented him or her from attending school.

(6) A claimant is ineligible for Department approval if the claimant is retaking a class that was originally taken while receiving benefits under Department approval. However, if Department approval was denied during the time the course was originally in progress, approval may be reinstated to cover that portion of the course not previously subsidized if the claimant can demonstrate satisfactory progress.

#### **R994-403-205. Short-Term Training.**

Department approval may be granted even though a claimant has marketable skills and does not meet the requirements for Department approval as defined in R994-403-202 if the entire course of training is no longer than eight weeks and will enhance the claimant's employment prospects. A claimant will not be granted a waiver for training that is longer than eight weeks even if the claimant needs only eight weeks or less to complete the training. This is intended as a one-time approval per benefit year and may not be extended beyond eight weeks.

#### **R994-403-301. Requirements for Special Benefits.**

Some benefit programs, including Extended Benefits, have different availability and work search requirements. The rule governing work search for Extended Benefits is R994-402. Other special programs are governed by the act or federal law.

#### **R994-403-302. Foreign Travel.**

(1) Benefits will not be denied if the claimant is required to travel to seek, apply for, or accept work within the United States or in a foreign country where the claimant has authorization to work and where there is a reciprocal agreement. The trip itself must be for the purpose of obtaining work. There is a rebuttable presumption that the claimant is not available for work when the trip is extended to accommodate the claimant's personal needs or interests, and the extension is for more than one-half of the workweek.

(2) Unemployment benefits cannot be paid to a claimant located in a foreign country unless the claimant has authorization to work there and there is a reciprocal agreement concerning the payment of unemployment benefits with that foreign country.

(3) Unemployment benefits are intended, in part, to stimulate the economy of Utah and the United States and thus are expected to be spent in this country. A claimant who travels



to a foreign country must report to the Department that he or she is out of the country, even if it is for a temporary purpose and regardless of whether the claimant intends to return to the United States if work becomes available. Failure to inform the Department will result in a fraud overpayment for the weeks benefits were paid while the claimant was in a foreign country. The claimant may be eligible if the travel is to Canada but must notify the Department of that travel. Canada is the only country with which Utah has a reciprocal agreement. If the claimant travels to, but is not eligible to work in, Canada and fails to notify the Department of the travel, it will result in a fraud overpayment for the weeks benefits were paid while the claimant was in Canada.

**KEY: filing deadlines, registration, student eligibility,  
unemployment compensation**  
**May 30, 2017** 35A-4-403(1)  
**Notice of Continuation March 29, 2018**

**R994. Workforce Services, Unemployment Insurance.****R994-405. Ineligibility for Benefits.****R994-405-1. Determining the Reason for Separation.**

When a job ends and a claim is filed, the Department must determine the reason for the separation. If there is more than one separation from the same employer, eligibility for benefits will be based on the reason for the last separation occurring prior to the date the claim is filed. However, an existing prior denial of benefits which resulted in a disqualification based on a prior separation from the same employer, will continue until the claimant has earned six times the weekly benefit amount on the claim in which the disqualification took place.) Charge decisions will also be made on the last separation as provided in rule R994-307-101(1)(a)(i). A separation decision will be made and may affect eligibility even if the employer is not covered by the Act except no separation decision will be made on noncovered self employment cases.

**R994-405-2. Separations From a Temporary Help Company (THC).**

(1) THC is defined in R994-202-102. Because the THC is the employer, eligibility for benefits of employees of a THC and the THC's liability for claims is based on the reason for the separation from the THC and not the reason for the separation from the client company. Once the Department determines the type of separation, it will then use the following rules to determine eligibility:

- (a) R994-405-101 et seq. for a voluntary quit;
- (b) R994-405-201 et seq. for a discharge or reduction of force;
- (c) R994-405-210 et seq. for a discharge for a crime.

(2) If there is no contact between the claimant and the THC within a reasonable period of time after the assignment ends, the separation is considered a voluntary quit. A reasonable period of time is generally considered to be whatever is stipulated in the employment contract between the claimant and the THC but must be at least two business days.

(a) If it is an initial or reopened claim, the contact must be before the claim is filed or it is considered a voluntary quit.

(b) If the THC informs the claimant about the end of an assignment, the requirement for contact is considered to have been satisfied.

(3) If the claimant and the THC have the required contact and:

(a) the THC is willing to send the claimant out on future assignments, but no new work is offered, the separation is considered a reduction of force;

(b) the THC refuses to send the claimant out on any future assignments, the separation is considered a discharge;

(c) the THC suspends the claimant from future assignments for a specific period of time, the separation will be adjudicated as a discharge if the claimant files a claim during the suspension period. If the claim is filed after the suspension period is over, and no new work has been offered, the separation is considered a reduction of force; or

(d) the claimant refuses an offer for a new assignment, the job separation is a quit if the new assignment is similar to his or her previous assignments. The separation is a reduction of force and an offer of new work if the new assignment is substantially different from the previous assignments. The elements listed in R994-405-306 should be considered in determining if the new assignment is similar to past assignments.

(i) If the only work available is the assignment the claimant just left and the claimant refuses to return to that assignment, the separation is considered a voluntary quit.

(ii) If the claimant is no longer able to perform the type of work previously performed for the THC and the THC agrees to send the claimant out on work he or she is able to do when it is available, the separation is considered a quit and the THC may

be eligible for relief of charges.

**R994-405-3. Professional Employer Organizations (PEO).**

(1) PEO is defined in R994-202-106 and must be licensed pursuant to Sections 31A-40-301 through 306. PEOs are also known as employee leasing companies. PEOs are treated differently from a THC because the assignments are usually not of a temporary nature.

(2) When a client company contracts with a PEO, the PEO becomes the employer of the client company's employees. Because the client company is no longer the employer, a job separation has occurred. The job separation is a reduction of force and the client company is not eligible for relief of charges.

(3) When the contract between a PEO and a client company ends, a separation occurs. Regardless of the circumstances or which entity is the moving party, the affected employees are considered separated due to a reduction of force, and the PEO is not eligible for relief of charges. Any offers of work extended to affected employees subsequent to the termination of the contract shall be considered offers of new work and shall be adjudicated in accordance with 35A-4-405(3) and R994-405-301 et seq.

(4) If the contract between the client company and the PEO remains in effect and the claimant's assignment with the client company ends, the PEO, or the client company acting on the PEO's behalf, must provide written notice to the claimant instructing the claimant to contact the PEO within a reasonable time for a new assignment. A reasonable time to contact the PEO is generally considered to be two working days after the assignment ends. The written notice must be provided to the claimant when the assignment ends and must be provided even if the PEO has a contract with the claimant requiring the claimant to contact the PEO when an assignment ends.

(5) If the PEO or client company does not provide written notice as referenced in paragraph (4) of this section, unemployment benefits will be determined based on the reason the assignment with the client company ended.

(6) If the PEO provides the notice referenced in paragraph (4) of this section and the claimant contacts the PEO as instructed and:

(a) refuses a new work assignment that is similar to the claimant's previous assignments with the PEO, the job separation is a quit. The duties, wages, hours, and conditions of the new assignment will be considered in determining if the new assignment is similar to the previous assignments.

(b) refuses a new work assignment that is substantially different from the claimant's previous assignments, the job separation is a layoff and an offer of new work.

(c) the PEO has no new assignments, the job separation is a layoff.

(7) If the PEO does not intend to offer the claimant another assignment the PEO should not provide the written notice referenced in paragraph (4) of this section at the time of separation. If no notice is provided, the separation will be determined based on the reason for the separation from the client company.

(8) If the claimant does not contact the PEO after receiving notice given pursuant to paragraph (4) of this section, the job separation is a quit.

**R994-405-101. Voluntary Leaving (Quit) - General Information.**

(1) A separation is considered voluntary if the claimant was the moving party in ending the employment relationship. A voluntary separation includes leaving existing work, or failing to return to work after:

(a) an employer attached layoff which meets the requirements for a deferral under R994-403-108b(1)(c),

(b) a suspension, or

(c) a period of absence initiated by the claimant.  
 (2) Failing to renew an employment contract may also constitute a voluntary separation.

(3) Two standards must be applied in voluntary separation cases: good cause and equity and good conscience. If good cause is not established, the claimant's eligibility must be considered under the equity and good conscience standard.

#### **R994-405-102. Good Cause.**

To establish good cause, a claimant must show that continuing the employment would have caused an adverse effect which the claimant could not control or prevent. The claimant must show that an immediate severance of the employment relationship was necessary. Good cause is also established if a claimant left work which is shown to have been illegal or to have been unsuitable new work.

(1) Adverse Effect on the Claimant.

(a) Hardship.

The separation must have been motivated by circumstances that made the continuance of the employment a hardship or matter of concern, sufficiently adverse to a reasonable person so as to outweigh the benefits of remaining employed. There must have been actual or potential physical, mental, economic, personal or professional harm caused or aggravated by the employment. The claimant's decision to quit must be measured against the actions of an average individual, not one who is unusually sensitive.

(b) Ability to Control or Prevent.

Even though there is evidence of an adverse effect on the claimant, good cause will not be found if the claimant:

(i) reasonably could have continued working while looking for other employment,

(ii) had reasonable alternatives that would have made it possible to preserve the job like using approved leave, transferring, or making adjustments to personal circumstances, or,

(iii) did not give the employer notice of the circumstances causing the hardship thereby depriving the employer of an opportunity to make changes that would eliminate the need to quit. An employee with grievances must have made a good faith effort to work out the differences with the employer before quitting unless those efforts would have been futile.

(2) Illegal.

Good cause is established if the claimant was required by the employer to violate state or federal law or if the claimant's legal rights were violated, provided the employer was aware of the violation and refused to comply with the law.

(3) Unsuitable New Work.

Good cause may also be established if a claimant left new work which, after a short trial period, was unsuitable consistent with the requirements of the suitable work test in Section R994-405-306. The fact the claimant accepted a job does not necessarily make the job suitable. The longer a job is held, the more it tends to negate the argument that the job was unsuitable. After a reasonable period of time a contention the quit was motivated by unsuitability of the job is generally no longer persuasive. The Department has an affirmative duty to determine whether the employment was suitable, even if the claimant does not raise suitability as an issue.

#### **R994-405-103. Equity and Good Conscience.**

(1) If the good cause standard has not been met, the equity and good conscience standard must be considered in all cases except those involving a quit to accompany, follow, or join a spouse as provided in R994-405-104. If there are mitigating circumstances, and a denial of benefits would be unreasonably harsh or an affront to fairness, benefits may be allowed under the provisions of the equity and good conscience standard if the claimant:

(a) acted reasonably.

The claimant acted reasonably if the decision to quit was logical, sensible, or practical. There must be evidence of circumstances which, although not sufficiently compelling to establish good cause, would have motivated a reasonable person to take similar action, and,

(b) demonstrated a continuing attachment to the labor market.

A continuing attachment to the labor market is established if the claimant took positive actions which could have resulted in employment during the first week subsequent to the separation and each week thereafter. An active work search, as provided in R994-403-113c, should have commenced immediately after the separation whether or not the claimant received specific work search instructions from the Department. Failure to show an immediate attachment to the labor market may not be disqualifying if it was not practical for the claimant to seek work. Some circumstances that may interfere with an immediate work search include illness, hospitalization, incarceration, or other circumstances beyond the control of the claimant provided a work search commenced as soon as practical.

#### **R994-405-104. Quit to Accompany, Follow or Join a Spouse.**

(1) Except as provided in subsection (3) if a claimant quit work to join, accompany, or follow a spouse or significant other to a new locality, good cause is not established. Furthermore, the equity and good conscience standard is not to be applied in this circumstance. It is the intent of this provision to deny benefits even though a claimant may have faced extremely compelling circumstances including the cost of maintaining two households and the desire to keep the family intact. If the claimant's employment is contingent on the spouse's military assignment and the spouse is reassigned, the separation will be considered a discharge.

(2) Quitting to get married is also disqualifying as provided in R994-405-107(7)(a).

(3)(a) A claimant who quits to accompany or follow his or her spouse to a new locality can establish good cause for quitting if the claimant can show all of the following:

(i) the claimant's spouse is a member of the United States armed forces and has been relocated by a full time assignment scheduled to last at least 180 days while on active duty as defined in 10 U.S.C. Sec. 101(d)(1) or active guard or reserve duty as defined in 10 U.S.C. Sec. 101(d)(6),

(ii) it is impractical for the claimant to commute to the previous work from the new locality, and

(iii) the claimant otherwise meets and follows the eligibility and reporting requirements including R994-403-112c(2)(a)(i).

(b) A claimant who is eligible under this subsection will be denied benefits for the limited period of time the claimant could have continued working up to 15 days before the scheduled start date of the spouse's active duty assignment as it is considered to be a failure to accept all available work as required under subsection 35A-4-403(1)(c).

(c) This subsection only applies to claims filed or reopened on or after May 6, 2012.

#### **R994-405-105. Burden of Proof in a Quit.**

The claimant was the moving party in a voluntary separation, and is the best source of information with respect to the reasons for the quit. The claimant has the burden to establish that the elements of good cause or of equity and good conscience have been met. The failure of the claimant to provide information will not necessarily result in a ruling favorable to the employer. If the claimant quit unsuitable new work, the burden of proof as described in R994-405-308 applies.

**R994-405-106. Quit or Discharge.****(1) Refusal to Follow Instructions.**

If the claimant refused or failed to follow reasonable requests or instructions, and knew the loss of employment would result, the separation is a quit.

**(2) Leaving Prior to Effective Date of Termination.**

(a) If a claimant leaves work prior to the date of an impending reduction of force, the separation is a quit. Notice of an impending layoff does not establish good cause for leaving work. However, the duration of available work may be a factor in considering whether a denial of benefits would be contrary to equity and good conscience. If the claimant is not disqualified for quitting benefits will be denied for the limited period of time the claimant could have continued working, as there was a failure to accept all available work as required under Subsection 35A-4-403(1)(c).

(b) If the claimant quit to avoid a disqualifying discharge the separation will be adjudicated as a discharge.

**(3) Leaving Work Because of a Disciplinary Action.**

If the disciplinary action or suspension was reasonable, leaving work rather than submitting to the discipline, or failing to return to work at the end of the suspension period, is considered a quit unless the claimant was previously disqualified as a result of the suspension.

**(4) Leave of Absence.**

If a claimant takes a leave of absence for any reason and files a claim while on such leave from the employer, the claimant will be considered unemployed and the separation is adjudicated as a quit, even though there still may be an attachment to the employer. If a claimant fails to return to work at the end of the leave of absence, the separation is a quit.

**(5) Leaving Due to a Remark or Action of the Employer or a Coworker.**

If a claimant hears rumors or other information suggesting he or she is to be laid off or discharged, the claimant has the responsibility to confirm, prior to leaving, that the employer intended to end the employment relationship. The claimant also has a responsibility to continue working until the date of an announced discharge. If the claimant failed to do so and if the employer did not intend to discharge or lay off the claimant, the separation is a quit.

**(6) Resignation Intended.****(a) Quit.**

If a claimant gives notice of his or her intent to leave at a future date and is paid regular wages through the announced resignation date, the separation is a quit even if the claimant was relieved of work responsibilities prior to the effective date of the resignation. A separation is also a quit if a claimant announces an intent to quit but agrees to continue working for an indefinite period as determined by the employer, even though the date of separation was determined by the employer. If a claimant resigns but later decides to stay and attempts to remain employed, the reasonableness of the employer's refusal to continue the employment is the primary factor in determining if the claimant quit or was discharged. For example, if the employer had already hired a replacement, or taken other action because of the claimant's impending quit, it may not be practical for the employer to allow the claimant to rescind the resignation, and the separation is a quit.

**(b) Discharge.**

If a claimant submitted a resignation to be effective at a definite future date, but was relieved of work responsibilities and was not paid regular wages through the balance of the notice period, the separation is considered a discharge as the employer was the moving party in determining the final date of employment. Merely assigning vacation pay not previously assigned to the notice period does not make the separation a quit.

**(7) If an employer tells a claimant it intends to discharge**

the claimant but allows the claimant to stay at work until he or she finds another job and the claimant decides to leave before finding another job, the separation is a quit. Good cause may be established if it would be unreasonable to require a claimant to remain employed after the employer has expressed its intent to discharge him or her.

**R994-405-107. Examples of Reasons for Quitting.****(1) Prospects of Other Work.**

Good cause is established if, at the time of separation, the claimant had a definite and immediate assurance of another job or self-employment that was reasonably expected to be full-time and permanent. However, if the new work is later determined to have been unsuitable and it is apparent the claimant knew, or should have known, about the unsuitability of the new work, but quit the first job and subsequently quit the new job, a disqualification will be assessed from the time the claimant quit the first job unless the claimant has purged the disqualification through earnings received while on the new job.

If, after giving notice but prior to leaving the first job, the claimant learns the new job will not be available when promised, permanent, full-time, or suitable, good cause may be established if the claimant immediately attempted to rescind the notice, unless such an attempt would have been futile.

(a) A definite assurance of another job means the claimant has been in contact with someone with the authority to hire, has been given a definite date to begin working and has been informed of the employment conditions.

(b) An immediate assurance of work generally means the prospective job will begin within two weeks from the last day the claimant was scheduled to work on the former job. Benefits will be denied for failure to accept all available work from the prior employer under the provisions of Subsection 35A-4-403(1)(c) if the claimant files during the period between the two jobs.

**(2) Reduction of Hours.**

The reduction of an employee's working hours generally does not establish good cause for leaving a job. However, in some cases, a reduction of hours may result in personal or financial hardship so severe the circumstances justify leaving.

**(3) Personal Circumstances.**

There may be personal circumstances that are sufficiently compelling or create sufficient hardship to establish good cause for leaving work, provided the claimant made a reasonable attempt to make adjustments or find alternatives prior to quitting.

**(4) Leaving to Attend School.**

Although leaving work to attend school may be a logical decision from the standpoint of personal advancement, it is not compelling or reasonable, within the meaning of the Act.

**(5) Religious Beliefs.**

To support an award of benefits following a voluntary separation due to religious beliefs, the work must conflict with a sincerely held religious or moral conviction. If a claimant was not required to violate such religious beliefs, quitting is not compelling or reasonable within the meaning of the Act. A change in the job requirements, such as requiring an employee to work on the employee's day of religious observance when such work was not agreed upon as a condition of hire, may establish good cause for leaving a job if the employer is unwilling to make adjustments.

**(6) Transportation.**

If a claimant quits a job due to a lack of transportation, good cause may be established if the claimant has no other reasonable transportation options available. However, an availability issue may be raised in such a circumstance. If a move resulted in an increased distance to work beyond normal commuting patterns, the reason for the move, not the distance to the work, is the primary factor to consider when adjudicating

the separation.

(7) Marriage.

(a) Marriage is not considered a compelling or reasonable circumstance, within the meaning of the Act, for quitting employment. Therefore, if the claimant quit to get married, benefits will be denied even if the new residence is beyond a reasonable commuting distance from the claimant's former place of employment.

(b) If the employer has a rule requiring the separation of an employee who marries a coworker, the separation is a discharge even if the employer allowed the couple to decide who would leave.

(8) Health or Physical Condition.

(a) Although it is not essential for the claimant to have been advised by a physician to quit, a contention that health problems required the separation must be supported by competent evidence. Even if the work caused or aggravated a health problem, if there were alternatives, such as treatment, medication, or altered working conditions to alleviate the problem, good cause for quitting is not established.

(b) If the risk to the health or safety of the claimant was shared by all those employed in the particular occupation, it must be shown the claimant was affected to a greater extent than other workers. Absent such evidence, quitting was not reasonable.

(9) Retirement and Pension.

Voluntarily leaving work solely to accept retirement benefits is not a compelling reason for quitting, within the meaning of the Act. Although it may have been reasonable for a claimant to take advantage of a retirement benefit, payment of unemployment benefits in this circumstance is not consistent with the intent of the Unemployment Insurance program, and a denial of benefits is not contrary to equity and good conscience.

(10) Sexual Harassment.

(a) A claimant may have good cause for leaving if the quit was due to discriminatory and unlawful sexual harassment, provided the employer was given a chance to take necessary action to stop the objectionable conduct. If it would have been futile to complain, as when the owner or top manager of the employer company is causing the harassment, the requirement that the employer be given an opportunity to stop the conduct is not necessary. Sexual harassment is a form of sex discrimination prohibited by Title VII of the United States Code and the Utah Anti-Discrimination Act.

(b) "Sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(i) submission to the conduct is either an explicit or implicit term or condition of employment, or

(ii) submission to or rejection of the conduct is used as a basis for an employment decision affecting the person, or

(iii) the conduct has a purpose or effect of substantially interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment.

(c) Inappropriate behavior which has sexual connotation but does not meet the test of sexual discrimination is insufficient to establish good cause for leaving work.

(11) Discrimination.

A claimant may have good cause for leaving if the quit was due to prohibited discrimination, provided the employer was given a chance to take necessary action to stop the objectionable conduct. If it would have been futile to complain, as when the owner or top manager of the employer company is the cause of the discrimination, the requirement that the employer be given an opportunity to stop the conduct is not necessary. It is a violation of federal law to discriminate against employees regarding compensation, terms, conditions, or privileges of employment, because of race, color, religion, sex, age or national origin; or to limit, segregate, or classify employees in

any way which would deprive or tend to deprive them of employment opportunities or otherwise adversely affect their employment status because of race, color, religion, sex, age or national origin.

(12) Voluntary Acceptance of Layoff.

If the employer wishes to reduce its workforce and gives the employees the option to volunteer for the layoff, those who do volunteer are separated due to reduction of force regardless of incentives.

**R994-405-108. Effective Date of Disqualification and Period of Disqualification.**

A disqualification based on a job separation begins the Sunday of the week in which the job separation took place. If the claimant did not file for benefits the week of the separation, the disqualification begins with the effective date of the new or reopened claim. The disqualification ends when the claimant earns requalifying wages equal to six times his or her WBA in bona fide covered employment as defined in R994-201-101(9). The WBA used to determine requalifying wages under this section is the WBA of the original claim. A disqualification that begins in one benefit year will continue into a new benefit year unless the claimant has earned requalifying wages. Severance or vacation pay cannot be used as requalifying wages.

**R994-405-109. Proximate Cause in a Quit.**

The claimant must show a relationship between the reason or reasons for quitting both as to cause and time. If the claimant did not quit immediately after becoming aware of the adverse conditions which led to the decision to quit, a presumption arises that the claimant quit for other reasons. The presumption may be overcome by showing the delay was due to the claimant's reasonable attempts to cure the problem.

**R994-405-201. Discharge - General Definition.**

A separation is a discharge if the employer was the moving party in determining the date the employment ended. Benefits will be denied if the claimant was discharged for just cause or for an act or omission in connection with employment, not constituting a crime, which was deliberate, willful, or wanton and adverse to the employer's rightful interest. However, not every legitimate cause for discharge justifies a denial of benefits. A just cause discharge must include some fault on the part of the claimant. A reduction of force is considered a discharge without just cause.

**R994-405-202. Just Cause.**

To establish just cause for a discharge, each of the following three elements must be satisfied:

(1) Culpability.

The conduct causing the discharge must be so serious that continuing the employment relationship would jeopardize the employer's rightful interest. If the conduct was an isolated incident of poor judgment and there was no expectation it would be continued or repeated, potential harm may not be shown. The claimant's prior work record is an important factor in determining whether the conduct was an isolated incident or a good faith error in judgment. An employer might not be able to demonstrate that a single violation, even though harmful, would be repeated by a long-term employee with an established pattern of complying with the employer's rules. In this instance, depending on the seriousness of the conduct, it may not be necessary for the employer to discharge the claimant to avoid future harm.

(2) Knowledge.

The claimant must have had knowledge of the conduct the employer expected. There does not need to be evidence of a deliberate intent to harm the employer; however, it must be shown the claimant should have been able to anticipate the

negative effect of the conduct. Generally, knowledge may not be established unless the employer gave a clear explanation of the expected behavior or had a written policy, except in the case of a violation of a universal standard of conduct. A specific warning is one way to show the claimant had knowledge of the expected conduct. After a warning the claimant should have been given an opportunity to correct the objectionable conduct. If the employer had a progressive disciplinary procedure in place at the time of the separation, it generally must have been followed for knowledge to be established, except in the case of very severe infractions, including criminal actions.

(3) Control.

(a) The conduct causing the discharge must have been within the claimant's control. Isolated instances of carelessness or good faith errors in judgment are not sufficient to establish just cause for discharge. However, continued inefficiency, repeated carelessness or evidence of a lack of care expected of a reasonable person in a similar circumstance may satisfy the element of control if the claimant had the ability to perform satisfactorily.

(b) The Department recognizes that in order to maintain efficiency it may be necessary to discharge workers who do not meet performance standards. While such a circumstance may provide a basis for discharge, this does not mean benefits will be denied. To satisfy the element of control in cases involving a discharge due to unsatisfactory work performance, it must be shown the claimant had the ability to perform the job duties in a satisfactory manner. In general, if the claimant made a good faith effort to meet the job requirements but failed to do so due to a lack of skill or ability and a discharge results, just cause is not established.

**R994-405-203. Burden of Proof in a Discharge.**

In a discharge, the employer initiates the separation and therefore has the burden to prove there was just cause for discharging the claimant. The failure of the employer to provide information will not necessarily result in a ruling favorable to the claimant. Interested parties have the right to rebut information contrary to their interests.

**R994-405-204. Quit or Discharge.**

The circumstances of the separation as found by the Department determine whether it was a quit or discharge. The conclusions on the employer's records, the separation notice, or the claimant's report are not controlling.

(1) Discharge Before Effective Date of Resignation.

(a) Discharge.

If a claimant notifies the employer of an intent to leave work on a definite date, and the employer ends the employment relationship prior to that date, the separation is a discharge unless the claimant is paid through the resignation date. Unless there is some other evidence of disqualifying conduct, benefits will be awarded.

(b) Quit.

If the claimant gives notice of an intent to leave work on a particular date and is paid regular wages through the announced resignation date, the separation is a quit even if the claimant was relieved of work responsibilities prior to the effective date of resignation. A separation is also a quit if a claimant announces an intent to quit but agrees to continue working for an indefinite period, even though the date of separation is determined by the employer. The claimant is not considered to have quit merely by saying he or she is looking for a new job. If a claimant resigns but later decides to stay and announces an intent to remain employed, the reasonableness of the employer's refusal to continue the employment is the primary factor in determining whether the claimant quit or was discharged. If the employer had already hired a replacement, or had taken other action because of the claimant's impending quit, it may not be practical

for the employer to allow the claimant to rescind the resignation, and it would be held the separation was a quit.

(2) Leaving in Anticipation of Discharge.

If a claimant leaves work in anticipation of a possible discharge and if the reason for the discharge would not have been disqualifying, the separation is a quit. A claimant may not escape a disqualification under the discharge provisions, Subsection 35A-4-405(2)(a), by quitting to avoid a discharge that would result in a denial of benefits. In this circumstance the separation is considered a discharge.

(3) Refusal to Follow Instructions.

If the claimant refused or failed to follow reasonable requests or instructions, and knew the loss of employment would result, the separation is a quit.

**R994-405-205. Disciplinary Suspension.**

When a claimant is placed on a disciplinary suspension, the definition of being unemployed may be satisfied. If a claimant files during the suspension period, the matter will be adjudicated as a discharge, even though the claimant may have an attachment to the employer and may expect to return to work. A suspension that is reasonable and necessary to prevent potential harm to the employer will generally result in a disqualification if the elements of knowledge and control are established. If the claimant fails to return to work at the end of the suspension period, the separation is a voluntary quit and may then be adjudicated under Subsection 35A-4-405(1), if benefits had not been previously denied.

**R994-405-206. Proximate Cause - Relation of the Offense to the Discharge.**

(1) The cause for discharge is the conduct that motivated the employer to make the decision to discharge the claimant. If a separation decision has been made, it is generally demonstrated by giving notice to the claimant. Although the employer may learn of other offenses following the decision to terminate the claimant's services, the reason for the discharge is limited to the conduct the employer was aware of prior to making the separation decision. If an employer discharged a claimant because of preliminary evidence, but did not obtain "proof" of the conduct until after the separation notice was given, it may still be concluded the discharge was caused by the conduct the employer was investigating.

(2) If the discharge did not occur immediately after the employer became aware of an offense, a presumption arises that there were other reasons for the discharge. The relationship between the offense and the discharge must be established both as to cause and time. The presumption that a particular offense was not the cause of the discharge may be overcome by showing the delay was necessary to accommodate further investigation, arbitration or hearings related to the claimant's conduct. If a claimant files for benefits while a grievance or arbitration process is pending, the Department shall make a decision based on the best information available. The Department's decision is not binding on the grievance process nor is the decision of an arbitrator binding upon the Department. If an employer elects to reduce its workforce and uses a claimant's prior conduct as the criteria for determining who will be laid off, the separation is a reduction of force.

**R994-405-207. In Connection with Employment.**

Disqualifying conduct is not limited to offenses that take place on the employer's premises or during business hours. However, it is necessary that the offense be connected to the employment in such a manner that it is a subject of legitimate and significant concern to the employer. Employers generally have the right to expect that employees will refrain from acts detrimental to the business or that would bring dishonor to the business name or institution. Legitimate interests of employers

include: goodwill, efficiency, employee morale, discipline, honesty and trust.

#### **R994-405-208. Examples of Reasons for Discharge.**

In the following examples, the basic elements of just cause must be considered in determining eligibility for benefits.

(1) Violation of Company Rules.

If a claimant violates a reasonable employment rule and just cause is established, benefits will be denied.

(a) An employer has the prerogative to establish and enforce work rules that further legitimate business interests. However, rules contrary to general public policy or that infringe upon the recognized rights and privileges of individuals may not be reasonable. If a claimant believes a rule is unreasonable, the claimant generally has the responsibility to discuss these concerns with the employer before engaging in conduct contrary to the rule, thereby giving the employer an opportunity to address those concerns. When rules are changed, the employer must provide appropriate notice and afford workers a reasonable opportunity to comply.

(b) If an employment relationship is governed by a formal employment contract or collective bargaining agreement, just cause may only be established if the discharge is consistent with the provisions of the contract.

(c) Habitual offenses may not constitute disqualifying conduct if the acts were condoned by the employer or were so prevalent as to be customary. However, if a claimant was given notice the conduct would no longer be tolerated, further violations may result in a denial of benefits.

(d) Culpability may be established if the violation of the rule did not, in and of itself, cause harm to the employer, but the lack of compliance diminished the employer's ability to maintain necessary discipline.

(e) Serious violations of universal standards of conduct do not require prior warning to support a disqualification.

(2) Attendance Violations.

(a) Attendance standards are usually necessary to maintain order, control, and productivity. It is the responsibility of a claimant to be punctual and remain at work within the reasonable requirements of the employer. A discharge for unjustified absence or tardiness is disqualifying if the claimant knew enforced attendance rules were being violated. A discharge for an attendance violation beyond the claimant's control is generally not disqualifying unless the claimant could reasonably have given notice or obtained permission consistent with the employer's rules, but failed to do so.

(b) In cases of discharge for violations of attendance standards, the claimant's recent attendance history must be reviewed to determine if the violation is an isolated incident, or if it demonstrates a pattern of unjustified absence within the claimant's control. The flagrant misuse of attendance privileges may result in a denial of benefits even if the last incident is beyond the claimant's control.

(3) Falsification of Work Record.

The duty of honesty is inherent in any employment relationship. An employee or potential employee has an obligation to truthfully answer material questions posed by the employer or potential employer. For purposes of this subsection, material questions are those that may expose the employer to possible loss, damage or litigation if answered falsely. If false statements were made as part of the application process, benefits may be denied regardless of whether the claimant would have been hired if all questions were answered truthfully.

(4) Insubordination.

An employer generally has the right to expect lines of authority will be followed; reasonable instructions, given in a civil manner, will be obeyed; supervisors will be respected and their authority will not be undermined. In determining when

insubordination becomes disqualifying conduct, a disregard of the employer's rightful and legitimate interests is of major importance. Protesting or expressing general dissatisfaction without an overt act is not a disregard of the employer's interests. However, provocative remarks to a superior or vulgar or profane language in response to a civil request may constitute insubordination if it disrupts routine, undermines authority or impairs efficiency. Mere incompatibility or emphatic insistence or discussion by a claimant, acting in good faith, is not disqualifying conduct.

(5) Loss of License.

If the discharge is due to the loss of a required license and the claimant had control over the circumstances that resulted in the loss, the conduct is generally disqualifying. Harm is established as the employer would generally be exposed to an unacceptable degree of risk by allowing an employee to continue to work without a required license. In the example of a lost driving privilege due to driving under the influence (DUI), knowledge is established as it is understood by members of the driving public that driving under the influence of alcohol is a violation of the law and may be punishable by the loss of driving privileges. Control is established as the claimant made a decision to risk the loss of his or her license by failing to make other arrangements for transportation.

(6) Incarceration.

When a claimant engages in illegal activities, it must be recognized that the possibility of arrest and detention for some period of time exists. It is foreseeable that incarceration will result in absence from work and possible loss of employment. Generally, a discharge for failure to report to work because of incarceration due to proven or admitted criminal conduct is disqualifying.

(7) Abuse of Drugs and Alcohol.

(a) The Legislature, under the Utah Drug and Alcohol Testing Act, Section 34-38-1 et seq., has determined the illegal use of drugs and abuse of alcohol creates an unsafe and unproductive workplace. In balancing the interests of employees, employers and the welfare of the general public, the Legislature has determined the fair and equitable testing for drug and alcohol use is a reasonable employment policy.

(b) An employer can establish a prima facie case of ineligibility for benefits under the Employment Security Act based on testing conducted under the Drug and Alcohol Testing Act by providing the following information:

(i) A written policy on drug or alcohol testing consistent with the requirements of the Drug and Alcohol Testing Act and that was in place at the time the violation occurred.

(ii) Reasonable proof and description of the method for communicating the policy to all employees, including a statement that violation of the policy may result in discharge.

(iii) Proof of testing procedures used which would include:

(A) Documentation of sample collection, storage and transportation procedures.

(B) Documentation that the results of any screening test for drugs and alcohol were verified or confirmed by reliable testing methods.

(C) A copy of the verified or confirmed positive drug or alcohol test report.

(c) The above documentation shall be admissible as competent evidence under various exceptions to the hearsay rule, including Rule 803(6) of the Utah Rules of Evidence respecting "records of regularly conducted activity," unless determined otherwise by a court of law.

(d) A positive alcohol test result shall be considered disqualifying if it shows a blood or breath alcohol concentration of 0.08 grams or greater per 100 milliliters of blood or 210 liters of breath. A blood or breath alcohol concentration of less than 0.08 grams may also be disqualifying if the claimant worked in

an occupation governed by a state or federal law that allowed or required discharge at a lower standard.

(e) Proof of a verified or confirmed positive drug or alcohol test result or refusal to provide a proper test sample is a violation of a reasonable employer rule. The claimant may be disqualified from the receipt of benefits if his or her separation was consistent with the employer's written drug and alcohol policy.

(f) In addition to the drug and alcohol testing provisions above, ineligibility for benefits under the Employment Security Act may be established through the introduction of other competent evidence.

#### **R994-405-209. Effective Date of Disqualification.**

A disqualification based on a job separation begins the Sunday of the week in which the job separation took place. If the claimant did not file for benefits the week of the separation, the disqualification begins with the effective date of the new or reopened claim. The disqualification ends when the claimant earns requalifying wages equal to six times his or her WBA in bona fide covered employment as defined in R994-201-101(9). The WBA used to determine requalifying wages under this section is the WBA of the original claim. A disqualification that begins in one benefit year will continue into a new benefit year unless the claimant has earned requalifying wages. Severance or vacation pay cannot be used as requalifying wages.

#### **R994-405-210. Discharge for Crime - General Definition.**

(1) A crime is a punishable act in violation of law, an offense against the State or the United States. Though in common usage "crime" is used to denote offenses of a more serious nature, the term "crime" as used in these sections, includes "misdemeanors". An insignificant, although illegal act, or the taking or destruction of something that is of little or no value, or believed to have been abandoned may not be sufficient to establish a crime was committed for the purposes of Subsection 35A-4-405(2)(b), even if the claimant was found guilty of a violation of the law. Before a claimant may be disqualified under the provisions of Subsection 35A-4-405(2)(b), it must be established the claimant was discharged for a crime that:

- (a) was in connection with work,
- (b) involved dishonesty constituting a crime or a felony or class A misdemeanor, and
- (c) was admitted or established by a conviction in a court of law.

(2) Discharges that are not disqualifying under Subsection 35A-4-405(2)(b), discharge for crime, must be adjudicated under Subsection 35A-4-405(2)(a), discharge for just cause.

#### **R994-405-211. In Connection with Work.**

Connection to the work is not limited to offenses that take place on the employer's premises or during business hours nor does the employer have to be the victim of the crime. However, the crime must have affected the employer's rightful interests. The offense must be connected to the employment in such a manner that it is a subject of legitimate and significant concern to the employer. Employers generally have the right to expect that employees will refrain from acts detrimental to the business or that would bring dishonor to the business name or institution. Legitimate employer interests include goodwill, efficiency, business costs, employee morale, discipline, honesty, trust and loyalty.

#### **R994-405-212. Dishonesty or Other Disqualifying Crimes.**

(1) For the purposes of this subsection, dishonesty generally means theft. Theft is defined as taking property without the owner's consent. Theft also includes swindling, embezzlement and obtaining possession of property by lawful

means and thereafter converting it to the taker's own use. Theft includes:

- (a) obtaining or exerting unauthorized control over property;
  - (b) obtaining control over property by threat or deception;
  - (c) obtaining control knowing the property was stolen;
- and,
- (d) obtaining services from another by deception, threat, coercion, stealth, mechanical tampering or by use of a false token or device.

(2) Felonies and Class A misdemeanors are also disqualifying even if they are not theft-related such as assault, arson, or destruction of property. Whether the crime is a felony or misdemeanor is determined by the court's verdict and not by the penalty imposed.

(3) A disqualification under this Subsection 35A-4-405(2)(b) may be assessed against Utah claimants based upon equivalent convictions in other states.

#### **R994-405-213. Admission or Conviction in a Court.**

(1) An admission offered to satisfy the requirements of R994-405-210(1)(c), must be a voluntary statement, verbal or written, in which a claimant acknowledges committing an act that is a violation of the law. The admission does not necessarily have to be made to a Department representative, however, the admission must have been made freely and not a false statement given under duress or made to obtain some concession.

(2) If the requirements of R994-405-210(1) have been met, a disqualification may be assessed even if no criminal charges have been filed and even if it appears the claimant will not be prosecuted. If the claimant agrees to a diversionary program as permitted by the court or enters a plea in abeyance, there is a rebuttable presumption, for the purposes of this subsection, that the claimant has admitted to the criminal act.

(3) A conviction occurs when a claimant has been found guilty by a court of committing an act in violation of the criminal code. Under Subsection 35A-4-405(2)(b), a plea of "no contest" is considered a conviction.

#### **R994-405-214. Disqualification Period.**

The 52-week disqualification period for Subsection 35A-4-405(2)(b) begins the Sunday immediately preceding the discharge even if this date precedes the effective date of the claim. A disqualification which begins in one benefit year shall continue into a new benefit year until the 52-week disqualification has ended.

#### **R994-405-215. Deletion of Wage Credits.**

The wage credits to be deleted are those from the employer who discharged the claimant under circumstances resulting in a denial under Subsection 35A-4-405(2)(b), "Discharge for Crime." All base period and lag period wages from this employer will be unavailable for current or future claims. Lag period wages are wages paid after the base period but prior to the effective date of the claim.

#### **R994-405-216. Cancellations Not Allowed.**

If a claimant is disqualified from the receipt of unemployment benefits because he or she was discharged for a crime in connection with work, the claim will be established for 52 weeks and cannot be canceled as provided in R994-403-102a(3).

#### **R994-405-301. Failure to Apply for or Accept Suitable Work.**

(1) The primary obligation of a claimant is to become reemployed. The intent of the unemployment insurance program is to assist people during periods of unemployment



when suitable work is not available. However, if suitable work is available, the claimant has an obligation to properly apply for and accept offered work.

(2) A claimant will not be disqualified for failing to apply for or accept suitable work unless all of the following elements are established:

(a) Availability of a Job.

There must be an actual job opening the claimant could reasonably expect to obtain.

(b) Knowledge.

It must be shown that the claimant knew, or should have known, about the job including the wage, type of work, hours, general location, and conditions of the job. The claimant must understand a referral for work is being offered as opposed to a general discussion of job possibilities or labor market conditions. If a job offer is made, it must be clearly communicated as an offer of work.

(c) Control.

The failure of the claimant to obtain the employment must be the result of the claimant's own actions or behavior in failing to:

- (i) accept a referral, or
- (ii) properly apply for work, or
- (iii) accept work when offered.

(3) If the elements of Subsection (2) above have been met, benefits will be denied under Subsection 35A-4-405(3) unless:

(a) the job is not suitable;

(b) the claimant had good cause for refusing a referral, the failure to apply for or accept the job; or

(c) a denial of benefits would be contrary to equity and good conscience.

#### **R994-405-302. Failure to Accept a Referral.**

(1) Definition of a Referral. A referral occurs when the department provides information about a job opening to the claimant and the claimant is given the opportunity to apply. The information must meet the requirements of R994-405-301(2)(b).

(2) Failure to Accept a Referral. A claimant fails to accept a referral when he or she prevents or discourages the Department from providing the necessary referral information. Failing to respond to a notice to contact the Department for the purpose of being referred to a specific job is the same as refusing a referral for possible employment.

(3) If there was a suitable job opening to which the claimant would have been referred, benefits will be denied unless good cause is established for not responding as directed, or the elements of equity and good conscience are established.

#### **R994-405-303. Proper Application for Work.**

A proper application for work is established if the claimant does those things normally done by applicants who are seriously and actively seeking work. Generally, the claimant must:

- (1) meet with the employer at the designated time and place,
- (2) report to the employer dressed and groomed in a manner appropriate for the type of work being sought,
- (3) present no unreasonable conditions or restrictions on acceptance of the available work and
- (4) report for and pass a drug test if necessary.

#### **R994-405-304. Failure to Accept an Offer of Work.**

It will be considered to be a refusal of new work if the claimant engages in conduct which discourages an offer of work, places unreasonable barriers to employment, or accepts an offer of new work but imposes unreasonable conditions which causes the offer to be rescinded. A refusal of work will not result in a denial of benefits if the claimant has accepted a definite offer of full-time employment which is expected to start within three weeks or has a date of recall to full-time work

expected to begin within three weeks.

#### **R994-405-305. Suitability of Work.**

(1) The unemployment compensation system is not intended to exert downward pressure on existing labor standards, nor is it intended to allow claimants to restrict availability to jobs with increased wages or improved working conditions.

(2) Workers should not feel compelled, through a threatened or potential denial of benefits, to accept work under less favorable conditions than those generally available in the area for similar work. The phrase "similar work" does not mean "identical work." Similar work is work in the same occupation or a different occupation which requires essentially the same skills.

(3) Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) If the position offered is vacant due to a strike, lockout, or other labor dispute;

(b) If the wages, hours, or other conditions of work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(c) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

#### **R994-405-306. Elements to Consider in Determining Suitability.**

A claimant is not required to accept an offer of new work unless the work is suitable. Whether a job is suitable depends on the length of time the claimant has been unemployed. As the length of unemployment increases, the claimant's demands with respect to earnings, working conditions, job duties, and the use of prior training must be systematically reduced unless the claimant has immediate prospects of reemployment. The following elements must be considered in determining the suitability of employment:

(1) Prior Earnings.

Work is not suitable if the wage is less than the state or federal minimum wage, whichever is applicable.

The claimant's prior earnings, length of unemployment and prospects of obtaining work are the primary factors in determining whether the wage is suitable. If a claimant's former wage was earned in another geographical area, the prevailing wage is determined by the new area.

(a) Until the claimant has received 50% of the maximum benefit amount (MBA) for his or her regular claim, work paying at least the customary wage earned during the base period is suitable. Customary wage is defined as the wage earned during the majority of the base period.

(b) After a claimant has received 50% of the MBA for his or her regular claim, any work paying a wage that is at least 75% of the customary wage earned during the base period is suitable.

(2) Prior Experience.

A claimant must be given a reasonable time to seek work that will preserve his or her customary skills. Customary skills or skill level, as used in this subsection, is defined as skills used during a majority of the base period. However, if a claimant has no realistic expectation of obtaining employment in an occupation utilizing his or her customary skill level, work in related occupations becomes suitable.

After the claimant has received 50% of the MBA for his or her regular claim, any work that he or she can reasonably perform consistent with the claimant's past work experience, training and skills is considered suitable.

**(3) Working Conditions.**

"Working conditions" refers to the provisions of the employment agreement whether express or implied as well as the physical conditions of the work. Working conditions include the following:

**(a) Hours of Work.**

Claimants are expected to make themselves available for work during the usual hours for similar work in the area provided they are not in violation of the law. However, the hours the claimant worked during his or her base period are generally considered suitable. A claimant's preference for certain hours or shifts based on mere convenience is not good cause for failure to accept otherwise suitable employment.

**(b) Fringe Benefits.**

Working conditions include fringe benefits such as health insurance, pensions, and retirement provisions.

**(c) Labor Disputes or Law Violations.**

Work is not suitable if the working conditions are in violation of any state or federal law, or the job opening is due to a strike, lockout, or labor dispute. If a claimant was laid off or furloughed prior to the labor dispute, and the former employer makes an offer of employment after the dispute begins, it is considered an offer of new work. The vacancy must be presumed to be the result of the labor dispute unless the claimant had a definite date of recall, or recall has historically occurred at a similar time.

**(4) Prior Training.**

The type of work performed during the claimant's base period is suitable unless there is a compelling circumstance that would prevent returning to work in that occupation. If a claimant has training that would now meet the qualifications for a new occupation, work in that occupation may also be suitable, particularly if the training was obtained, at least in part, while the claimant was receiving unemployment benefits under Department approval, or the training was subsidized by another government program.

**(5) Risk to Health and Safety.**

Work is not suitable if it presents a risk to a claimant's physical or mental health greater than the usual risks associated with the occupation. If a claimant would be required, as a condition of employment, to perform tasks that would cause or substantially aggravate health problems, the work is not suitable.

**(6) Physical Fitness.**

The claimant must be physically capable of performing the work. Employment beyond the claimant's physical capacity is not suitable.

**(7) Distance of the Available Work from the Claimant's Residence.**

To be considered suitable, the work must be within customary commuting patterns as they apply to the occupation and area. A claimant's failure to provide his or her own transportation within the normal or customary commuting pattern in the area, or failure to utilize alternative sources of transportation when available, does not establish good cause for failing to apply for or accept suitable work. Work is not suitable if accepting the employment would require a move from the current area of residence unless that is a usual practice in the occupation.

**(8) Religious or Moral Convictions.**

The work must conflict with sincerely held religious or moral convictions before a conscientious objection could support a conclusion that the work was not suitable. This does not mean all personal beliefs are entitled to protection. However, beliefs need not be acceptable, logical, consistent, or comprehensible to others, or shared with members of a religious or other organized group in order to show the conviction is held in good faith.

**(9) Part-time or Temporary Work.**

Part-time or temporary work may be suitable depending on

the claimant's work history. If the major portion of a claimant's base period work history consists of part-time or temporary work, then any work which is otherwise suitable would be considered suitable even if the work is part-time or temporary. If the claimant has no recent history of temporary or part-time work, the work may still be considered suitable, particularly if the claimant has been unemployed for an extended period and does not have an immediate prospect of full-time work.

**R994-405-307. New Work.**

(1) All work is performed under a contract of employment between a worker and an employer whether written, oral, or implied. The contract addresses the job duties, as well as the terms and conditions under which the work is to be performed. A substantial change in the duties, terms, or conditions of the work, not authorized by the existing employment contract, is in effect a termination of the existing contract and the offer of a new contract and constitutes a separation and an offer of new work.

(2) The provisions of R994-405-310 are used to determine if the new contract constitutes suitable work. A request to perform different duties that are customary in the occupation and that do not result in a loss of skills, wages, or benefits, does not constitute an offer of a new work, even if those duties are not specified as part of the official job requirements. The contract of employment has not changed if it is customary for workers to perform short-term tasks involving different or new duties and those assignments do not replace the regular duties of the worker. It is not considered to be a termination of the existing contract and an offer of new work if the claimant fails to return after a vacation, with or without pay, or a short-term layoff for a definite period. A short-term layoff must meet the requirements for a deferral under R994-403-108b(1)(c).

**(3) New work is defined as:**

(a) work offered by an employer for whom the individual has never worked;

(b) work offered by an individual's current employer involving duties, terms, or conditions substantially different from those agreed upon as part of the existing contract of employment; or

(c) reemployment offered by an employer for whom the individual is not working at the time the offer is made, whether the conditions of employment are the same or different from the previous job.

**R994-405-308. Burden of Proof.**

(1) The statute requires that the wage, hours, and other conditions of the work shall not be substantially less favorable to the individual than those prevailing for similar work in the area in order to be considered suitable work. The Department has the burden to prove that the work offered meets these minimum standards before benefits can be denied. Before benefits may be denied, the Department must show:

(a) the job was available,

(b) the claimant had an opportunity to learn about the conditions of employment,

(c) the claimant had an opportunity to apply for or accept the job, and

(d) the claimant's action or inaction resulted in the failure to obtain the job.

(2) When the Department has established all of the elements in paragraph (1) of this subsection, a disqualification must be assessed unless it can be established that the work was not suitable, that there was good cause for failing to obtain the job, or the claimant or the Department can show that a disqualification would be contrary to equity and good conscience.

(3) The Department has the option, but not the obligation, to review Department records concerning the claimant's wages

and work history to determine suitability in cases where the claimant has not provided a reason for refusing the job, or the claimant's stated reason for refusing the job was for a reason other than suitability. In these cases, department intervention would only be appropriate if the available information establishes that a denial would be an affront to fairness.

**R994-405-309. Period of Ineligibility.**

(1) The disqualification period imposed under Subsection 35A-4-405(3) begins the Sunday of the week in which the claimant's action or inaction resulted in the failure to obtain employment or the first week the work was available, whichever is later. The disqualification ends when the claimant earns requalifying wages equal to six times his or her WBA in bona fide covered employment as defined in R994-201-101(9). The WBA used to determine requalifying wages under this section is the WBA of the original claim. A disqualification that begins in one benefit year will continue into a new benefit year unless the claimant has earned requalifying wages. Severance or vacation pay cannot be used as requalifying wages.

(2) A disqualification will be assessed as of the effective date of a new claim if the claimant refused an offer of suitable work after his or her last job ended and prior to the effective date of the claim. A disqualification will also be assessed as of the reopening date, if the claimant refused an offer of suitable work after his or her last job ended and prior to the reopening date.

**R994-405-310. Good Cause.**

(1) Good cause for failing to accept available work is established if the work is not suitable or accepting the job would cause hardship which the claimant was unable to overcome. Hardship can only be established if the claimant can show that the employment would result in actual or potential physical, mental, economic, personal, or professional harm.

(2) Good cause is limited to circumstances which were beyond the claimant's control or were compelling and reasonable.

(3) A claimant may have good cause for failing to obtain employment due to personal circumstances if acceptance of the employment would cause a substantial hardship and there are no reasonable alternatives. However, if a personal circumstance prevents the acceptance of suitable employment, there is a presumption the claimant is not able or available for work.

(4) Good cause is not established if a claimant refuses suitable work because the work will interfere with school or training. Claimants attending school full-time with Department approval are not required to seek work.

**R994-405-311. Equity and Good Conscience.**

A claimant will not be denied benefits for failing to apply for or accept work if it would be contrary to equity and good conscience, even though good cause has not been established. If there are mitigating circumstances and a denial of benefits would be unreasonably harsh or an affront to fairness, benefits may be allowed. A mitigating circumstance is one that may not be sufficiently compelling to establish good cause, but would motivate a reasonable person to take similar action. In order to establish eligibility under the equity and good conscience standard the following elements must be shown:

(1) Reasonableness.

The claimant must have acted reasonably and the decision to refuse the offer of work was logical, sensible, or practical.

(2) Continuing Attachment to the Labor Market.

The claimant must show evidence of a genuine and continuing attachment to the labor market by making an active and consistent effort to become reemployed. The claimant must have a realistic plan for obtaining suitable employment and show evidence of employer contacts prior to, during, and after

the week the job in question was available.

**R994-405-401. Strike.**

Claimants may be ineligible for unemployment benefits when the unemployment is due to a strike.

**R994-405-402. Elements Necessary for a Disqualification.**

All of the following elements must be present before a disqualification will be assessed under Subsection 35A-4-405(4):

(1) the claimant's unemployment must be the result of an ongoing strike,

(2) the strike must involve workers at the factory or establishment of the claimant's last employment;

(3) the strike must have been initiated by the workers,

(4) the employer must not have conspired, planned or agreed to foment the strike,

(5) there must be a stoppage of work,

(6) the strike must involve the claimant's grade, group or class of workers, and,

(7) the strike must not have been caused by the employer's failure to comply with State or Federal laws governing wages, hours or other conditions of work.

**R994-405-403. Unemployment Due to a Strike.**

(1) The claimant's unemployment must be the result of an ongoing strike. A strike exists when combined workers refuse to work except upon a certain contingency involving concessions either by the employer or the bargaining unit. A strike consists of at least four components in addition to the suspended employer-employee relationship:

(a) a demand for some concession,

(b) a refusal to work with intent to bring about compliance with demands,

(c) an intention to return to work when an agreement is reached, and

(d) an intention on the part of the employer to re-employ the same employees or employees of a similar class when the demands are acceded to or withdrawn or otherwise adjusted.

(2) A strike may exist without such actions as a proclamation preceding a stoppage of work or pickets at the business or industry announcing an intent and purpose to go out on strike. Although a strike involves a labor dispute, a labor dispute can exist without a strike and a strike can exist without a union. The party or group who first resorts to the use of economic sanctions to settle a dispute must bear the responsibility. A strike occurs when workers withhold services. A lockout occurs when the employer withholds work because of a labor dispute including: the physical closing of the place of employment, refusing to furnish available work to regular employees, or by imposing such terms on their continued employment so that the work becomes unsuitable or the employees could not reasonably be expected to continue to work.

(3) The following are examples of when unemployment is due to a strike;

(a) a strike is formally and properly announced by a union or bargaining group, and as a result of that announcement, the affected employer takes necessary defensive action to discontinue operations,

(b) after a strike begins the employer suspends work because of possible destruction or damage to which the employer's property would not otherwise be exposed, provided the measures taken are those that are reasonably required,

(c) if the employer is not required by contract to submit the dispute to arbitration and the workers ceased working because the employer rejects a proposal by the union or bargaining group to submit the dispute to arbitration, or

(d) upon the expiration of an existing contract, whether or

not negotiations have ceased, the employer is willing to furnish work to the employees upon the terms and conditions in force under the expired contract.

(4) The following are examples of when unemployment is not due to a strike;

(a) the claimant was separated from employment for some other reason that occurred prior to the strike, for example: a quit, discharge or a layoff even if the layoff is caused by a strike at an industry upon which the employer is dependent,

(b) the claimant was replaced by other permanent employees,

(c) the claimant was on a temporary layoff, prior to the strike, with a predetermined date of recall; however, if the claimant refuses to return to his or her regular job when called on the predetermined date his or her subsequent unemployment is due to a strike,

(d) as a result of start up delays, the claimant is not recalled to work for a period after the settlement of the strike,

(e) the employer refuses to agree to binding arbitration when the contract provides that the dispute shall be submitted to arbitration, or

(f) the claimant is unemployed due to a lockout. The immediate cause of the work stoppage determines if it is a strike or a lockout depending on who first imposes economic sanctions. A lockout occurs when;

(i) the employer takes the first action to suspend operations resulting from a dispute with employees over wages, hours, or working conditions,

(ii) an employer, anticipating that employees will go on strike, but prior to a positive action by the workers, curtails operations by advising employees not to report for work until further notice. Positive action can include a walkout or formal announcement that the employees are on strike. In this case the immediate cause of the unemployment is the employer's actions, even if a strike is subsequently called., or

(iii) upon expiration of an existing contract where the employer is seeking to obtain unreasonable wage concessions, the employees offer to work at the rate of the expired agreement and continue to bargain in good faith.

#### **R994-405-404. Workers at Factory or Establishment of the Claimant's Last Employment.**

(1) "At the factory or establishment" of last employment may include any job sites where the work is performed by any members of the grade, group or class of employees involved in the labor dispute, and is not limited to the employer's business address.

(2) "Last employment" is not limited to the last work performed prior to the filing of the claim, but means the last work prior to the strike. If the claimant becomes unemployed due to a strike, the provisions of Subsection 35A-4-405(4) apply beginning with the week in which the strike began even if the claimant did not file for benefits immediately and continues until the strike ends or until the claimant establishes subsequent eligibility as required by Subsection 35A-4-405(4)(c). For example: the claimant left work for employer A due to a disqualifying strike, and then obtained work for employer B where he or she worked for a short period of time before being laid off due to reduction of force. If he or she then files for unemployment benefits, and cannot qualify monetarily for benefits based solely on his or her employment with employer B, the claimant is not eligible for unemployment benefits.

#### **R994-405-405. Fomented by the Employer.**

A strike will not result in a denial of benefits to claimants if the employer or any of its agents or representatives conspired, planned or agreed with any of the workers in promoting or inciting the development of the strike.

#### **R994-405-406. Work Stoppage.**

Work stoppage means that the claimant is no longer working but it is not necessary for the employer to be unable to continue to conduct business. For the purposes of this rule, a work stoppage exists when an employee chooses to withhold his services in concert with fellow employees.

#### **R994-405-407. Grade, Group or Class of Worker.**

(1) A claimant is a member of the grade, group or class if:

(a) the dispute affects hours, wages, or working conditions of the claimant, even if the claimant is not a member of the group conducting the strike or not in sympathy with its purposes,

(b) the labor dispute concerns all of the employees and as a direct result causes a stoppage of their work,

(c) the claimant is covered either by the bargaining unit or is a member of the union, or

(d) the claimant voluntarily refuses to cross a peaceful picket line even when the picket line is being maintained by another group of workers.

(2) A claimant is not included in the grade, group or class if:

(a) the claimant is not participating in, financing, or directly interested in the dispute or is not included in any way in the group that is participating in or directly interested in the dispute,

(b) the claimant was an employee of a company that has no work for him or her as a result of the strike, but the company is not the subject of the strike and whose employee's wages, hours or working conditions are not the subject of negotiation,

(c) the claimant was an employee of a company that is out of work as a result of a strike at one of its work sites but he or she is not participating in the strike, will not benefit from the strike, and the constitution of the union leaves the power to join a strike with the local union, provided the governing union has not concluded that a general strike is necessary, or

(d) work continues to be available after a strike begins and the claimant reported for work and performed work after the strike began and was subsequently unemployed.

(3) The burden of proof is on the claimant to show that he or she is not participating in any way in the strike.

#### **R994-405-408. Strike Caused by Employer Non-Compliance with State or Federal Laws.**

If the strike was caused by the employer's failure to comply with state or federal laws governing wages, hours, or working conditions, the claimant is not disqualified as a result of the strike. However, to establish the strike was caused by unlawful practices, the issue of an unfair labor practice must be one of the grievances still subject to negotiation at the time the strike occurs. The making of such an allegation after the strike begins will not enable workers to claim that such a violation was the initiating factor in the strike.

#### **R994-405-409. Period of Disqualification.**

The period of disqualification begins on the effective date of the new or reopened claim and continues as long as all the elements are present. If the claimant has other employment subsequent to the beginning of the strike which is insufficient when solely considered to qualify for a new claim, the disqualification under Subsection 35A-4-405(4) would continue to apply. It is not necessary for the employer involved in the strike to be a base period employer for a disqualification to be assessed.

#### **R994-405-410. Wages Used to Establish Claim as Provided by Subsection 35A-4-405(4)(c).**

(1) Ineligibility following a strike. A disqualification must be assessed if the elements for disqualification are present, even

if the claim is not based on employment with the employer involved in the labor dispute. Wages for an employer not involved in the strike that are concurrent with employment for an employer that is involved in the strike will not be used independently to establish a claim in order to avoid a disqualification.

(2) New claim following strike. If a claimant is ineligible due to a strike, wages used in establishing a new claim must have been earned after the strike began. The job does not have to be obtained after the strike but only those wage credits obtained after the strike may be used to establish a new claim. If the claimant has sufficient wages to qualify for a new benefit year after his or her unemployment due to a strike, a new claim may be established even if the claimant has a current benefit year under which benefits have been denied due to a strike.

(3) Redetermination after strike ends. No wages from the employer involved in the strike will be used to compute the new benefit amount, until after the provisions of Subsection 35A-4-405(4) no longer apply. Any such redetermination must be requested by the claimant and will be effective the beginning of the week in which the request for a redetermination is made.

**R994-405-411. Availability.**

If benefits are not denied under Subsection 35A-4-405(4), the claimant's availability for work will be considered including the amount of time spent walking picket lines and working for the bargaining unit. A refusal to seek work except with employers involved in a lockout or strike is a restriction on availability that will be considered in accordance with Subsection 35A-4-405(3) and R994-403-115c. A refusal to accept work with an employer involved in a lockout or strike is not disqualifying.

**R994-405-412. Suitability of Work Available Due to a Strike.**

Subsection 35A-4-405(3)(b) provides that new work is not suitable and benefits will not be denied if the position offered is vacant due directly to a strike, lockout or other labor dispute. If the claimant was laid off or furloughed prior to the strike, and an offer of employment is made after the strike begins by the former employer, it is considered an offer of new work. The vacancy must be presumed to be the result of the strike unless the claimant had a definite date of recall, or recall has historically occurred at a similar time.

**R994-405-413. Strike Benefits.**

Strike benefits received by a claimant, which are paid contingent upon walking a picket line or for other services, are reportable income that must be deducted from any weekly benefits to which the claimant is eligible in accordance with provisions of Subsection 35A-4-401(3). Money received for performance of services in behalf of a striking union may not be subject wages used as wage credits in establishing a claim. However, money received as a general donation from the union treasury that requires no personal services is not reportable income.

**R994-405-701. Payments Following Separation - General Definition.**

Vacation and severance payments which a claimant is receiving, has received or is entitled to receive are treated as wages and the claimant's WBA is reduced as provided in R994-401-301(1). This is true even though vacation or severance payments do not meet the statutory definition of wages.

**R994-405-702. Definition of Disqualifying Vacation and Severance Pay.**

(1) Before a disqualification is assessed, the claimant must be entitled to vacation or severance pay in addition to regular

wages.

(a) Entitled To Receive. The claimant may not receive unemployment benefits for any week if he or she is eligible to receive payment from the employer whether the payment has already been made or will be made. The week in which the payment is actually received is not controlling in determining when the payment is deductible. It is not necessary for the employer to assign such payment to a particular week on the payroll records.

(b) Severance or Vacation Pay Which Is Subject to Negotiation. If there is a question of whether the claimant is entitled to receive a payment and the matter is being negotiated by the court, a union, or the employer, it has not been established the claimant is entitled to payment and therefore a disqualification cannot be assessed. However, when it is determined the claimant is entitled to receive payment from the employer, a disqualification will be assessed beginning with the week in which the agreement is made establishing the right to payment, provided the other elements are present. An overpayment will be established as appropriate.

(2) Vacation Pay.

Vacation pay is not considered earned during the period of time the claimant worked to qualify for the vacation pay, even if the amount of vacation pay is dependent upon length of service.

(3) Separation Payments.

(a) Any form of separation payment may subject the claimant to disqualification under Subsection 35A-4-405(7) if the payment would not have been made except for the severance of the employment relationship. If the payment is given at the time of the separation but would have been made even if the claimant was not separated, it is not a separation payment, but is considered earnings assignable to the period of employment subject to the provisions of Subsection 35A-4-401(7). The controlling factor is not the method used by the employer to determine the amount of the payment, but the reason the payment is being made. The history of similar payments is indicative of whether the payment is a bonus or is being made as the result of the separation. Whether a payment is based on the number of years of service or some other factor does not determine if the payment is disqualifying. Payments made directly to the claimant after separation and intended for the purchase of health insurance, whether made in a lump sum or periodically, are considered separation payments. When a business changes owners and some employees are retained by the new owners, but all employees receive a similar payment from the prior owner, the payment is not made subject to the separation of the employees and therefore would be a bonus and not a separation payment. Accrued sick leave, paid at the time of separation not because of an illness or injury is not considered a separation payment and will not result in a disqualification or a reduction in benefits under Subsection 35A-4-405(7).

(b) Payments for Remaining on the Job.

When an employer offers an additional payment for remaining on the job until a job is completed, the additional remuneration will be considered an increased wage or bonus attributable to a period of time prior to the date of separation, not a severance payment.

(4) Attributable to Weeks Following the Last Day of Work.

All vacation and severance payments are attributable to a period of time following the last day worked after a permanent separation and assigned to weeks according to the following guidelines:

(a) Designated as Covering Specified Weeks. If the employer specified that the payment is for a number of weeks which is consistent with the average weekly wage, the payment is attributable to those weeks. For example, if the claimant was

entitled to two weeks of vacation or severance pay at his or her regular wage or salary, the last day worked was a Wednesday, and his or her normal working days were Monday through Friday, the claimant is considered to have two weeks of pay beginning on the Thursday following the last day of work. The claimant's earnings for the first week, including his or her wages would normally exceed the weekly benefit amount; the claimant would have a full week of pay for the second week, and would have reportable earnings for Monday, Tuesday and Wednesday of the following week.

(b) Lump Sum Payments. A lump sum payment is assigned to a period of time by comparison to the employee's most recent rate of pay. The period of assignment following the last day of work is equivalent to the number of days during which the worker would have received a similar amount of his or her regular pay. For example, if the claimant received \$500 in severance pay, and last earned \$10 an hour working a 40 hour week, the claimant's customary weekly earnings were \$400 a week. The claimant is denied benefits for one week and must report \$100 as if it were earnings on the claim for the following week. The Department will ordinarily use a claimant's base salary for calculations in this paragraph but if the claimant provides verifiable evidence of a rate of pay higher than the base salary in the period immediately preceding separation, that can be used.

(c) Payments Less than Weekly Benefit Amount. If separation payments are paid out over a specific period of time and the claimant does not have the option to receive a lump sum payment, the claimant will be entitled to have benefits reduced as provided by Subsection 35A-4-401(3), pursuant to offset earnings if the amount attributed to the week is less than the weekly benefit amount.

(d) If the claimant is entitled to both vacation and separation pay, the payments are assigned consecutively, not concurrently.

(5) Temporary Separation.

A claimant is not entitled to benefits if it is established that the week claimed coincides with a week:

(a) Designated as a week of vacation. If the separation from the employer is not permanent and the claimant chooses to take his or her vacation pay, or is filing during the time previously agreed to as his or her vacation, the vacation pay is assigned to that week. If the employer has prepaid vacation pay and at the time of a temporary layoff the claimant may still take his or her vacation time after being recalled, the vacation pay is not assigned to the weeks of the layoff unless the claimant chooses to have the vacation pay assigned to those weeks, or the employer, because of contractual obligations, must pay any outstanding vacation due the claimant.

(b) Designated as a vacation shutdown. If the claimant files during a vacation shutdown, and is entitled to vacation pay equivalent to the length of the vacation shutdown, the vacation pay is attributable to the weeks designated as a vacation shutdown, even if the claimant chooses to actually take his or her time off work before or after the vacation shutdown. A holiday shutdown is treated the same as a vacation shutdown.

**R994-405-703. Period of Disqualification.**

Only those payments equal to or greater than the claimant's weekly benefit amount require a disqualification. Payments less than the weekly benefit amount are treated the same as earnings and deductions are made as provided by Subsection 35A-4-401(3).

**R994-405-704. Disqualifying Separations.**

If the claimant has been disqualified as the result of his or her separation under either Subsections 35A-4-405(1) or 35A-4-405(2), the vacation or separation pay cannot be used to satisfy the requirement to earn six times the weekly benefit amount in

bona fide covered employment.

**R994-405-705. Base Period Wages.**

Vacation pay is used as base period wages. Separation payments attributable to weeks following the separation can be used as base period wages if the employer was legally required to make such payments as provided in Section 35A-4-208. Separation payments that are treated as wages will be assigned to weeks in the manner explained in Subsections R994-405-702(4).

**R994-405-801. Services in Education Institutions - General Definition.**

Subsection 35A-4-405(8) denies unemployment benefits during periods when the claimant's unemployment is due to school not being in session provided the claimant has been given a reasonable assurance that he or she can return to work when school resumes and the claimant intends to return when school resumes. Schools have traditionally not been in session during the summer months, holidays and between terms. This circumstance is known to employees when they accept work for schools. In extending coverage to school employees, it was intended such coverage would only be available when the claimant is no longer attached in any way to a school and the reason for the unemployment is not due to normal school recesses or paid sabbatical leave.

**R994-405-802. Elements Required for Denial.**

(1) The claimant is ineligible if all of the following elements are met:

(a) The Claimant is an Employee of an Educational Institution.

The claimant's benefits are based on employment for an educational institution or a governmental agency established and operated exclusively for the purpose of providing services to an educational institution. The service performed for the educational institution may be in any capacity including professional employees teachers, researchers and principals and all non-professional employees including secretaries, lunch workers, teacher's aides, and janitors.

(b) School is Not in Session or the Claimant is on a Paid Sabbatical Leave.

Benefits are only denied if the week for which benefits are claimed is during a period between two successive academic years or a similar period between two regular terms whether or not successive, during a period of paid sabbatical leave provided in the contract, or during holiday recesses and customary vacation periods.

(c) The claimant has a reasonable assurance of returning to work for an educational institution at the next regular year or term.

**R994-405-803. Educational Institution (School).**

(1) To be considered an educational institution it is not necessary the school be non-profit or that it be funded or controlled by a school district. However, the instruction provider must be sponsored by an "institution" that meets all of the following elements:

(a) An institution in which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher.

(b) The course of study or training is academic, technical, trade, or preparation for gainful employment in an occupation.

(c) The instruction provider is approved or licensed to operate as a school by the State Board of Education or other government agency authorized to issue such license or permit.

(2) Head start programs operated by community based

organizations, Indian tribes, or governmental associations as a side activity in a sponsorship role do not meet the definition of educational institution and therefore are not subject to the disqualifying provisions of this rule.

**R994-405-804. Employee for an Educational Institution.**

(1) All employees of an educational institution, even though not directly involved in educational activities, are subject to the disqualifying provisions of Subsection 35A-4-405(8). Also, employees of a state or local governmental entity are not eligible for benefits provided the entity was established and operated exclusively for the purpose of providing services to or on behalf of an educational institution. For example, if a school bus driver is employed by the city rather than the school district, he or she is not subject to a disqualification under Subsection 35A-4-405(8).

(2) Ineligibility under Subsection 35A-4-405(8) shall only apply if there are base period wages from an educational institution. If the claimant had sufficient non-school employment in the base period to qualify for benefits, the claimant may establish a claim based only on the non-school employment and benefits would be payable during the period between successive school terms, provided he or she is otherwise eligible. If the claimant continues to be unemployed when school commences, he or she may be entitled to benefits based upon the combined school and non-school employment. In most cases this would result in higher weekly and maximum benefit amounts, less the benefits already received. A revision of the monetary determination will be made effective the beginning of the week in which the claimant submits a request for a revision to include school employment.

**R994-405-805. Reasonable Assurance.**

(1) "Reasonable assurance" is defined as a written, oral, or implied agreement that the employee will perform service in the same or similar capacity during the ensuing academic year, term, or remainder of a term.

(2) Reasonable Assurance Presumed.

A claimant is presumed to have implied reasonable assurance of employment during the next regular school year or term with an educational institution if he or she worked for the educational institution during the prior school term and there has been no change in the conditions of his or her employment that would indicate severance of the employment relationship. Under such circumstances benefits initially will be denied.

(3) Advised on Non-Recall.

If the claimant has been advised by proper school administrative authorities that he or she will not be offered employment when the next school term begins, benefits would not be denied under Subsection 35A-4-405(8).

(4) Offer of New Work by an Educational Institution.

Reasonable assurance is not limited to the same school where the claimant was employed during the base period or the same type of work, but includes any bona fide offer of suitable work at any educational institution. Reasonable assurance exists if the terms and conditions of any new work offered in the second term are not substantially less suitable, as defined by Subsection 35A-4-405(3), than the terms and conditions of the work performed during the first term. A disqualification under Subsection 35A-4-405(8) would begin with the week the employment is offered, and a disqualification under Subsection 35A-4-405(3) may begin with the week in which the offered employment would become available. For example: if a claimant was advised that due to reduction in enrollment he or she will not be recalled by the school where he or she last worked as a teacher's aide, but then obtains an offer of employment as a librarian from another school or another school district, a disqualification under Subsection 35A-4-405(8) would be assessed beginning with the week in which the offer

of employment was made to the claimant, and a disqualification under Subsection 35A-4-405(3) would begin at the beginning of the school term if the work is not accepted.

(5) Separated Due to a Quit or Discharge.

If the employment relationship is severed either due to a quit or discharge, the provisions of Subsection 35A-4-405(8) do not apply, but Subsections 35A-4-405(1) or 35A-4-405(2) may apply and a disqualification, if assessed, would begin with the effective date of the separation or the claim, whichever is later.

**R994-405-806. Substitute Teachers.**

A substitute teacher is treated the same as any other school employee. If the claimant worked as a substitute teacher during the prior school term, he or she is presumed to have a reasonable assurance of having work under similar conditions during the next term and benefits will be denied when school is not in session. However, for any weeks the claimant is not called to work when school is in session, a disqualification under Subsection 35A-4-405(8) would not apply.

**R994-405-807. Period of Disqualification.**

The effective date of the unemployment insurance claim does not have to begin between regular school terms for a disqualification to apply, but benefits will be denied for a week that begins during a period when school is not in session or the claimant is on a paid sabbatical leave. A disqualification under Subsection 35A-4-405(8) can only be assessed for weeks:

(1) between two successive academic years or terms, or

(2) during a break in school activity between two regular terms even if the terms are not successive, including school vacations and holidays as well as the break between academic terms, or

(3) when the claimant is on a paid sabbatical leave if the claimant worked during the prior school year and has a contract or reasonable assurance of working in any capacity for an educational institution in the school term following the sabbatical leave. When the claimant is on an unpaid sabbatical leave, benefits may be allowed provided he or she is otherwise eligible including meeting the eligibility requirements of Subsection 35A-4-403(1)(c) and R994-405-106(4).

**R994-405-808. Retroactive Payments.**

Retroactive payments under Subsection 35A-4-406(2) may be made after a disqualification has been assessed only if the claimant:

(1) is not a professional employee in an instructional, research or administrative capacity,

(2) was not offered an opportunity for employment for an educational institution for the second academic years or terms,

(3) filed weekly claims in a timely manner as instructed, and

(4) benefits were denied solely by reason of Subsection 35A-4-405(8).

**R994-405-901. Professional Athletes.**

(1) Eligibility for Professional Athletes.

A claimant who has performed services as a professional athlete for substantially all of his or her base period is not eligible for benefits between successive sports seasons or similar periods when the claimant has a reasonable assurance of performing those services in the next sports season or similar period.

(2) Substantially All Services Performed in a Base Period.

A claimant has performed services as a professional athlete for substantially all of his or her base period when the base period wages from that work equal 90 percent or more of the claimant's total base period wages.

(3) Definition of Professional Athlete.

For the purposes of determining eligibility for benefits, a

claimant is a professional athlete when he or she is employed as a competitive athlete or works as a specified ancillary employee. Employment as a competitive athlete includes preparing for and participating in competitive sports events. Specified ancillary employees are managers, coaches, and trainers who are employed by professional sports organizations and referees and umpires employed by professional sports leagues or associations.

(4) Reasonable Assurance.

(a) The claimant has a reasonable assurance of performing services as a professional athlete during the next sports season or similar period when the claimant has:

- (i) a multi-year contract with a professional sports organization, league or association;
- (ii) a year-to-year contract and no indication of release;
- (iii) no contract but the employer affirms intent to recall;
- (iv) no contract but an employer representative confirms that the claimant is being considered for next season; or
- (v) no contract but plans to pursue employment as a professional athlete.

(b) The claimant does not have a reasonable assurance if he or she has no contract and has withdrawn from sports as a professional athlete.

**R994-405-902. Base Period Wage Credits.**

(1) If the claimant has a reasonable assurance of performing services as a professional athlete during the next sports season or similar period and 90 percent or more of the claimant's base period wage credits were earned as a professional athlete, neither those wage credits nor any other base period wage credits can be used to establish monetary eligibility for any weeks that begin during a period between the applicable sports seasons or similar periods.

(2) All of the claimant's base period wage credits can be used if the claimant did not earn 90 percent or more of his or her base period wage credits as a professional athlete.

(3) All of the claimant's base period wages credits can be used to establish monetary eligibility for any weeks that begin during the applicable sports season or similar period.

**R994-405-1001. Aliens - General Definition.**

The protection provided by the unemployment insurance program is limited to American citizens and people who are lawfully admitted to the United States. It is not the intent of this program to subsidize people who have worked unlawfully or who cannot legally accept employment. All claimants will be required, as a condition of eligibility, to sign a declaration under penalty of perjury stating whether the claimant is a citizen or national of the United States, or if not, whether the claimant is lawfully admitted to the United States with permission to work. A claimant who certifies to lawful admission must present documentary evidence. A denial of benefits under Subsection 35A-4-405(10) can only be made if there is a preponderance of evidence the claimant is not legally admitted to work. Benefits must be denied to claimants who are NOT United States citizens unless they are lawfully present BOTH during the base period of the claim and while filing for benefits. In addition, to be considered "available for work," a claimant must be legally authorized to work at the time benefits are claimed.

**R994-405-1002. Alien Status.**

(1) An alien may establish wage credits and qualify for benefit payments if he or she was:

- (a) Lawfully admitted for permanent residence at the time the services were performed, or
- (b) Lawfully present for the purpose of performing the services, or
- (c) Permanently residing in the United States under color of law at the time the services were performed, or

(d) Granted the status of "refugee" or "asylee" by the Immigration and Nationality Act, United States Code Title 8, Section 1101 et seq.

(2) The status of temporary residence or the granting of work authorization does not confer retroactive lawful presence for purposes of monetary entitlement or work authorization.

**R994-405-1003. Lawfully Admitted for Permanent Residence.**

A claimant who is lawfully admitted for permanent residence must be given a dated employment authorization or other appropriate work permit by the US Citizenship and Immigration Services (USCIS).

**R994-405-1004. Lawfully Present for the Purpose of Performing Services.**

These are aliens with work permits issued by USCIS who have received permission to work in the United States. Aliens who do not possess USCIS documentation have not been processed through USCIS procedures and are not lawfully present in the United States. Aliens permitted to reside in the United States temporarily have privileges accorded by USCIS which may include work authorization. The claimant's work authorization must be printed on the document or stamped on the form.

**R994-405-1005. Permanently Residing in U.S. Under Color of Law.**

Eligibility can be established if:

(1) The USCIS knows of the alien's presence and has provided the alien with written assurance that deportation is not planned, and

(2) The alien is "permanently residing" which means the USCIS has given the alien permission to remain in the U.S. for an indefinite period of time. Individuals who have been granted the status of refugees or have been granted asylum have been defined by the USCIS as individuals who are permanently residing "under color of law."

**R994-405-1006. Section 1182(d)(5)(A) of the Immigration and Nationality Act.**

For reference, 8 USC 1182(d)(5)(A) includes people, referred to as parolees, admitted under specific authorization given by the United States Attorney General and those paroled into the United States temporarily for emergent reasons or for reasons rooted in the public interest, including crew members refused shore leave who are admitted on parole for medical treatment. All of these individuals are issued USCIS forms endorsed to show work status.

**R994-405-1007. Procedural Requirements.**

(1) Verification of Status.

If the claimant states he or she is an alien, the claimant must present documentary evidence of alien status. Acceptable evidence includes:

- (a) An alien registration document or other proof of immigration registration from USCIS that contains the claimant's alien admission number or alien file number, or
  - (b) Other documents that constitute reasonable evidence indicating a satisfactory alien status such as a passport.
- (2) Verification by the Department.

The Department must verify documentation referred to in Subsection R994-405-1007(1) with the USCIS through an automated system or other system designated by the USCIS. This system must protect the claimant's privacy as required by law. The Department must use the claimant's alien file number or alien admission number as the basis for verifying the alien status. If the claimant provides other documents, the Department must submit a photocopy of the documents to



USCIS for verification. Pending verification of the alien's documentation, the Department may not delay, deny, reduce or terminate the claimant's eligibility for benefits.

(3) Claimant Rights.

(a) Reasonable Opportunity to Submit Documentation.

The Department will provide the claimant with a reasonable opportunity to submit documentation establishing satisfactory alien status if such documentation is not presented at the time of filing. The Department will also provide the claimant reasonable opportunity to submit evidence of satisfactory alien status if the documentation presented is not verified by the USCIS. The claimant will initially be given three weeks to provide documentation or advise the Department as to any circumstances that would justify an extension of the time allowed. Failure to provide documentation or request an extension of time will result in a denial of benefits under Subsection 35A-4-403(1)(e) or Sections R994-403-122e through R994-403-128e.

(b) Disqualification Restrictions.

The Department will not delay, deny, reduce or terminate a claimant's eligibility for benefits on the basis of alien status until a reasonable opportunity has been provided for the claimant to present required documentation or pending its verification after the claimant presents the documents. The claimant will be considered at fault in the creation of any overpayment if benefits were paid based on the claimant's unverifiable assertion of legal admission.

(c) Notice of Disqualification.

When benefits are denied by reason of alien status, a written, appealable decision must be issued to the claimant stating the evidence upon which the denial is based, the findings of fact, and the conclusion of law.

**R994-405-1008. Preponderance of Evidence.**

Benefits will be denied only if the preponderance of evidence supports denial. Aliens are presumed lawfully admitted or lawfully present under the Immigration and Nationality Act until it is established by a preponderance of evidence they are not lawfully admitted. The preponderance of evidence required to support a denial of benefits is not satisfied by a lack of evidence. Therefore, the claimant's certification as to citizenship or legal alien status should be accepted while USCIS is being contacted for verification.

**R994-405-1009. Availability for Work.**

While filing for benefits, an alien must show authorization to work to be considered available for work as required under Subsection 35A-4-403(1)(c). An alien with temporary resident status may be granted authorization to engage in employment in the United States. In such cases the alien will be provided with an "employment authorized" endorsement or other appropriate work permit. Termination of "temporary residence status" can be made by the United States Attorney General only upon a determination the alien is deportable.

**R994-405-1010. Periods of Ineligibility.**

Any wages earned during a period of time when the alien was not in legal status, cannot be used in the monetary determination, and a disqualification must be assessed under Subsection 35A-4-405(10). If the claimant was in legal status during a portion of the base period, only wages earned during that portion may be used to establish a claim. If the alien did earn sufficient wage credits while in legal status, but is no longer in legal status at the time the benefits are claimed, the claimant is ineligible under Subsection 35A-4-403(1)(c) because he or she cannot legally obtain employment.

**KEY: unemployment compensation, employment, employee's rights, employee termination**

March 1, 2017

Notice of Continuation March 29, 2018

35A-4-502(1)(b)

35A-1-104(4)

35A-4-405

**R994. Workforce Services, Unemployment Insurance.****R994-508. Appeal Procedures.****R994-508-101. Right to Appeal an Initial Department Determination.**

(1) An interested party has the right to appeal an initial Department determination on unemployment benefits or unemployment tax liability (contributions) by filing an appeal with the Appeals Unit or at any DWS Employment Center.

(2) The appeal must be in writing and either sent through the U.S. Mail, faxed, or delivered to the Appeals Unit, or submitted electronically through the Department's website.

(3) The appeal must be signed by an interested party unless it can be shown that the interested party has conveyed, in writing, the authority to another person or is physically or mentally incapable of acting on his or her own behalf. Providing the correct Personal Identification Number (PIN) when filing an appeal through the Department's website will be considered a signed appeal.

(4) The appeal should give the date of the determination being appealed, the social security number of any claimant involved, the employer number, a statement of the reason for the appeal, and any and all information which supports the appeal. The failure of an appellant to provide the information in this subsection will not preclude the acceptance of an appeal.

(5) The scope of the appeal is not limited to the issues stated in the appeal.

(6) If the claimant is receiving benefits at the time the appeal is filed, payments will continue pending the written decision of the ALJ even if the claimant is willing to waive payment. If benefits are denied as a result of the appeal, an overpayment will be established.

**R994-508-102. Time Limits for Filing an Appeal from an Initial Department Determination.**

(1) The time permitted for an appeal is fifteen calendar days from the date on the Department decision unless otherwise specified on the decision.

(2) In computing the period of time allowed for filing an appeal, the date as it appears in the determination is not included. The last day of the appeal period is included in the computation unless it is a Saturday, Sunday, or legal holiday when Department offices are closed. If the last day permitted for filing an appeal falls on a Saturday, Sunday, or legal holiday, the time permitted for filing a timely appeal will be extended to the next day when Department offices are open.

(3) An appeal sent through the U.S. Mail is considered filed on the date shown by the postmark. If the postmark date cannot be established because it is illegible, erroneous, or omitted, the appeal will be considered filed on the date it was mailed if the sender can establish that date by competent evidence and can show that it was mailed prior to the date of actual receipt. If the date of mailing cannot be established by competent evidence, the appeal will be considered filed on the date it is actually received by the Appeals Unit as shown by the Appeals Unit's date stamp on the document or other credible evidence such as a written notation of the date of receipt. "Mailed" in this subsection means taken to the post office or placed in a receptacle which is designated for pick up by an employee who has the responsibility of delivering it to the post office.

**R994-508-103. Untimely Appeal.**

If it appears that an appeal was not filed in a timely manner, the appellant will be notified and given an opportunity to show that the appeal was timely or that it was delayed for good cause. If it is found that the appeal was not timely and the delay was without good cause, the ALJ or the Board will not have jurisdiction to consider the merits unless jurisdiction is established in accordance with provisions of Subsection 35A-4-

406(2). Any decision with regard to jurisdictional issues will be issued in writing and delivered or mailed to all interested parties with a clear statement of the right of further appeal or judicial review.

**R994-508-104. Good Cause for Not Filing Within Time Limitations.**

A late appeal may be considered on its merits if it is determined that the appeal was delayed for good cause. Good cause is limited to circumstances where it is shown that:

(1) the appellant received the decision after the expiration of the time limit for filing the appeal, the appeal was filed within ten days of actual receipt of the decision and the delay was not the result of willful neglect;

(2) the delay in filing the appeal was due to circumstances beyond the appellant's control; or

(3) the appellant delayed filing the appeal for circumstances which were compelling and reasonable.

**R994-508-105. Response to an Appeal.**

A respondent is not required to file a written response to an appeal. A respondent may file a response if it does not delay the proceedings.

**R994-508-106. Notice of the Hearing.**

(1) All interested parties will be notified by mail, at least seven days prior to the hearing, of:

(a) the time and place of the hearing;

(b) the right to be represented at the hearing;

(c) the legal issues to be considered at the hearing;

(d) the procedure for submitting written documents;

(e) the consequences of not participating;

(f) the procedures and limitations for requesting a continuance or rescheduling; and

(g) the procedure for requesting an interpreter for the hearing, if necessary.

(2) When a new issue arises during the hearing, advance written notice may be waived by the parties after a full explanation by the ALJ of the issues and potential consequences.

(3) It is the responsibility of a party to notify and make arrangements for the participation of the party's representative and/or witnesses, if any.

(4) If a party has designated a person or professional organization as its agent, notice will be sent to the agent which will satisfy the requirement to give notice to the party.

**R994-508-107. Department to Provide Documents.**

The Appeals Unit will obtain the information which the Department used to make its initial determination and the reasoning upon which that decision was based and will send all of the Department's relevant documentary information to the parties with the notice of hearing.

**R994-508-108. Discovery.**

(1) Discovery is a legal process to obtain information which is necessary to prepare for a hearing. In most unemployment insurance hearings, informal methods of discovery are sufficient. Informal discovery is the voluntary exchange of information regarding evidence to be presented at the hearing, and witnesses who will testify at the hearing. Usually a telephone call to the other party requesting the needed information is adequate. Parties are encouraged to cooperate in providing information. If this information is not provided voluntarily, the party requesting the information may request that the ALJ compel a party to produce the information through a verbal or written order or issuance of a subpoena. In considering the requests, the ALJ will balance the need for the information with the burden the requests place upon the

opposing party and the need to promptly decide the appeal.

(2) The use of formal discovery procedures in unemployment insurance appeals proceedings are rarely necessary and tend to increase costs while delaying decisions. Formal discovery may be allowed for unemployment insurance hearings only if so directed by the ALJ and when each of the following elements is present:

(a) informal discovery is inadequate to obtain the information required;

(b) there is no other available alternative that would be less costly or less intimidating;

(c) it is not unduly burdensome;

(d) it is necessary for the parties to properly prepare for the hearing; and

(e) it does not cause unreasonable delays.

(3) Formal discovery includes requests for admissions, interrogatories, and other methods of discovery as provided by the Utah Rules of Civil Procedure.

#### **R994-508-109. Hearing Procedure.**

(1) All hearings will be conducted before an ALJ in such manner as to provide due process and protect the rights of the parties.

(2) The hearing will be recorded.

(3) The ALJ will regulate the course of the hearing to obtain full disclosure of relevant facts and to afford the parties a reasonable opportunity to present their positions.

(4) The decision of the ALJ will be based solely on the testimony and evidence presented at the hearing.

(5) All testimony of the parties and witnesses will be given under oath or affirmation.

(6) All parties will be given the opportunity to provide testimony, present relevant evidence which has probative value, cross-examine any other party and/or other party's witnesses, examine or be provided with a copy of all exhibits, respond, argue, submit rebuttal evidence and/or provide statements orally or in writing, and/or comment on the issues.

(7) The evidentiary standard for ALJ decisions, except in cases of fraud, is a preponderance of the evidence. Preponderance means evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. The evidentiary standard for determining claimant fraud is clear and convincing evidence. Clear and convincing is a higher standard than preponderance of the evidence and means that the allegations of fraud are highly probable.

(8) The ALJ will direct the order of testimony and rule on the admissibility of evidence. The ALJ may, on the ALJ's own motion or the motion of a party, exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(9) Oral or written evidence of any nature, whether or not conforming to the rules of evidence, may be accepted and will be given its proper weight. A party has the responsibility to present all relevant evidence in its possession. When a party is in possession of evidence but fails to introduce the evidence, an inference may be drawn that the evidence does not support the party's position.

(10) Official Department records, including reports submitted in connection with the administration of the Employment Security Act, may be considered at any time in the appeals process including after the hearing.

(11) Parties may introduce relevant documents into evidence. Parties must mail, fax, or deliver copies of those documents to the ALJ assigned to hear the case and all other interested parties so that the documents are received three days prior to the hearing. Failure to prefile documents may result in a delay of the proceedings. If a party has good cause for not submitting the documents three days prior to the hearing or if a

party does not receive the documents sent by the Appeals Unit or another party prior to the hearing, the documents will be admitted after provisions are made to insure due process is satisfied. At his or her discretion, the ALJ can either:

(a) reschedule the hearing to another time;

(b) allow the parties time to review the documents at an in-person hearing;

(c) request that the documents be faxed during the hearing, if possible, or read the material into the record in case of telephone hearing; or

(d) leave the record of the hearing open, send the documents to the party or parties who did not receive them, and give the party or parties an opportunity to submit additional evidence after they are received and reviewed.

(12) The ALJ may, on his or her own motion, take additional evidence as is deemed necessary.

(13) With the consent of the ALJ, the parties to an appeal may stipulate to the facts involved. The ALJ may decide the appeal on the basis of those facts, or may set the matter for hearing and take further evidence as deemed necessary to decide the appeal.

(14) The ALJ may require portions of the testimony be transcribed as necessary for rendering a decision.

(15) All initial determinations made by the Department are exempt from the provisions of the Utah Administrative Procedures Act (UAPA). Appeals from initial determinations will be conducted as formal adjudicative proceedings under UAPA.

#### **R994-508-110. Telephone Hearings.**

(1) Hearings are scheduled as telephonic hearings. Every party wishing to participate in the telephone hearing must call the Appeals Unit before the hearing and provide a telephone number where the party can be reached at the time of the hearing. If the party that filed the appeal fails to call in advance as required by the notice of hearing, the appeal will be dismissed and an order of default will be issued.

(2) If a party requires an in-person hearing, the party must contact an ALJ and request that the hearing be scheduled as an in-person hearing. The request should be made sufficiently in advance of the hearing so that all other parties may be given notice of the change in hearing type and the opportunity to appear in person also. Requests will only be granted if the party can show that an in-person hearing is necessary to accommodate a special need or if the ALJ deems an in-person hearing is necessary to ensure an orderly and fair hearing which meets due process requirements. If the ALJ grants the request, all parties will be informed that the hearing will be conducted in person. Even if the hearing is scheduled as an in-person hearing, a party may elect to participate by telephone. In-person hearings are held in the office of the Appeals Unit unless the ALJ determines that another location is more appropriate. The Department is not responsible for any travel costs incurred by attending an in-person hearing.

(3) The Appeals Unit will provide a toll-free telephone number that parties and their witnesses can call for confirming and participating in telephone hearings.

#### **R994-508-111. Evidence, Including Hearsay Evidence.**

(1) The failure of one party to provide information either to the Department initially or at the appeals hearing severely limits the facts available upon which to base a good decision. Therefore, it is necessary for all parties to actively participate in the hearing by providing accurate and complete information in a timely manner to assure the protection of the interests of each party and preserve the integrity of the unemployment insurance system.

(2) Hearsay, which is information provided by a source whose credibility cannot be tested through cross-examination,

has inherent infirmities which make it unreliable.

(3) Evidence will not be excluded solely because it is hearsay. Hearsay, including information provided to the Department through telephone conversations and written statements will be considered, but greater weight will be given to credible sworn testimony from a party or a witness with personal knowledge of the facts.

(4) Findings of fact cannot be based exclusively on hearsay evidence unless that evidence is admissible under the Utah Rules of Evidence. All findings must be supported by a residuum of legal evidence competent in a court of law.

**R994-508-112. Procedure For Use of an Interpreter at the Hearing.**

(1) If a party notifies the Appeals Unit that an interpreter is needed, the Unit will arrange for an interpreter at no cost to the party.

(2) The ALJ must be assured that the interpreter understands the English language and understands the language of the person for whom the interpreter will interpret.

(3) The ALJ will instruct the interpreter to interpret, word for word, and not summarize, add, change, or delete any of the testimony or questions.

(4) The interpreter will be sworn to truthfully and accurately translate all statements made, all questions asked, and all answers given.

**R994-508-113. Department a Party to Proceedings.**

As a party to the hearing, the Department or its representatives have the same rights and responsibilities as other interested parties to present evidence, bring witnesses, cross-examine witnesses, give rebuttal evidence, and appeal decisions. The ALJ cannot act as the agent for the Department and therefore is limited to including in the record only that relevant evidence which is in the Department files, including electronically kept records or records submitted by Department representatives. The ALJ will, on his or her own motion, call witnesses for the Department when the testimony is necessary and the need for such witnesses or evidence could not have been reasonably anticipated by the Department prior to the hearing. If the witness is not available, the ALJ will, on his or her own motion, continue the hearing until the witness is available.

**R994-508-114. Ex Parte Communications.**

Parties are not permitted to discuss the merits or facts of any pending case with the ALJ assigned to that case or with a member of the Board prior to the issuance of the decision, unless all other parties to the case have been given notice and opportunity to be present. Any ex parte discussions between a party and the ALJ or a Board member will be reported to the parties at the time of the hearing and made a part of the record. Discussions with Department employees who are not designated to represent the Department on the issue and are not expected to participate in the hearing of the case are not ex parte communications and do not need to be made a part of the record.

**R994-508-115. Requests for Removal of an ALJ from a Case.**

A party may request that an ALJ be removed from a case on the basis of partiality, interest, or prejudice. The request for removal must be made to the ALJ assigned to hear the case. The request must be made prior to the hearing unless the reason for the request was not, or could not have been known prior to the hearing. The request must state specific facts which are alleged to establish cause for removal. If the ALJ agrees to the removal, the case will be assigned to a different ALJ. If the ALJ finds no legitimate grounds for the removal, the request will be denied and the ALJ will explain the reasons for the denial during the

hearing. Appeals pertaining to the partiality, interest, or prejudice of the ALJ may be filed consistent with the time limitations for appealing any other decision.

**R994-508-116. Rescheduling or Continuance of Hearing.**

(1) The ALJ may adjourn, reschedule, continue, or reopen a hearing on the ALJ's own motion or on the motion of a party.

(2) If a party knows in advance of the hearing that they will be unable to proceed with or participate in the hearing on the date or time scheduled, the party must request that the hearing be rescheduled or continued to another day or time.

(a) The request must be received prior to the hearing.

(b) The request must be made orally by calling the Appeals Unit. If the request is not received prior to the hearing, the party must show cause for failing to make a timely request.

(c) The party making the request must provide evidence of good cause for the request.

(3) Unless compelling reasons exist, a party will not normally be granted more than one request for a continuance.

**R994-508-117. Failure to Participate in the Hearing and Reopening the Hearing After the Hearing Has Been Concluded.**

(1) If a party fails to appear for or participate in the hearing, either personally or through a representative, the ALJ may take evidence from participating parties and will issue a decision based on the best available evidence.

(2) Any party failing to participate, personally or through a representative, may request that the hearing be reopened.

(3) The request must be in writing, must set forth the reason for the request, and must be mailed, faxed, or delivered to the Appeals Unit within ten days of the issuance of the decision issued under Subsection (1). Intermediate Saturdays, Sundays and legal holidays are excluded from the computation of the ten days in accordance with Rule 6 of the Utah Rules of Civil Procedure. If the request is made after the expiration of the ten-day time limit, but within 30 days, the party requesting reopening must show cause for not making the request within ten days. If no decision has yet been issued, the request should be made without unnecessary delay. If the request is received more than 30 days after the decision is issued, the Department will have lost jurisdiction and the party requesting reopening must show good cause for not making a timely request.

(4) If a request to reopen is not granted, the ALJ will issue a decision denying the request. A party may appeal a denial of the request to reopen to the Board within 30 days of the date of issuance of the decision. The appeal must be in writing and set forth the reason or reasons for the appeal. The appeal can only contest the denial of the request to set aside the default and not the underlying merits of the case except as provided in R994-508-118(2)(f).

(5) The ALJ may reopen a hearing on his or her own motion if it appears necessary to take continuing jurisdiction or if the failure to reopen would be an affront to fairness.

(6) If the request to reopen is made more than 30 days after the issuance of the ALJ's decision, the ALJ may consider the request or refer it to the Board to be treated as an appeal to the Board.

**R994-508-118. What Constitutes Grounds to Reopen a Hearing.**

(1) The request to reopen will be granted if the party was prevented from appearing at the hearing due to circumstances beyond the party's control.

(2) The request may be granted upon such terms as are just for any of the following reasons: mistake, inadvertence, surprise, excusable neglect, or any other reason justifying relief from the operation of the decision. The determination of what sorts of neglect will be considered excusable is an equitable one,

taking into account all of the relevant circumstances including:

(a) the danger that the party not requesting reopening will be harmed by reopening;

(b) the length of the delay caused by the party's failure to participate including the length of time to request reopening;

(c) the reason for the request including whether it was within the reasonable control of the party requesting reopening;

(d) whether the party requesting reopening acted in good faith;

(e) whether the party was represented at the time of the hearing. Attorneys and professional representatives are expected to have greater knowledge of Department procedures and rules and are therefore held to a higher standard; and

(f) whether based on the evidence of record and the parties' arguments or statements, taking additional evidence might affect the outcome of the case.

(3) Requests to reopen are remedial in nature and thus must be liberally construed in favor of providing parties with an opportunity to be heard and present their case. Any doubt must be resolved in favor of granting reopening.

(4) Excusable neglect is not limited to cases where the failure to act was due to circumstances beyond the party's control.

(5) The ALJ has the discretion to schedule a hearing to determine if a party requesting reopening satisfied the requirements of this rule or may, after giving the other parties an opportunity to respond to the request, grant or deny the request on the basis of the record in the case.

#### **R994-508-119. Withdrawal of Appeal.**

A party who has filed an appeal with the Appeals Unit may request that the appeal be withdrawn. The request must explain the reasons for the withdrawal and be made to the ALJ assigned to hear the case, or the supervising ALJ if no ALJ has yet been assigned. The ALJ may deny the request if the withdrawal of the appeal would jeopardize the due process rights of any party. If the ALJ grants the request, the ALJ will issue a decision dismissing the appeal and the initial Department determination will remain in effect. The decision will inform the parties of the right to reinstate the appeal and the procedure for reinstating the appeal. A request to reinstate an appeal must be made within ten calendar days of the decision dismissing the appeal, must be in writing, and must show cause for the request. A request to reinstate made more than ten days after the dismissal will be treated as a late appeal.

#### **R994-508-120. Prompt Notification of Decision.**

Any decision by an ALJ or the Board which affects the rights of any party with regard to benefits, tax liability, or jurisdictional issues will be mailed to the last known address of the parties or delivered in person. Each decision issued will be in writing with a complete statement of the findings of fact, reasoning and conclusions of law, and will include or be accompanied by a notice specifying the further appeal rights of the parties. The notice of appeal rights shall state clearly the place and manner for filing an appeal from the decision and the period within which a timely appeal may be filed.

#### **R994-508-122. Finality of Decision.**

The ALJ's decision is binding on all parties and is the final decision of the Department unless appealed within 30 days of date the decision was issued.

#### **R994-508-201. Non-Attorney Representative Fees.**

(1) An authorized representative who is not an attorney may not charge or receive a fee for representing a claimant in an action before the Department without prior approval by an ALJ or the Board. The Department is not responsible for the payment of the fee, only the regulation and approval of the fee.

The Department does not regulate fees charged to employers or attorney's fees.

(2) Fees will not be approved in excess of 25 percent of the claimant's maximum potential regular benefit entitlement.

#### **R994-508-202. Petition for Approval of Fee.**

(1) If a fee is to be charged, a written petition for approval must be submitted by the claimant's representative to the ALJ before whom the representative appeared, or to the supervising ALJ if no hearing was scheduled. An approval form can be obtained through the Appeals Unit. Prior to approving the fee, a copy of the petition will be sent to the claimant and the claimant will be allowed ten days from the date of mailing to object to the fee. At the discretion of the ALJ, the fee may be approved as requested, adjusted to a lower amount, or disallowed in its entirety.

(2) If the case is appealed to the Board level, the claimant's representative must file a new petition with the Board if additional fees are requested.

#### **R994-508-203. Criteria for Evaluation of Fee Petition.**

The appropriateness of the fee will be determined using the following criteria:

(1) the complexity of the issues involved;

(2) the amount of time actually spent in;

(a) preparation of the case;

(b) attending the hearing;

(c) preparation of a brief, if required. Unless an appeal is taken to the Court of Appeals, fees charged for preparation of briefs or memoranda will not ordinarily be approved unless the ALJ requested or preapproved the filing of the brief or memoranda; and

(d) further appeal to the Board, the Court of Appeals, and/or the Supreme Court.

(3) The quality of service rendered including:

(a) preparedness of the representative;

(b) organization and presentation of the case;

(c) avoidance of undue delays. A representative should make every effort to go forward with the hearing when it is originally scheduled to avoid leaving the claimant without income or an unnecessary overpayment; and,

(d) the necessity of representation. If the ALJ or the Board determines that the claimant was not in need of representation because of the simplicity of the case or the lack of preparation on the part of the representative, only a minimal fee may be approved or, in unusual circumstances, a fee may be disallowed.

(4) The prevailing fee in the community. The prevailing fee is the rate charged by peers for the same type of service. In determining the prevailing fee for the service rendered, the Department may consider information obtained from the Utah State Bar Association, Lawyer's Referral Service, or other similar organizations as well as similar cases before the Appeals Unit.

#### **R994-508-204. Appeal of Fee.**

The claimant or the authorized representative may appeal the fee award to the Board within 30 days of the date of issuance of the ALJ's decision. The appeal must be in writing and set forth the reason or reasons for the appeal.

#### **R994-508-301. Appeal From a Decision of an ALJ.**

If the ALJ's decision did not affirm the initial Department determination, the Board will accept a timely appeal from that decision if filed by an interested party. If the decision of the ALJ affirmed the initial Department determination, the Board has the discretion to refuse to accept the appeal or request a review of the record by an individual designated by the Board. If the Board refuses to accept the appeal or requests a review of the record as provided in statute, the Board will issue a written

decision declining the appeal and containing appeal rights.

**R994-508-302. Time Limit for Filing an Appeal to the Board.**

(1) The appeal from a decision of an ALJ must be filed within 30 calendar days from the date the decision was issued by the ALJ. This time limit applies regardless of whether the decision of the ALJ was sent through the U.S. Mail or personally delivered to the party. "Delivered to the party" means personally handed, faxed, or sent electronically to the party. No additional time for mailing is allowed.

(2) In computing the period of time allowed for filing a timely appeal, the date as it appears in the ALJ's decision is not included. The last day of the appeal period is included in the computation unless it is a Saturday, Sunday, or legal holiday when the offices of the Department are closed. If the last day permitted for filing an appeal falls on a Saturday, Sunday, or legal holiday, the time permitted for filing a timely appeal will be extended to the next day when the Department offices are open.

(3) The date of receipt of an appeal to the Board is the date the appeal is actually received by the Board, as shown by the Department's date stamp on the document or other credible evidence such as a written or electronic notation of the date of receipt, and not the post mark date from the post office. If the appeal is faxed to the Board, the date of receipt is the date recorded on the fax.

(4) Appeals to the Board which appear to be untimely will be handled in the same way as untimely appeals to the ALJ in rules R994-508-103 and R994-508-104.

**R994-508-303. Procedure for Filing an Appeal to the Board.**

(1) An appeal to the Board from a decision of an ALJ must be in writing and include:

(a) the name and signature of the party filing the appeal. Accessing the Department's website for the purpose of filing an appeal and providing a correct PIN will be considered a signed appeal;

(b) the name and social security number of the claimant in cases involving claims for unemployment benefits;

(c) the grounds for appeal; and

(d) the date when the appeal was mailed or sent to the Board.

(2) The appeal must be mailed, faxed, delivered to, or filed electronically with the Board.

(3) An appeal which does not state adequate grounds, or specify alleged errors in the decision of the ALJ, may be summarily dismissed.

**R994-508-304. Response to an Appeal to the Board.**

Interested parties will receive notice that an appeal has been filed and a copy of the appeal and will be given 15 days from the date the appeal was mailed to the party to file a response. Parties are not required to file a response. A party filing a response should mail a copy to all other parties and the Board.

**R994-508-305. Decisions of the Board.**

(1) The Board has the discretion to consider and render a decision on any issue in the case even if it was not presented at the hearing or raised by the parties on appeal.

(2) Absent a showing of unusual or extraordinary circumstances, the Board will not consider new evidence on appeal if the evidence was reasonably available and accessible at the time of the hearing before the ALJ.

(3) The Board has the authority to request additional information or evidence, if necessary.

(4) The Board may remand the case to the Department or the ALJ when appropriate.

(5) A copy of the decision of the Board, including an explanation of the right to judicial review, will be delivered or mailed to the interested parties.

**R994-508-307. Withdrawal of Appeal to the Board.**

A party who has filed an appeal from a decision of an ALJ may request that the appeal be withdrawn. The request must explain the reasons for the withdrawal by making a written statement to the Board explaining the reasons for the withdrawal. The Board may deny such a request if the withdrawal of the appeal jeopardizes the due process rights of any party. If the Board grants the request, a decision dismissing the appeal will be issued and the underlying decision will remain in effect. The decision will inform the party of the right to reinstate the appeal and the procedure for reinstating the appeal. A request to reinstate an appeal under this subsection must be made within ten days of the decision dismissing the appeal, must be in writing, and must show cause for the request. A request to reinstate made more than 30 days after the dismissal will be treated as a late appeal.

**R994-508-401. Jurisdiction and Reconsideration of Decisions.**

(1) An initial Department determination or a decision of an ALJ or the Board is not final until the time permitted for the filing of an appeal has elapsed. There are no limitations on the review of decisions until the appeal time has elapsed.

(2) After a determination or decision has become final, the Department may, on its own initiative or upon the request of any interested party, review a determination or decision and issue a new decision or determination, if appropriate, if there has been a change of conditions or a mistake as to facts. The reconsideration must be made at, or with the approval of, the level where the last decision on the case was made or is currently pending.

(a) A change in conditions may include a change in the law which would make reconsideration necessary in fairness to the parties who were adversely affected by the law change. A change in conditions may also include an unforeseeable change in the personal circumstances of the claimant or employer which would have made it reasonable not to file a timely appeal.

(b) A mistake as to facts is limited to material information which was the basis for the decision. A mistake as to facts may include information which is misunderstood or misinterpreted, but does not include an error in the application of the act or the rules provided the decision is made under the correct section of the act. A mistake as to facts can only be found if it was inadvertent. If the party alleging the mistake intentionally provided the wrong information or intentionally withheld information, the Department will not exercise jurisdiction under this paragraph.

(3) The Department is not required to take jurisdiction in all cases where there is a change in conditions or a mistake as to facts. The Department will weigh the administrative burden of making a redetermination against the requirements of fairness and the opportunities of the parties affected to file an appeal. The Department may decline to take jurisdiction if the redetermination would have little or no effect.

(4) Any time a decision or determination is reconsidered, all interested parties will be notified of the new information and provided with an opportunity to participate in the hearing, if any, held in conjunction with the review. All interested parties will receive notification of the redetermination and be given the right to appeal.

(5) A review cannot be made after one year from the date of the original determination except in cases of fraud or claimant fault. In cases of fault or fraud, the Department has continuing jurisdiction as to overpayments. In cases of fraud, the Department only has jurisdiction to assess the penalty

provided in Utah Code Subsection 35A-4-405(5) for a period of one year after the discovery of the fraud.

**KEY: unemployment compensation, appellate procedures**  
**May 30, 2017** 35A-4-508(2)  
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