

UTAH STATE BULLETIN

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

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Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Division of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3764. Additional rulemaking information and electronic versions of all administrative rule publications are available at <http://www.rules.utah.gov/>.

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

Division of Administrative Rules, Salt Lake City 84114

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SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Medicaid Nursing Facility Reimbursement

The Division of Medicaid and Health Financing (DMHF) is submitting changes to the Medicaid State Plan through Attachment 4.19-D, SPA 14-013-UT Quality Improvement Incentive. These changes are necessary to extend the program and to add a new subprogram of the quality incentive programs, called patient dignity, for nursing facilities in State Fiscal Year 2015 and beyond.

Pending Centers for Medicare and Medicaid Services (CMS) approval, this amendment becomes effective on July 1, 2014.

This amendment is not anticipated to result in a fiscal impact.

A copy of these changes may be obtained from Craig Devashrayee (801-538-6641), or by writing the Technical Writing Unit, Utah Department of Health, PO Box 143102, Salt Lake City, UT 84114-3102. Comments are welcome at the same address. Copies of the changes are also available at local county health department offices.

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between March 01, 2014, 12:00 a.m., and March 14, 2014, 11:59 p.m. are included in this, the April 01, 2014, issue of the *Utah State Bulletin*.

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

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

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least May 1, 2014. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through July 30, 2014, the agency may notify the Division of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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

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

The Proposed Rules Begin on the Following Page

Commerce, Consumer Protection
R152-23
 Utah Health Spa Services

160 E 300 S
 SALT LAKE CITY, UT 84111-2316
 or at the Division of Administrative Rules.

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38329

FILED: 03/05/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The administrative rule definition of "personal trainer" caused more confusion for applicants than guidance.

SUMMARY OF THE RULE OR CHANGE: The definition of "Personal Trainer" is being eliminated from the Definitions section of the administrative rule and registration requirements for personal trainers are clarified.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 13-2-5 and Section 13-23-4 and Section 63G-3-201

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The state budget will not be affected because there are no enforcement costs associated with this amendment.
- ◆ LOCAL GOVERNMENTS: Local governments will not be affected because they do not enforce the Health Spa Services Protection Act.
- ◆ SMALL BUSINESSES: Health spas that qualify as small businesses will benefit from the elimination of a confusing definition.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons that offer health spa services will benefit from the elimination of a confusing definition.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs for affected persons associated with the elimination of a definition. The registration requirements remain the same, so compliance costs will remain the same.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As stated in the rule analysis, this filing moves certain requirements governing registration of a health spa from the definition section into the substantive rule. No fiscal impact to businesses is anticipated.

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

COMMERCE
 CONSUMER PROTECTION
 HEBER M WELLS BLDG

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Angela Hendricks by phone at 801-530-6035, by FAX at 801-538-6001, or by Internet E-mail at ahendricks@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2014

AUTHORIZED BY: Daniel O'Bannon, Director

R152. Commerce, Consumer Protection.

R152-23. Utah Health Spa Services.

R152-23-3. Definitions.

In addition to the definitions set forth in Section 13-23-2, the following definitions shall apply to these Rules.

(1) "Advance Sales" shall mean sales of consumer contracts on any date prior to the date a health spa facility becomes fully operational and available for use.

(2) "Costs" shall mean those costs incurred by the Division in investigating complaints, in collecting and distributing funds, and in otherwise fulfilling its responsibilities under the Health Spa Services Protection Act or these Rules.

(3) "Facility" means the physical building where the health spa services are provided.

(4) "Operate" means to advertise health spa services, to sell memberships, or to perform any other function of business by a health spa that is doing business in Utah.

[~~(5) "Personal Trainer" means an individual who is a health spa under Section 13-23-2 because the individual (1) hires another individual, either as an employee or an independent contractor, to provide instruction to assist patrons to improve their physical condition or appearance through aerobic conditioning, strength training, fitness training or other exercise, and (2) is granted the use of a facility that contains exercise equipment.~~

R152-23-4. Registration Requirements.

(1) A health spa may not operate in this state without first having received a registration permit from the Division. Each health spa entity shall obtain a registration permit prior to selling, offering or attempting to sell, soliciting the sale of, or becoming a party to any contract to provide health spa services.

(2) The application shall request the following items:

(a) Name, addresses, email address and telephone numbers of owner(s) of the health spa Facility and the facility address, telephone number, email address, and name of contact person at the facility.

(b) Payment of the non-refundable application fee.

(c) A current pricing structure for health and fitness services.

(d) A copy of the contract that will be utilized by the facility containing the provisions required by law. The required provisions shall be highlighted for easy reference.

(e) The documents necessary to satisfy the surety requirement of Section 13-23-5(2)(a). If the health spa claims that it is exempt from providing the surety, then it must provide the Division with sufficient evidence that each requirement of Section 13-23-6 is satisfied.

(f) The number of consumer contracts that relate to each facility.

(g) The name, address, email address, and telephone number of each [Personal Trainer]employee, independent contractor, or any other health spa service provider who will be authorized by the registrant to use the health spa's facilities in providing health spa services to consumers during the year.

(h) The company name and contact information for a third party billing and management provider, if used.

(i) Evidence that the health spa facility maintains current liability or professional liability insurance.

(3) A separate registration shall be required for each facility that is maintained and operated by a health spa.

(4) If any information contained in the application becomes incorrect or incomplete, then the health spa shall, within thirty (30) days of the information becoming incorrect or incomplete, correct the application or file the complete information.

(5) All initial applications and renewal applications shall be processed within twenty (20) business days after their receipt by the Division.

KEY: consumer protection, health spas

Date of Enactment or Last Substantive Amendment: ~~[November 29, 2012]~~2014

Notice of Continuation: March 22, 2012

Authorizing, and Implemented or Interpreted Law: 63G-3-201; 13-2-5; 13-23-1

Commerce, Occupational and
Professional Licensing
R156-15

Health Facility Administrator Act Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38337

FILED: 03/11/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Health Facility Administrators Licensing Board are proposing amendments to: 1) clarify responsibilities and supervision of Administrator-in-Training (AIT) preceptorships which will expand current practices which limited the availability of experienced health facility administrators in the training of new professionals; and 2) make certain corrections in administration in connection with Department of Health rules.

SUMMARY OF THE RULE OR CHANGE: Throughout the rule, the terms "division" and "board" have been capitalized. Subsection R156-15-102(4) is amended to make a change to general administration of licensed facilities as permitted by the Department of Health rules on facilities requiring licensed health facility administrators. Subsection R156-15-102(7) is amended to expand who may supervise AIT preceptorship training. Subsection R156-15-307(2) is amended to permit additional licensed health facility administrators with experience to supervise the training of an AIT.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a) and Subsection 58-15-3(3)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The Division will incur minimal costs of approximately \$50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

♦ LOCAL GOVERNMENTS: The proposed amendments only apply to licensed health facility administrators and applicants for licensure in that classification. As a result, the proposed amendments do not apply to local governments.

♦ SMALL BUSINESSES: The proposed amendments only apply to licensed health facility administrators and applicants for licensure in that classification. The proposed amendments will provide more training opportunities for applicants and may also provide additional employment opportunities for licensees; but should have no impact on small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendments only apply to licensed health facility administrators and applicants for licensure in that classification. The proposed amendments will increase the availability of prospective licensees to training with experienced licensees to the benefit and safety of the public. The Division does not anticipate any substantial costs or savings as a result of the proposed amendments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed health facility administrators and applicants for licensure in that classification. The proposed amendments will increase the availability of prospective licensees to training with experienced licensees to the benefit and safety of the public. The proposed amendments should have no increased compliance cost or impact for health facility administrators. If the proposed increased training opportunities and employment opportunities occur, there may be some unknown costs which the Division is not able to determine due to a wide range of circumstances.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As stated in the rule analysis, this filing will allow certain licensees who are working in executive positions with

licensed health facilities to supervise up to two administrators in training. No fiscal impact to businesses is anticipated.

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

COMMERCE
OCCUPATIONAL AND PROFESSIONAL
LICENSING
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Sally Stewart by phone at 801-530-6179, by FAX at 801-530-6511, or by Internet E-mail at sstewart@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2014

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

R156-15. Health Facility Administrator Act Rule.

R156-15-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 15, as used in this rule:

(1) "Administrator in training (AIT)" means an individual who is participating in a preceptorship with a licensed health facility administrator.

(2) "Board" means the Health Care Administrators Board.

(3) "Distance learning" means acquiring qualified professional education as referenced in Subsection R156-15-309(4) using technologies and other forms of learning, including internet, audio/visual recordings, mail or other correspondence.

(4) "General administration" as used in the definition of "administrator", Subsection 58-15-2(1), means that the administrator is responsible for operation of the health facility in accordance with all applicable laws regardless of whether the administrator is present full or part time in the facility or whether the administrator maintains an office inside or outside of the facility, but may not exceed responsibility for more than ~~one facility~~ the number of licensed facilities in accordance with Utah Administrative Code R432-150 or R432-200.

(5) "General supervision" means general supervision as defined in Subsection R156-1-102a(4)(c).

(6) "Nursing home administrator" means a health facility administrator.

(7) "Preceptor" means a licensed health facility administrator meeting the qualifications of Subsection R156-15-307(2), who is responsible for the supervision and training of an AIT.

(8) "Preceptorship" means a formal training program approved by the [d]Division in collaboration with the [b]Board for an administrator in training (AIT), under the supervision of an

approved licensed health facility administrator. The program is conducted in a licensed health facility.

(9) "Qualifying experience" means at least 8,000 hours of employment in a licensed health facility including hours in a supervisory role as referenced in Section R156-15-302c.

R156-15-103. Authority - Purpose.

This rule is adopted by the [d]Division under the authority of Subsection 58-1-106(1)(a) to enable the [d]Division to administer Title 58, Chapter 15.

R156-15-302c. Qualifications for Licensure - Experience Requirements.

In accordance with Subsection 58-1-203(1)(b) and 58-1-301(3), the experience requirement for licensure in Subsection 58-15-4(2) is defined, clarified, or established as follows:

(1) The applicant shall complete at least 8,000 hours of qualifying experience approved by the [d]Division in collaboration with the [b]Board.

(2) At least 4,000 hours of the qualifying experience shall be in a supervisory role.

(3) Subsection (1) may include up to 500 hours of an approved AIT preceptorship as outlined in Section R156-15-307, and if in a supervisory role may be included as part of Subsection (2).

R156-15-307. AIT Preceptorship.

(1) A preceptor shall be allowed to supervise no more than two AIT preceptees at a time.

(2) In order to be approved as a preceptor, the health facility administrator shall:

(a) have been licensed for three years;

(b) be currently licensed and in good standing in Utah;

and

(c)(i) be currently working in a licensed health facility; or

(ii) be currently working in an executive position related to a licensed health facility.

(3) The AIT preceptee shall at all times be under the general supervision of the preceptor.

(4) The AIT preceptee may work in the facility either full or part time while completing the preceptorship requirements. Credit received for an AIT preceptorship training shall be earned only for duties related to AIT preceptorship training as set forth under Subsection (5).

(5) An approved AIT preceptorship shall include the following:

(a) Patient care including:

(i) health maintenance;

(ii) social and psychological needs;

(iii) food service program;

(iv) medical care;

(v) recreational and therapeutic recreational activities;

(vi) medical records;

(vii) pharmaceutical program; and

(viii) rehabilitation program;

(b) Personnel management including:

(i) grievance procedures;

(ii) performance evaluation system;

(iii) job descriptions/performance standards;

- (iv) interview and hiring procedures;
- (v) training program;
- (vi) personnel policies and procedures; and
- (vii) employee health and safety program;
- (c) Financial management including:
 - (i) developing a budget;
 - (ii) financial planning
 - (iii) cash management system; and
 - (iv) establishing accurate financial records;
- (d) Marketing and public relations including
 - (i) planning and implementing a public relations program; and
 - (ii) planning and implementing an effective marketing program;
- (e) Physical resource management including:
 - (i) ground and codes, building maintenance;
 - (ii) sanitation and housekeeping procedures;
 - (iii) compliance with fire and life safety codes;
 - (iv) security; and
 - (v) fire and disaster plan;
- (f) Laws and regulatory codes including:
 - (i) knowledge of Medicaid and Medicare;
 - (ii) labor laws;
 - (iii) knowledge of building, fire and life safety codes;
 - (iv) OSHA/UOSHA;
 - (v) Bureau of Health Facility Licensure Law and Rule;
 - (vi) licensing and certification/professional licensing boards;
 - (vii) Health Facility Administrator Law and Rule;
 - (viii) tax laws; and
 - (ix) establishing or working with a governing board.

KEY: licensing, health facility administrators
Date of Enactment or Last Substantive Amendment: [~~May 26, 2011~~2014
Notice of Continuation: October 13, 2011
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-15-3(3)

Education, Administration
R277-119
Discretionary Funds

NOTICE OF PROPOSED RULE
 (New Rule)
 DAR FILE NO.: 38357
 FILED: 03/14/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to provide for the Utah State Board of Education (Board) to review and approve the use of discretionary account funds.

SUMMARY OF THE RULE OR CHANGE: The rule provides definitions and criteria for Board review and approval of discretionary funds use.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This rule provides for Board review and approval of discretionary funds use which likely will not result in a cost or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** This rule provides for Board review and approval of discretionary funds use which likely will not result in a cost or savings to local government.
- ◆ **SMALL BUSINESSES:** This rule provides for Board review and approval of discretionary funds use which likely will not result in a cost or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule provides for Board review and approval of discretionary funds use which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule provides for Board review and approval of discretionary funds use which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2014

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.**R277-119. Discretionary Funds.****R277-119-1. Definitions.**

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

B. "Board discretionary funds" means:

(1) Land exchange funds are funds appropriated to the Board from the account described in Section 53C-3-203;

(2) Mineral lease funds are funds identified in Section 59-21-1 and directed to the Board in Section 53A-3-203(4)(b); and

(3) State carryover funds are funds appropriated by the Legislature, maintained by the Board, and carried over from one fiscal year to the next for discretionary use.

C. "State Superintendent of Public Instruction (Superintendent)" means the executive officer of the Board and serves at the pleasure of the Board.

R277-119-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities; Section 59-21-2(2)(e) in which the Legislature appropriates 2.25 percent of all deposits made to Mineral Lease Account to the Board for use consistent with Section 53C-3-203(4)(b)(iii); and Section 53C-3-203(4)(b)(iii) in which the Legislature appropriates funds for the Board's use.

B. The purpose of this rule is to provide for Board review and approval of funds received by the Board for identified purposes.

R277-119-3. Board Review and Use of Discretionary Funds.

A. The Superintendent shall present an annual projection of revenues and expenditures of Board discretionary funds as part of the annual budget proposed to the Board.

B. The Superintendent shall submit to the Board for review a quarterly summary of actual versus projected expenditures from Board discretionary funds.

C. The Superintendent shall at least annually make a request to the Board for monies from carry-over funds for the Superintendent's sole discretion but may make additional requests.

D. The Superintendent may make requests to the Board to expend funds, consistent with purposes identified in state law, from the mineral lease or land exchange accounts.

KEY: State Board of Education, discretionary funds
Date of Enactment or Last Substantive Amendment: 2014
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3)

Education, Administration
R277-524
 Paraprofessional/Paraeducator
 Programs, Assignments, and
 Qualifications

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38358

FILED: 03/14/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-524 is amended to remove language that is no longer applicable. With the ESEA Flexibility Waiver that was granted by the U.S. Department of Education, Utah no longer identifies Title I schools in need of improvement under the adequate yearly progress (AYP) accountability model.

SUMMARY OF THE RULE OR CHANGE: The phrase "adequate yearly progress" is removed from the rule and additional nonessential language is removed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Subsection 53A-1-402(1)(a)(i)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The amendments to this rule remove the phrase "adequate yearly progress" and additional nonessential language which likely will not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** The amendments to this rule remove the phrase "adequate yearly progress" and additional nonessential language which likely will not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** The amendments to this rule remove the phrase "adequate yearly progress" and additional nonessential language which likely will not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments to this rule remove the phrase "adequate yearly progress" and additional nonessential language which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to this rule remove the phrase "adequate yearly progress" and additional nonessential language which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2014
THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2014

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.**R277-524. Paraprofessional/Paraeducator Programs, Assignments, and Qualifications.****R277-524-1. Definitions.**

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

B. "Core academic subjects or areas" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB).

C. "Direct supervision of a licensed teacher" means:

(1) the teacher prepares the lesson and plans the instruction support activities the paraprofessional carries out, and the teacher evaluates the achievement of the students with whom the paraprofessional works; and

(2) the paraprofessional works in close and frequent proximity with the teacher.

D. "Eligible school," for purposes of this rule and the Paraeducator Funding Program, means a Title I school that ~~has not achieved adequate yearly progress, as defined by ESEA, in the same subject area for two consecutive years or~~ is one of the state's lowest-performing Title I priority schools as defined by ESEA.

E. "No Child Left Behind (NCLB)" means the federal law under the Elementary and Secondary Education Act, Title IX, Part A, 20 U.S.C. 7801.

F. "Paraeducator funding" means supplemental state funding provided under Section 53A-17a-168 to Title I schools identified as in need of improvement under the Elementary and Secondary Education Act (ESEA), Title IX, Part A, 20 U.S.C. 7801 to hire additional paraeducators to assist students in achieving academic success.

G. "Paraprofessional" or "paraeducator" means an individual who works under the supervision of a teacher or other licensed/certificated professional who has identified responsibilities in the public school classroom.

R277-524-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution, Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which gives the Board authority to adopt rules in accordance with its responsibilities, Section 53A-1-402(1)(a)(i) which requires the Board to establish rules and minimum standards for the public schools regarding the qualification and certification of educators and ancillary personnel who provide direct student services, and NCLB, P.L. 107-110, Title 1, Sec. 1119 which requires that each

local education agency receiving assistance under this part shall ensure that all paraprofessionals shall be appropriately qualified.

B. The purpose of this rule is to designate appropriate assignments of paraprofessionals and qualifications for paraprofessionals hired before and after January 6, 2002 consistent with NCLB requirements.

C. This rule establishes the formula for distribution of Paraeducator funding under Section 53A-17a-168 to eligible schools. The rule provides minimum standards for use of funds and reporting requirements.

R277-524-3. Appropriate Assignments or Duties for Paraprofessionals.

Paraprofessionals may:

A. provide individual or small group assistance or tutoring to students under the direct supervision of a licensed teacher during times when students would not otherwise be receiving instruction from a teacher.

B. assist with classroom organization and management, such as organizing instructional or other materials;

C. provide assistance in computer laboratories;

D. conduct parental involvement activities;

E. provide support in library or media centers;

F. act as translators;

G. provide supervision for students in non-instructional settings.

R277-524-4. Requirements for Paraprofessionals.

A. Paraprofessionals hired before January 6, 2002 who function under R277-504-3A, and working in programs supported by Title I funds shall satisfy one of the following ~~prior to January 6, 2006~~:

(1) The individual has completed at least two years (minimum of 48 semester hours) at an accredited higher education institution; or

(2) The individual has obtained an associates (or higher) degree from an accredited higher education institution; or

(3) The individual has satisfied a rigorous state assessment, approved by the Board, that demonstrates:

(a) knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or

(b) knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness, as appropriate; or

(4) The individual has satisfied a rigorous local assessment, approved by the local board, that demonstrates:

(a) knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or

(b) knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness, as appropriate.

B. Paraprofessionals hired after January 6, 2002 in programs supported by Title I funds shall satisfy R277-524-4B(1)(2)(3) or (4).

(1) Individual shall have earned a secondary school diploma or a recognized equivalent; and

(2) The individual has completed at least two years (minimum of 48 semester hours) at an accredited higher education institution; or

(3) The individual has obtained an associates (or higher) degree from an accredited higher education institution; or

(4) The individual has satisfied a rigorous state or local assessment about the individual's knowledge of an ability to assist students in core courses under NCLB.

C. The individual shall satisfactorily complete a criminal background check [if he will have significant unsupervised access to students] consistent with Section 53A-3-410(2) and R277-516.

R277-524-5. Variances.

The provisions of this rule do not apply to:

A. paraprofessionals who are proficient in English and a language other than English who provide translator services; or

B. paraprofessionals who have only parental involvement or similar responsibilities.

R277-524-6. Use of Funds.

Local education agencies may use Title I funds in addition to other funds available and identified by the local education agency to support ongoing training and professional development for paraprofessionals.

R277-524-7. Board Responsibilities.

A. The Board shall annually distribute funds provided under Section 53A-17a-168 to eligible Title I schools. The funds shall be divided equally among eligible schools.

B. The Board shall submit an annual report to the Public Education Appropriations Subcommittee on the implementation of this program.

R277-524-8. Responsibilities of Eligible Schools Receiving Paraeducator Funding.

A. Paraeducators hired with these funds shall meet the qualifications under R277-524-4.

B. Paraeducators hired with these funds shall provide additional aid in the classroom to assist students in achieving academic success as defined in R277-524-3A.

C. Schools that accept the Paraeducator Funding shall demonstrate, as required by USOE reporting, that funds are used to supplement other state and federal funds to provide paraeducator services.

D. Schools accepting these funds shall provide an annual report as directed by the USOE that includes the following:

(1) the number of paraeducators hired with program money;

(2) school funding, in addition to funds provided under this rule, the school used to supplement program money to hire paraeducators; and

(3) accountability measures, including student test scores and other student assessment elements for students served by the program.

KEY: paraprofessional qualifications, NCLB

Date of Enactment or Last Substantive Amendment: ~~July 9, 2012~~ **2014**

Notice of Continuation: **March 14, 2014**

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-1-402(1)(a)(i); P.L. 107-110, Title 1, Sec, 1119

Education, Administration
R277-709-11
Coordinating Council

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38359

FILED: 03/14/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule was recently amended. During the 30-day comment period, the Utah State Office of Education received comments that addressed deletion of "LEA" from the YIC Coordinating Council. In response to the comments, Section R277-709-11 is amended to include representation from school district superintendents on the YIC Coordinating Council. Also, the Division of Substance Abuse and Mental Health was inadvertently deleted from YIC Coordinating Council membership and should be included.

SUMMARY OF THE RULE OR CHANGE: School district superintendents and Division of Substance Abuse and Mental Health are added to the YIC Coordinating Council membership.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Subsection 53A-1-403(2)(b)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The amendments to this rule add school district superintendents and Division of Substance Abuse and Mental Health to the YIC Coordinating Council membership which likely will not result in costs or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** The amendments to this rule add school district superintendents and Division of Substance Abuse and Mental Health to the YIC Coordinating Council membership which likely will not result in costs or savings to local government.

◆ **SMALL BUSINESSES:** The amendments to this rule add school district superintendents and Division of Substance Abuse and Mental Health to the YIC Coordinating Council membership which likely will not result in costs or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments to this rule add school district superintendents and Division of Substance Abuse and Mental Health to the YIC Coordinating Council membership which likely will not result in costs or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to this rule add school district superintendents and Division of Substance Abuse and Mental Health to the YIC Coordinating Council membership which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2014

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-709. Education Programs Serving Youth in Custody.

R277-709-11. Coordinating Council.

A. The Department of Human Services and the Board shall appoint a coordinating council to plan, coordinate, and recommend budget, policy, and program guidelines for the education and treatment of persons in the custody of the Division of Juvenile Justice Services and the Division of Child and Family Services. The Council shall operate under the guidelines developed and approved by the Department of Human Services and the Board.

B. Council membership shall include a representative of the following:

- (1) Department of Human Services;
- (2) Division of Substance Abuse and Mental Health;
- (~~2~~)³ Division of Juvenile Justice Services;
- (~~3~~)⁴ Division of Child and Family Services;
- (~~4~~)⁵ Utah State Office of Education;
- (~~5~~)⁶ Administrative Office of the Courts; [~~and~~]
- (7) School district superintendents; and
- (~~6~~)⁸ a Native American tribe.

KEY: students, education, juvenile courts

Date of Enactment or Last Substantive Amendment: [~~January 14,~~]²⁰¹⁴

Notice of Continuation: March 12, 2013

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-403(1); 53A-1-401(3)

Education, Administration **R277-735** Corrections Education Programs

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38360

FILED: 03/14/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to make the rule consistent with Rule R277-733, Adult Education, address the funding of corrections programs as a result of a legislative audit, and to allocate funds to the USOE to cover/support administrative expenses.

SUMMARY OF THE RULE OR CHANGE: Language is added and changed to Rule R277-735 to make the rule consistent with Rule R277-733 and changes are made to the funding distribution.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-1-403.5 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The amendments to this rule add new language and make the rule consistent with Rule R277-733, and changes are made to the funding distribution which likely will not result in a cost or savings to the state.

♦ **LOCAL GOVERNMENTS:** The amendments to this rule add new language and make the rule consistent with Rule R277-733, and changes are made to the funding distribution which likely will not result in a cost or savings to local government.

♦ **SMALL BUSINESSES:** The amendments to this rule add new language and make the rule consistent with Rule R277-733, and changes are made to the funding distribution which likely will not result in a cost or savings to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments to this rule add new language and make the rule consistent with Rule R277-733, and changes are made to the funding distribution which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to this rule add new language and make the

rule consistent with Rule R277-733, and changes are made to the funding distribution which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

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

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DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2014

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-735. Corrections Education Programs.

R277-735-1. Definitions.

A. "Adult Basic Education (ABE)" means a program of instruction below the 9.0 academic grade level for adults who lack competency in reading, writing, speaking, problem solving or computation at a level that substantially impairs their ability to find or retain adequate employment that will allow them to become employable, contributing members of society and preparing them for advanced education and training. The instruction is designed to help adults by:

- (1) increasing their independence;
- (2) improving their ability to benefit from occupational training;
- (3) increasing opportunities for more productive and profitable employment; and
- (4) making them better able to meet adult responsibilities.

B. "Adult Education and Family Literacy Act (AEFLA)" means Title II of the Workforce Investment Act (WIA) of 1998 which provides the principle source of federal support for adult basic and literacy education programs for adults who lack basic skills, an Adult Education Secondary Diploma or its equivalency, or proficiency in English.

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

[A]D. "Board" means the Utah State Board of Education.

E. "Community-based organization (CBO)" means a nonprofit organization:

- (1) eligible for and accepting federal AEFLA funds; and
- (2) for the sole purpose of providing adult education services to qualified adult education learners.
- (3) All rules and laws that apply to school districts shall also apply to CBOs that receive adult education funding.

(4) CBOs:

- (a) apply to the USOE;
- (b) receive adult education funding through a competitive process; and
- (c) receive USOE funding on a reimbursement basis only.

[E]E. "Custody" means the status of being legally in the control of another adult person or a public agency.

G. "Education Contracts funds" means funds appropriated annually by the Legislature to be used partly for corrections education.

[D]H. "English for Speakers of Other Languages (ESOL)" is an instructional program provided for non-native language speakers.

I. "General Educational Development (GED) Testing" means the test required under R277-702.

[B]J. "Inmate" means an offender who is incarcerated in state or county correctional facilities. Inmates may be housed in various locations throughout the state of Utah.

K. "SEOP/plan for college and career readiness" means a plan for students in grades 7-12 that includes:

- (1) all Board and LEA board graduation requirements;
- (2) the individual student's specific course plan that will meet graduation requirements and provides a supportive sequence of courses consistent with identified post-secondary training goals;
- (3) evidence of parent, student, and school representative involvement annually; and
- (4) attainment of approved workplace skill competencies.

[E]L. "Teaching of English to Speakers of Other Languages (TESOL)" means a credential for teachers of ESOL.

[F]M. "USOE" means the Utah State Office of Education.

[G]N. "UTopia" means Utah Online Performance Indicators for Adult Education statewide database.

R277-735-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and authority over public education in the Board, by Section 53A-1-403.5 which makes the Board directly responsible for the education of inmates in custody and Section 53A-1-401(3) which allows the Board and Board of Regents to adopt rules in accordance with its responsibilities.

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

C. Corrections education programs shall be consistent with R277-733, Adult Education Programs.

R277-735-3. Procedures for Providing Services.

A(1) The Board may contract with local school boards, state post-secondary educational institutions, other state agencies, or private providers of the local boards' choosing to provide educational services for inmates.

(2) The respective responsibilities of the Board, local school boards, and other service providers for education shall be established by ~~[letters]~~memoranda of agreement or contracts.

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

(4) Educational services shall be provided in the appropriate environment for the student's behavior and educational performance.

(5) Educational programs to which inmates are assigned shall meet the standards adopted by the Board for that type of program.

(6) Educational programs shall be monitored by the USOE in periodic review visits.

(7) Educational services shall be sufficiently coordinated with non-custody programs to enable inmates in custody to continue their public school education with minimal disruption following discharge from custody.

(8) Custodial status alone does not qualify an individual for services under the Individuals with Disabilities Act (IDEA), 20 U.S.C. Sec. 1400 et seq., amended in 2004.

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

C. When a student inmate is released from custody, educational records shall only be available consistent with the Family Education Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g; 34 CFR Part 99.

D. ~~[Funding]~~Corrections education programs shall adhere to the same overarching program standards and practices defined for all adult education programs, consistent with R277-733, unless otherwise noted.

R277-735-4. Fiscal Procedures.

~~[(+)]~~A. Inmates receiving educational services by or through a school district become students of that school district for funding purposes.

~~[(2)]~~B. State funds appropriated to the USOE for corrections education shall be allocated to school districts on the basis of annual applications.

~~[~~(3) The funds distributed to a district shall be based upon criteria which include:

~~(a) the number of inmates in custody served in the district;~~

~~(b) the type of services provided to the inmates;~~

~~(c) the setting for providing services; and~~

~~(d) the length of the program.~~

~~]~~ [E-]C. Funds approved for corrections education projects can be expended only for the purposes described in the respective funding application.

~~[~~F. Unexpended funds may only be carried over from one fiscal year to the next with specific approval of the Board or its designee.

~~]~~ D. Lapsing and nonlapsing funds

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

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

(3) Requested and approved school district budgets that show carry over funds shall be submitted for approval according to a time line and dates set by the USOE.

(4) The USOE may consider excess funds in determining the school district's allocation for the next fiscal year. The USOE shall recapture fund balances in excess of 10 percent or \$50,000 annually no later than February 1 and reallocate funds to school district corrections education programs through the supplemental award process based on need and effort consistent with R277-733.

[G]E. The Board, or its designee, shall adopt uniform pupil and fiscal accounting procedures, forms, and deadlines for correctional education programs.

~~[~~H. Program Staff

~~(1) Education staff assigned to provide education services shall be qualified and appropriate for their assignments.~~

~~(2) The teaching certificate and endorsement held by a staff member or a person assigned to teach in a prison or jail shall be important in evaluating the appropriateness of the teacher's assignment, but not controlling. For example, elementary teachers may teach secondary age students who are academically performing at an elementary level in certain subjects. Persons teaching an adult education high school completion course shall hold a valid Utah elementary or secondary education license and may issue adult education high school completion credits in multiple subjects. Non-licensed individuals providing instruction in ESOL, Adult Basic Education (ABE) or Adult High School Completion (AHSC) classes shall instruct under the supervision of a licensed program employee.~~

~~(3) Persons with a post-secondary degree in adult education but are not in possession of a Utah teaching certificate may be considered for employment solely in an adult education program teaching adult students following the completion of a student teaching field experience in an accredited adult education program.~~

~~(4) Persons with TESOL or ESOL credentials may be considered for employment solely in a adult education program teaching adult students following the completion of a student teaching experience in an accredited adult education program.~~

R277-735-5. Allocation of Education Contracts Funds Designated for Corrections Education.

A. Oversight, monitoring, evaluation, and reports:

(1) The Board may designate no more than four percent of the total legislative Education Contracts funding appropriated for adult corrections education for USOE administrative services.

(2) The USOE shall use designated funds for oversight, monitoring and evaluation of corrections adult education programs and program compliance with law and this rule.

B. Education Contracts funding designated for state prisons and country jails housing state offenders:

(1) Of the total number of incarcerated offenders in the custody of the Utah Department of Corrections, the percentage housed in county jails and the percentage housed at prison sites, shall be calculated each year.

(2) Those percentages shall determine the percentages of Education Contracts funding designated for corrections education

that is provided to school districts serving students in respective facilities.

(3) Eligible school districts shall receive a base amount of \$10,000 for each prison or county jail in which they provide services.

(4) The balance of the percentages shall be prorated to respective school districts based upon total student enrollee counts as per the State Funding Program Outcome Measures (POM) report, provided by the Adult Education Program, used to determine adult education funding.

R277-735-[4]6. Program, Curriculum, Outcomes and Student Mastery.

A. [Adult]Corrections education programs shall provide [a—]programs that allow[s] students to transition between correctional sites in a seamless manner.

B. Adult education students receiving education services in a state prison or jail education program may graduate with a school district adult education secondary diploma upon completion of the state required [24-0]minimum units of credit [required—]under R277-700 and satisfied through completed credits or demonstrated course competency consistent with students' [SEOP—career focus]SEOP/plans for college and career readiness under R277-733.

C. Graduation requirements may be changed or modified, or both, for adult students with documented disabilities through Individual Education Plans (IEPs) consistent with IDEA.

D. Modified graduation requirements for individual students shall:

(1) be consistent with the student's IEP or SEOP/plan for college and career readiness, or both;

(2) be maintained in the student's files;

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

E. Corrections education programs shall offer courses consistent with the Utah Core curriculum under R277-700.

F. The Utah Core curriculum and teaching strategies may be modified or adjusted to meet the individual needs of adult education students.

G. School district adult education staff shall develop and write (both elective and required) course descriptions for AHSC courses, consistent with the Utah Core curriculum and Utah adult education curriculum standards, as provided by the USOE.

H. School districts, CBOs and the USOE shall cooperate to develop written course descriptions for GED Test preparation, ESOL and ABE courses; courses shall be based on the Utah Core curriculum standards, modified for adult learners.

I. Course descriptions shall contain adult education mastery criteria and shall stress mastery of adult life skill material consistent with Core objective standards and Core curriculum.

J. Course content mastery shall be stressed rather than completion of required seat time in a classroom.

K. Adult high school completion education is determined by the following prerequisite courses:

(1) ESOL competency AEFLA levels one through six; and

(2) ABE competency AEFLA levels one through four.

L. AHSC courses for students seeking an Adult Education Secondary Diploma should meet the federal AEFLA AHSC Levels I and II competency requirements.

M. Adult students seeking an adult high school diploma shall have the minimum credits defined in R277-705.

N. The courses shall be supervised by a Utah licensed educator.

R277-735-[5]7. Confidentiality.

A. Transcripts and diplomas prepared for inmates in custody shall be issued in the name of the contracted educational agency which also provides service to non-custodial offenders and shall not bear reference to custodial status.

B. School records which refer to custodial status, inmate court records, and related matters shall be kept separate from permanent school records and shall be destroyed or may be sealed upon order of a court of competent jurisdiction.

C. Access to Student Records

(1) Staff who design and oversee individual student education plans shall have access to all appropriate records relevant to [the]a student's education.

(2) Information obtained from student records remains the property of the supplying agency and shall[not] be transferred or shared with other persons or agencies [without the permission of the supplying agency, consistent with Section 63G-2-206]only consistent with 34 CFR 99.10.

[—(3)— Access to and provision of student records or transcripts shall be consistent with state and federal law.]

R277-735-8. Corrections Education Records and Audits.

Corrections adult education programs shall meet program standards defined in R277-733-11A and B.

KEY: public education, custody, inmates

Date of Enactment or Last Substantive Amendment: [October 8, 2008]2014

Notice of Continuation: March 14, 2014

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-403.5; 53A-1-401(3)

**Education, Rehabilitation
R280-202
USOR Procedures for Individuals with
the Most Severe Disabilities**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 38361

FILED: 03/14/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to make changes in terminology consistent with federal law and regulations and provide clarification for determination of eligibility.

SUMMARY OF THE RULE OR CHANGE: The amendments include changing most "severe" to most "significant" to be

consistent with federal law; changing the definition of "major life activities" to be consistent with federal law and regulations; and making changes to eligibility to clarify that a licensed vocational rehabilitation counselor (LVRC) can determine eligibility with or without third party documentation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Pub. L. No. 102-569, Title VI-C and Section 53A-24-103

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The amendments to this rule make changes in terminology consistent with federal law and regulations and provide clarification for determination of eligibility which likely will not result in a cost or savings to the state budget.

◆ LOCAL GOVERNMENTS: The amendments to this rule make changes in terminology consistent with federal law and regulations and provide clarification for determination of eligibility which likely will not result in a cost or savings to local government.

◆ SMALL BUSINESSES: The amendments to this rule make changes in terminology consistent with federal law and regulations and provide clarification for determination of eligibility which likely will not result in a cost or savings to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments to this rule make changes in terminology consistent with federal law and regulations and provide clarification for determination of eligibility which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to this rule make changes in terminology consistent with federal law and regulations and provide clarification for determination of eligibility which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2014

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R280. Education, Rehabilitation.

R280-202. USOR Procedures for Individuals with the Most [Severe]Significant Disabilities.

R280-202-1. Definitions.

[E]A. "Board" means the Utah State Board of Education.

B. "Executive Director" means the Executive Director of the Utah State Office of Rehabilitation.

[A]C. "Individual with a disability" (hereinafter individual) means a person who has a disability which limits one or more of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the USOR or the State Board of Education.

[E]D. "Major life activities" means functions such as ~~[earing for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working]~~mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills.

[G]E. "Social Security Disability Insurance (SSDI)" means payments to disabled workers under 65 and their families, or people who become disabled before age 22, or disabled widows or widowers 50 or over who are found to be eligible under Social Security Administration criteria.

[F]E. "Supplemental Security Income (SSI)" means payments to adults and children who are determined to be severely disabled or blind and whose assets and income are below the limits set by the Social Security Administration.

[D]G. "USOR" means the Utah State Office of Rehabilitation.

R280-202-2. Authority and Purpose.

A. This rule is authorized pursuant to PL 102-569, Title VI-C, October, 1992, which directs state agencies to define for themselves individuals with the most ~~[severe]~~significant disabilities and Section 53A-24-103 which directs that the USOR shall be under the policy direction of the Board.

B. The purpose of this rule is to define "persons with the most ~~[severe]~~significant disabilities" for purposes of providing services and determining order of selection for services according to federal and state law.

R280-202-3. Eligibility Criteria.

In order to be classified as an individual with the most ~~[severe]~~significant disabilities an individual shall meet one of the criteria under Subsection A below or the criteria under Subsection B below:

A. ~~[The]~~A state licensed USOR Vocational Rehabilitation Counselor (LVRC) shall make the determination based on medical, psychological, and other diagnostic documentation and a clinical assessment by the LVRC or may make the determination using the following documentation:

(1) individual is ~~[E]~~eligible for services from Division of Services for People with Disabilities, (DSPD); or

(2) individual is ~~[D]~~determined severely and persistently mentally ill (SPMI) by the State Division of Mental Health or any one of the private, non-profit mental health programs certified by the State Division of Mental Health; or

(3) individual is ~~[F]~~found to be permanently and totally disabled by the State Labor Commission~~[-and]~~.

~~[(4)]~~B. Individuals who are allowed SSI/SSDI blind or disabled benefits may or may not be considered most ~~[severe]~~significant under R280-202-3.

(1) To be considered most ~~[severe]~~significant there ~~[must]~~shall be two or more functional limitations; and

(~~[5]~~2) The individual will require multiple ~~[VR]~~vocational rehabilitation services over an extended period of time.

~~[B]~~C. If an appropriate determination has not been made by ~~[another agency]~~an LVRC, the individual ~~[must]~~shall exhibit functional deficits in two or more of the following areas as determined by the USOR to be considered an individual with the most ~~[severe]~~significant disabilities. ~~[Examples under it]~~The seven categories ~~[include]~~:

(1) Mobility;

(a) Requires assistive device(s) (cane, crutches, prosthesis, walker, wheelchair) to be mobile~~[-];~~

(b) Is unable to climb one flight of stairs without pause~~[-];~~

(c) Is unable to walk 100 meters without pause~~[-];~~

(d) Cannot leave a building independently in less than three minutes~~[-]; or~~

(e) Other mobility deficits as defined or approved by the USOR.

(2) Communication;

(a) Expressive and receptive primary mode of communication is unintelligible to non-family members~~[-];~~

(b) Does not demonstrate understanding of simple requests or is unable to understand one~~[-to-]~~ or two step instructions~~[-]; or~~

(c) Other communication deficits as defined or approved by the USOR.

(3) Self-care: Is unable to perform normal activities of daily living without assistance.

(4) Self direction: Is unable to provide informed consent for life issues without the assistance of a court-appointed legal representative or guardian~~[-];~~ or has been declared legally incompetent.

(5) Learning ability and inter-personal deficits;

(a) Valid psychological assessment of conceptual intelligence reflects performance approximately two standard deviations or more below the mean observed in a population of persons of a comparable background; commonly defined as an IQ of 70 or below on a standardized measure of intelligence~~[-];~~

(b) Disfigurement or deformity so pronounced as to cause social rejection~~[-];~~

(c) Demonstrated behavior such that the individual is a danger to self and others without supervision~~[-]; or~~

(d) Other learning or interpersonal deficits as defined or approved by the USOR.

(6) Capacity for Independence;

(a) Unable to perform tasks such as locate and use telephone~~[-];~~

(b) Unable to access public transportation without assistance~~[-];~~

(c) Unable to understand money or change making~~[-];~~

(d) Unable to tell time~~[-]; or~~

(e) Other deficits in independence as defined or approved by the USOR.

(7) Work skills and work tolerance;

(a) Unable to perform sustained work for more than four hours per day~~[-];~~

(b) Unable to perform work outside sheltered environment~~[-];~~

(c) Unable to perform work in an integrated setting without support;

(d) Other work related deficits as defined or approved by the USOR; ~~[and]~~or

(e) The individual will require multiple vocational rehabilitation services over an extended period of time.

C. When the determination of individuals with the most ~~[severe]~~significant disabilities is made under Subsection B above, the counselor ~~[must]~~shall document the functional deficits.

KEY: disabled persons, rehabilitation

Date of Enactment or Last Substantive Amendment: ~~[January 5, 1999]~~2014

Notice of Continuation: March 14, 2014

Authorizing, and Implemented or Interpreted Law: Pub. L. 102-569; 53A-24-103

Environmental Quality, Air Quality R307-357-4 Standards

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38332

FILED: 03/06/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: An error was identified for the VOC content limit for general purpose adhesives in Table 1 found in Section R307-357-4. The 80% limit in the current rule was based off of a model rule from the Ozone Transport Commission. That rule incorrectly used the 80% limit instead of the 10% limit found in both the federal rule and the California Air Resource Board rule. This change is to appropriately align the content limits requirements of Section R307-357-4 with those in the

federal rule and was developed in consultation with stakeholders.

SUMMARY OF THE RULE OR CHANGE: The VOC content limit for general purpose adhesives is changed from 80% to 10%. Other formatting changes are made in the table to more clearly distinguish between the various categories and subcategories regulated by the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-101

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** Because these changes correct a limit by matching it to the federal limit, there are no anticipated costs or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** Because these changes correct a limit by matching it to the federal limit, there are no anticipated costs or savings to local government.
- ◆ **SMALL BUSINESSES:** Because these changes correct a limit by matching it to the federal limit, there are no anticipated costs or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Because these changes correct a limit by matching it to the federal limit, there are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because these changes correct a limit by matching it to the federal limit, there are no anticipated compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because these changes correct a limit by matching it to the federal limit, there is no anticipated fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 AIR QUALITY
 FOURTH FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 06/04/2014

AUTHORIZED BY: Bryce Bird, Director

**R307. Environmental Quality, Air Quality.
 R307-357. Consumer Products.
 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	EFFECTIVE BEGINNING DATES		
	9/1/2014	1/1/2015	1/1/2016
<u>[-]Adhesive Removers:</u>			
Floor and wall covering	5		
Gasket or thread locking	50		
General purpose	20		
Specialty	70		
<u>Adhesives:</u>			
Aerosol mist spray	65		
Aerosol web spray	55		
<u>_Special Purpose Spray</u>			
<u>_Adhesives:</u>			
_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		
<u>Covering:</u>			
_Contact general purpose	[-]55		
_Contact special purpose	[-]80		
General purpose	[80]10		
Structural waterproof	15		
<u>Air Fresheners:</u>			
Single-phase aerosols	30		
Double-phase aerosols	25		

Dual-purpose air freshener/disinfectant aerosol	60	_Non-aerosol	[-]0 HVOC 0 MVOC
Liquids/pump sprays	18	Dusting Aids:	
Solids/semisolids	3	Aerosols	25
Antiperspirants:		All other forms	7
Aerosol	40 HVOC 10 MVOC	[-]Electrical cleaner	45
Non-aerosol	0 HVOC 0 MVOC	[-]Electronic cleaner	75
Anti-static product:		Engine Degreasers:	
Non-aerosol	11	Aerosol	10
Aerosol	80	Non-aerosol	5
Automotive rubbing or polishing compound	17	[-]Fabric protectants	60
Automotive wax, polish, sealant or Glaze:		Fabric refresher:	
Hard paste waxes	45	Aerosol	15
Instant detailers	3	Non-aerosol	6
All other forms	15	Floor Polishes or Waxes:	
[-]Automotive windshield [-]washer fluids	35	Resilient flooring materials	1
Bathroom and Tile Cleaners:		Nonresilient flooring materials	1
Aerosols	7	Wood floor wax	90
Non-aerosols	1	Footwear or leather care products:	
[-]Brake cleaner	10	Aerosol	75
[-]Bug and tar remover	40	Solid	55
[-]Carburetor or [-]fuel-injection air [-]intake cleaners	10	Other forms	15
Carpet and Upholstery Cleaners:		Furniture Maintenance Products:	
Aerosols	7	Aerosols	17
Non-aerosols (dilutables)	0.1	Non-aerosol (except solid or paste)	3
Non-aerosols (ready-to-use)	3.0	General Purpose Cleaners:	
[-]Cooking spray aerosols	18	Aerosols	8
Disinfectant:		Non-aerosols	4
Aerosol	70	General Purpose Degreasers:	
non-aerosol	1	Aerosols	10
Deodorants:		Non-aerosols	4
Aerosol	0 HVOC 10 MVOC	Glass Cleaners:	
		Aerosols	12
		Non-aerosols	4

Graffiti Remover:

Aerosols	50
Non-aerosols	30
[-]Hair mousses	6
[-]Hair shines	55
[-]Hairsprays	55
[-]Hair styling gels	6

Hair Styling Products:

Aerosol and pump sprays	6
All other forms	2
[-]Heavy-duty hand cleaners or soaps	8

Insecticides:

Crawling bug (aerosol)	15
Crawling bug (all other forms)	20
Flea and tick	25
Flying bug (aerosol)	25
Flying bug (all other forms)	35
Foggers	45
Lawn and garden (all other forms)	20
Lawn and garden (non-aerosol)	3
Wasp and hornet	40

Laundry Prewashes:

Aerosols/solids	22
All other forms	5
[-]Laundry starch products	4.5
[-]Metal polishes/cleansers	30

Multi-Purpose lubricants (excluding solid or semi-solid products)

[-]Multi-purpose Solvent	3
[-]Nail Polish Removers	1
[-]Non-selective [-]terrestrial herbicides, [-]non-aerosols	3

Oven or Grill Cleaners:

Aerosols/pump sprays	8
Non-aerosols	4
[-]Paint remover or [-]strippers	50
[-]Paint Thinner	30
[-]Penetrants	50

Rubber or Vinyl Protectants:

Aerosols	10
Non-aerosols	3

Sanitizer:

Aerosol	70
Non-aerosols	1
[-]Sealants and [-]caulking compounds	4
[-]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

(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 (bromochlorodifluoromethane);
- (g) Halon 1301 (bromotrifluoromethane);
- (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.

KEY: air pollution, consumer products

Date of Enactment or Last Substantive Amendment: [August 1, 2013]2014

Authorizing, and Implemented or Interpreted Law: 19-2-101; 19-2-104

Environmental Quality, Solid and Hazardous Waste **R315-1-1** Definitions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38344

FILED: 03/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Changes are needed in this rule to be consistent with changes made in Section R315-2-4.

SUMMARY OF THE RULE OR CHANGE: Section R315-1-1 is modified to add the definition of "No free liquids" and "Solvent-contaminated wipe". The new definitions are related to changes in Section R315-2-4. (DAR NOTE: The proposed amendment to Section R315-2-4 is under DAR No. 38345 in this issue, April 1, 2014, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-106

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The costs for the state budget will not change since the rule change does not change the requirements or administration of the hazardous waste management program.

♦ **LOCAL GOVERNMENTS:** Rule change is to definitions and does not have any cost or savings to local governments.

♦ **SMALL BUSINESSES:** Rule change is to definitions and does not have any cost or savings to small business.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Rule change is to definitions and does not have any cost or savings to persons, business or government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Rule change is to definitions and does not have any cost or savings to persons, business or government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rule change is to definitions and does not have any cost or savings to persons, business or government.

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

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE

SECOND FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3097
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Ralph Bohn by phone at 801-536-0212, by FAX at 801-536-0222, or by Internet E-mail at rbohn@utah.gov
- ◆ Tina Mercer by phone at 801-536-0259, by FAX at 801-536-0222, or by Internet E-mail at tmmrcer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 05/15/2014

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Solid and Hazardous Waste.

R315-1. Utah Hazardous Waste Definitions and References.

R315-1-1. Definitions.

(a) Terms used in R315-1 through R315-101 are defined in Sections 19-1-103 and 19-6-102.

(b) For R315-1 through R315-101, the terms defined in 40 CFR 260.10, 264.18(a)(2), and 279.1, 2010 ed., are adopted and incorporated by reference with the following revisions:

(1) Substitute "Director of the Division of Solid and Hazardous Waste" for "Regional Administrator" or "Administrator," except in the following cases:

(i) In the actual definitions of "Administrator" and "Regional Administrator;" and

(ii) In the definitions of "hazardous waste constituent" and "industrial furnace," "Board" shall be substituted.

(2) Insert in the definition of "existing tank system" or "existing component" the following additional phrase after "July 14, 1986," "or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of R315. A non-HSWA existing tank system or non-HSWA tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1."

(3) Insert in the definition of "new tank system" or "new tank component" the following additional phrase after "July 14, 1986," "or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of R315; except, however, for purposes of 40 CFR 265.193(g)(2) and 40 CFR 264.193(g)(2), a new tank system is one which construction commences after July 14, 1986. A non-HSWA new tank system or non-HSWA new tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1."

(c) The terms defined in 40 CFR 261.1(c), 2010 ed., are adopted and incorporated by reference.

(d) For purposes of R315-3 regarding application and permit procedures for hazardous waste facilities, the terms defined in 40 CFR 270.2, 1999 ed., are adopted and incorporated by reference with the following revisions:

(1) "Permit" means the plan approval as required by subsection 19-6-108(3)(a), or equivalent control document issued by the Director to implement the requirements of the Utah Solid and Hazardous Waste Act;

(2) "Director" or "State Director" means the Director of the Division of Solid and Hazardous Waste, and

(3) Replace existing definition of "corrective action management unit" with the definition as found in 40 CFR 260.10, 2000 ed.

(e) The definitions of "Polychlorinated biphenyl, PCB," and "Polychlorinated item" as found in 761.3, 40 CFR, 1990 ed., are adopted and incorporated by reference.

(f) In addition, the following terms are defined as follows:

(1) "Approved hazardous waste management facility" or "approved facility" means a hazardous waste treatment, storage, or disposal facility which has received an EPA permit in accordance with federal requirements, has been approved under 19-6-108 and R315-3, or has been permitted or approved under any other EPA authorized hazardous waste state program.

(2) "Director" means the Director of the Division of Solid and Hazardous Waste.

(3) "Division" means the Division of Solid and Hazardous Waste.

(4) "Hazard class" means:

(i) The DOT hazard class identified in 49 CFR 172; and

(ii) If the DOT hazard class is "OTHER REGULATED MATERIAL," ORM, the EPA hazardous waste characteristic exhibited by the waste and identified in R315-2-9.

(5) "Monitoring" means all procedures used to systematically inspect and collect data on operational parameters of the facility or on the quality of the air, ground water, surface water, or soils.

(6) "No free liquids" as used in R315-2-4(a)(23) and R315-2-4(b)(16), means that solvent-contaminated wipes may not contain free liquids as determined by Method 9095B (Paint Filter Liquids Test), included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2, and that there is no free liquid in the container holding the wipes.

~~(6)~~(7) "POHC's" means principle organic hazardous constituents.

~~(7)~~(8) "Permittee" means any person who has received an approval of a hazardous waste operation plan under 19-6-108 and R315-3 or a Federal RCRA permit for a treatment, storage, or disposal facility.

~~(8)~~(9) "Precipitation run-off" means water generated from naturally occurring storm events. If the precipitation run-off has been in contact with a waste defined in R315-2-9, it qualifies as "precipitation run-off" if the water does not exhibit any of the characteristics identified in R315-2-9. If the precipitation run-off has been in contact with a waste listed in R315-2-10 or R315-2-11, then it qualifies as "precipitation run-off" when the water has been excluded under R315-2-16. Water containing any leachate does not qualify as "precipitation run-off".

(10) "Solvent-contaminated wipe" means:

(1) A wipe that, after use or after cleaning up a spill, either:

(i) Contains one or more of the F001 through F005 solvents found in R315-2-10(e), which incorporates by reference 40 CFR 261.31 or the corresponding P- or U- listed solvents found in R315-2-11, which incorporates by reference 40 CFR 261.33;

(ii) Exhibits a hazardous characteristic found in R315-2-9(a) when that characteristic results from a solvent found in R315-2-10, which incorporates by reference 40 CFR part 261; and/or

(iii) Exhibits only the hazardous waste characteristic of ignitability found in R315-2-9(d) due to the presence of one or more solvents that are not listed in R315-2-10 which incorporates by reference 40 CFR part 261.

(2) Solvent-contaminated wipes that contain listed hazardous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other than solvents, are not eligible for the exclusions at R315-2-4(a)(23) and R315-2-4(b)(16).

~~(9)~~(11) "Spill" means the accidental discharging, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes, into or on any land or water.

~~(10)~~(12) "Waste management area" means the limit projected in the horizontal plane of the area on which waste will be placed during the active life of a regulated unit. The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit. If the facility contains more than one regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.

(13) "Wipe" means a woven or non-woven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

(g) Terms used in R315-15 are defined in sections 19-6-703 and 19-6-706(2)(b)(ii).

(h) For purposes of R315-101 regarding cleanup action and risk-based closure standards, the following terms are defined as follows:

(1) "The concentration term, C" is calculated as the 95% upper confidence limit, UCL, on the arithmetic average for normally distributed data, or as the 95% upper confidence limit on the arithmetic average for lognormally distributed data. For normally distributed data, $C = \text{Mean} + t \times \text{Standard Deviation}/n^{1/2}$, where n is the number of observations, and t is Student's t distribution (at the 95% one-sided confidence level and n-1 degrees of freedom), tables of which are printed in most introductory statistics textbooks. For lognormally distributed data, $C = \exp(\text{Mean of lognormal-transformed data} + 0.5 \times \text{Variance of lognormal-transformed data} + \text{Standard Deviation of lognormal-transformed data} \times H/(n-1)^{1/2})$, where n is the number of observations, and H is Land's H statistic (at the 95% one-sided confidence level), tables of which are printed in advanced statistics books. For data which are not normally nor lognormally distributed, appropriate statistics, such as nonparametric confidence limits, shall be applied.

(2) "Area of contamination" means a hazardous waste management unit or an area where a release has occurred. The boundary is defined as the furthest extent where contamination from a defined source has migrated in any medium at the time the release is first identified.

(3) "Contaminate" means to render a medium polluted through the introduction of hazardous waste or hazardous constituents as identified in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII.

(4) "Hazard index" means the sum of more than one hazard quotient for multiple substances, multiple exposure pathways, or both. The Hazard Index is calculated separately for chronic, subchronic, and shorter duration exposures.

(5) "Hazard quotient" means the ratio of a single substance exposure level over a specified time period, e.g. subchronic, to a reference dose for that substance derived from a similar exposure period.

(6) "Risk-based closure" means closure of a site where hazardous waste was managed or any medium has been contaminated by a release of hazardous waste or hazardous constituents, and where hazardous waste or hazardous constituents remain at the site in any medium at concentrations determined, under this rule, to cause minimal levels of risk to human health and the environment so as to require no further action or monitoring on the part of the responsible party nor any notice of hazardous waste management on the deed to the property.

(7) "Reasonable maximum exposure (RME)" means the highest exposure that is reasonably expected to occur at a site. The goal of RME is to combine upper-bound and mid-range exposure factors so that the result represents an exposure scenario that is both protective and reasonable; not the worst possible case.

(8) "Release" means spill or discharge of hazardous waste, hazardous constituents, or material that becomes hazardous waste when released to the environment.

(9) "Responsible party" means the owner or operator of a facility, or any other person responsible for the release of hazardous waste or hazardous constituents.

(10) "Site" means the area of contamination and any other area that could be impacted by the released contaminants, or could influence the migration of those contaminants, regardless of whether the site is owned by the responsible party.

R315-1-2. References.

(a) For purposes of R315-1 through R315-101, the publication references of 40 CFR 260.11, 2006 ed., are adopted and incorporated by reference.

(b) R315-1 through R315-101 incorporate by reference a number of provisions from 40 CFR. The incorporated provisions sometimes include cross-references to other sections of 40 CFR. Wherever there are sections in R315-1 through R315-101 that correspond to those cross-references, the cross-references of 40 CFR are not incorporated into R315-1 through R315-101. Instead, the corresponding sections in R315-1 through R315-101 shall apply.

Note: The following materials are available for purchase from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605-6000 or (800) 553-6847; or for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800.

"APTI Course 415: Control of Gaseous Emissions," EPA Publication EPA-450/2-81-005, December 1981.

KEY: hazardous waste

Date of Enactment or Last Substantive Amendment: [April 25, 2013]2014

Notice of Continuation: July 13, 2011
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

**Environmental Quality, Solid and
 Hazardous Waste
 R315-2-4
 Exclusions**

**NOTICE OF PROPOSED RULE
 (Amendment)**

DAR FILE NO.: 38345
 FILED: 03/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Changes to this rule are needed because of changes to the corresponding federal rule.

SUMMARY OF THE RULE OR CHANGE: Changes to Section R315-2-4 will allow a generator of rags and wipes that have been contaminated with solvents that would cause these materials to be defined as a hazardous waste to dispose of the rags and wipes in lined non-hazardous solid waste landfills. The rule specifies the conditions under which the disposal of these wastes can take place. The rule also allows for and sets conditions under which the material can be sent to a laundry for cleaning. The changes to the federal rule that allow for non-hazardous waste disposal and laundering as options for management of these contaminated wastes are less stringent than the federal rule that existed before the change. Section 3006 of the federal Resource Conservation and Recovery Act (RCRA) provides for delegation of the hazardous waste program to states to administer in lieu of the U.S. Environmental Protection Agency (EPA). In order to receive authorization from EPA for the hazardous waste program, states must have and demonstrate equivalent legal authorities and regulations to those of the federal government for the management of hazardous waste. As the change in federal requirements is less stringent, Utah is not required to adopt the change to maintain delegation of the hazardous waste program. However, Utah Code Annotated Section 19-6-106 requires that rules of the hazardous waste program be no more stringent than federal rule. Adoption of the changes to Section R315-2-4 will make Utah rules equivalent to federal rules.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-106

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The costs for administration of the hazardous waste program will not change since the rule change does not change the way in which the hazardous

waste program is administered. There could be a cost savings for any state agency that generates contaminated rags and wipes and chooses to dispose of the wipes as a non-hazardous waste or send them to a laundry.

◆ **LOCAL GOVERNMENTS:** Any local government that generates contaminated rags and wipes and chooses to dispose of the wipes as a non-hazardous waste or send them to a laundry could realize a cost savings. The savings will depend on the amounts generated.

◆ **SMALL BUSINESSES:** Any small business that generates contaminated rags and wipes and chooses to dispose of the wipes as a non-hazardous waste or send them to a laundry could realize a cost savings. The savings will depend on the amounts generated.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Anyone that generates contaminated rags and wipes and chooses to dispose of the wipes as a non-hazardous waste or send them to a laundry could realize a cost savings. The savings will depend on the amounts generated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule could result in a cost savings for anyone that generates contaminated wipes and chooses to dispose of the wipes as a non-hazardous waste or send them to a laundry. The savings will depend on the amounts generated but could be in the range of \$200 to \$275 per barrel of wipes generated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule could result in a cost savings for anyone that generates contaminated wipes and chooses to dispose of the wipes as a non-hazardous waste or send them to a laundry. The savings will depend on the amounts generated but could be in the range of \$200 to \$275 per barrel of wipes generated.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 SOLID AND HAZARDOUS WASTE
 SECOND FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3097
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Ralph Bohn by phone at 801-536-0212, by FAX at 801-536-0222, or by Internet E-mail at rbohn@utah.gov
 ◆ Tina Mercer by phone at 801-536-0259, by FAX at 801-536-0222, or by Internet E-mail at tmm Mercer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 05/15/2014

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Solid and Hazardous Waste.**R315-2. General Requirements - Identification and Listing of Hazardous Waste.****R315-2-4. Exclusions.****(a) MATERIALS WHICH ARE NOT SOLID WASTES.**

The following materials are not solid wastes for the purpose of this rule:

(1) Domestic sewage or any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(2) Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the Clean Water Act, as amended. This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored, or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.

(3) Irrigation return flows.

(4) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. Section 2011 et seq.

(5) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

(6) Pulping liquors, black liquor that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1(c).

(7) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in subsection R315-1-1(c), which incorporates by reference 40 CFR 261.1(c).

(8) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(9)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in R315-2-4(a)(9)(i) and (ii), so long as they meet all of the following conditions:

(A) The wood preserving wastewaters and spent wood preserving solutions are reused onsite at water borne plants in the production process for their original intended purpose;

(B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both;

(C) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in R315-7-28, which incorporates by reference 40 CFR 265.440 - 445, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator submits to the Director a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records for a period of no less than 3 years from the date specified in the notice. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the Director for reinstatement. The Director may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur.

(10) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are hazardous only because they exhibit the Toxicity Characteristic (TC) specified in R315-2-9(g) when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar or are mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or the tar recovery or refining processes, or mixed with coal tar.

(11) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.

(12)(i) Oil-bearing hazardous secondary materials, i.e., sludges, byproducts, or spent materials, that are generated at a petroleum refinery, SIC code 2911, and are inserted into the petroleum refining process, SIC code 2911 - including distillation, catalytic cracking, fractionation, gasification (as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10), or thermal cracking units, i.e., cokers, unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph, provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in R315-2-4(a)(12)(ii), oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry, i.e., from sources other than petroleum refineries, are not excluded under R315-2-4. Residuals generated from processing or recycling materials excluded under this paragraph (a)(12)(i), where such materials as generated would have otherwise met a listing under R315-2-10, R315-2-11, R315-2-24, and R315-2-26, are designated as F037 listed wastes when disposed of or intended for disposal.

(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in R315-2-4(a)(12)(i). Recovered oil is oil that has been reclaimed from secondary materials, including wastewater, generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5152.) Recovered oil does not include oil-bearing hazardous wastes listed in R315-2-10, R315-2-11, R315-2-24, and R315-2-26; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in 19-6-703(19).

(13) Excluded scrap metal, processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal, being recycled.

(14) Shredded circuit boards being recycled provided that they are:

(i) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

(ii) Free of mercury switches, mercury relays, and nickel-cadmium batteries and lithium batteries.

(15) Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.

(16) Comparable fuels or comparable syngas fuels that meet the requirements of R315-2-26, which incorporates by reference 40 CFR 261.38.

(17) Spent materials as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1, other than hazardous wastes listed in R315-2-10, 2-11, and 2-26 (which incorporate by reference 40 CFR 261 Subpart D), and R315-2-24, generated within the primary mineral processing industry from which minerals, acids, cyanide, water or other values are recovered by mineral processing or by beneficiation, provided that:

(i) The spent material is legitimately recycled to recover minerals, acids, cyanide, water or other values;

(ii) The spent material is not accumulated speculatively;

(iii) Except as provided in R315-2-4(a)(17)(iv), the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support, except smelter buildings may have partially earthen floors provided the secondary material is stored on the non-earthen portion, and have a roof suitable for diverting rainwater away from the foundation; a tank must be free standing, not be a surface impoundment as defined R315-1-1(b), which incorporates by reference 40 CFR 260.10, and be manufactured of a material suitable for containment of its contents; a container must be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator must operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings must be designed, constructed and operated to prevent significant releases to the environment of these materials.

(iv) The Director may make a site-specific determination, after public review and comment, that only solid mineral processing spent materials may be placed on pads, rather than in tanks, containers, or buildings. Solid mineral processing spent materials do not contain

any free liquid. The Director must affirm that pads are designed, constructed and operated to prevent significant releases of the secondary material into the environment. Pads must provide the same degree of containment afforded by the non-RCRA tanks, containers and buildings eligible for exclusion.

(A) The Director must also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, air exposure pathways are: the volume and physical and chemical properties of the secondary material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway, and the possibility and extent of harm to human and environmental receptors via each exposure pathway.

(B) Pads must meet the following minimum standards: be designed of non-earthen material that is compatible with the chemical nature of the mineral processing spent material, capable of withstanding physical stresses associated with placement and removal, have run on/runoff controls, be operated in a manner which controls fugitive dust, and have integrity assurance through inspections and maintenance programs.

(C) Before making a determination under this paragraph, the Director must provide notice and the opportunity for comment to all persons potentially interested in the determination. This can be accomplished by placing notice of this action in major local newspapers, or broadcasting notice over local radio stations.

(v) The owner or operator provides notice to the Director, providing the following information: the types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in land-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process.

(vi) For purposes of R315-2-4(b)(7), mineral processing spent materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

(vii) R315-2-4(a)(16) becomes effective July 1, 1999.

(18) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process, SIC code 2911, along with normal petroleum refinery process streams, provided:

(i) The oil is hazardous only because it exhibits the characteristic of ignitability, as defined in R315-2-9(d), and/or toxicity for benzene, R315-2-9(g), waste code D018; and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An "associated organic chemical manufacturing facility" is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials, i.e., sludges, byproducts, or spent materials, including wastewater,

from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

(19) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1(c).

(20) Hazardous secondary materials used to make zinc fertilizers, provided that the conditions specified below are satisfied:

(i) Hazardous secondary materials used to make zinc micronutrient fertilizers must not be accumulated speculatively, as defined in R315-1-1(c) which incorporates by reference 40 CFR 261.1(c)(8).

(ii) Generators and intermediate handlers of zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers must:

(A) Submit a one-time notice to the Director which contains the name, address and EPA ID number of the generator or intermediate handler facility, provides a brief description of the secondary material that will be subject to the exclusion, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in R315-2-4(a)(20).

(B) Store the excluded secondary material in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of the secondary materials into the environment. At a minimum, any building used for this purpose must be an engineered structure made of non-earthen materials that provide structural support, and must have a floor, walls and a roof that prevent wind dispersal and contact with rainwater. Tanks used for this purpose must be structurally sound and, if outdoors, must have roofs or covers that prevent contact with wind and rain. Containers used for this purpose must be kept closed except when it is necessary to add or remove material, and must be in sound condition. Containers that are stored outdoors must be managed within storage areas that:

(1) have containment structures or systems sufficiently impervious to contain leaks, spills and accumulated precipitation;

(2) provide for effective drainage and removal of leaks, spills and accumulated precipitation; and

(3) prevent run-on into the containment system.

(C) With each off-site shipment of excluded hazardous secondary materials, provide written notice to the receiving facility that the material is subject to the conditions of R315-2-4(a)(20).

(D) Maintain at the generator's or intermediate handler's facility for no less than three years records of all shipments of excluded hazardous secondary materials. For each shipment these records must at a minimum contain the following information:

(1) Name of the transporter and date of the shipment;

(2) Name and address of the facility that received the excluded material, and documentation confirming receipt of the shipment; and

(3) Type and quantity of excluded secondary material in each shipment.

(iii) Manufacturers of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials must:

(A) Store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in R315-2-4(a)(20)(ii)(B).

(B) Submit a one-time notification to the Director that, at a minimum, specifies the name, address and EPA ID number of the manufacturing facility, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in R315-2-4(a)(20).

(C) Maintain for a minimum of three years records of all shipments of excluded hazardous secondary materials received by the manufacturer, which must at a minimum identify for each shipment the name and address of the generating facility, name of transporter and date the materials were received, the quantity received, and a brief description of the industrial process that generated the material.

(D) Submit to the Director an annual report that identifies the total quantities of all excluded hazardous secondary materials that were used to manufacture zinc fertilizers or zinc fertilizer ingredients in the previous year, the name and address of each generating facility, and the industrial process(s) from which they were generated.

(iv) Nothing in this section preempts, overrides or otherwise negates the provision in R315-5-1.11, which incorporates by reference 40 CFR 262.11, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) Interim status and permitted storage units that have been used to store only zinc-bearing hazardous wastes prior to the submission of the one-time notice described in R315-2-4(a)(20)(ii)(A), and that afterward will be used only to store hazardous secondary materials excluded under this paragraph, are not subject to the closure requirements of R315-7 and R315-8.

(21) Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under R315-2-4(a)(20), provided that:

(i) The fertilizers meet the following contaminant limits:

(A) For metal contaminants:

.....

(B) For dioxin contaminants the fertilizer must contain no more than eight (8) parts per trillion of dioxin, measured as toxic equivalent (TEQ).

(ii) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing must also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

(iii) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of R315-2-4(a)(21)(ii). Such records must at a minimum include:

(A) The dates and times product samples were taken, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) taking the samples;

(C) A description of the methods and equipment used to take the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any cleanup and sample preparation methods; and

(F) All laboratory analytical results used to determine compliance with the contaminant limits specified in R315-2-4(a)(21).

(22) Used cathode ray tubes (CRTs)

(i) Used, intact CRTs as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, are not solid wastes within the United States unless they are disposed, or unless they are speculatively accumulated as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1(c)(8), by CRT collectors or glass processors.

(ii) Used, intact CRTs as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, are not solid wastes when exported for recycling provided that they meet the requirements of R315-2-27, which incorporates by reference 40 CFR 261.40.

(iii) Used, broken CRTs as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, are not solid wastes provided that they meet the requirements of R315-2-27, which incorporates by reference 40 CFR 261.39.

(iv) Glass removed from CRTs is not a solid waste provided that it meets the requirements of R315-2-27, which incorporates by reference 40 CFR 261.39(c).

(23) Solvent-contaminated wipes that are sent for cleaning and reuse are not solid wastes from the point of generation, provided that

(i) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers must be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container must be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;

(ii) The solvent-contaminated wipes may be accumulated by the generator for up to 180 days from the start date of accumulation for each container prior to being sent for cleaning;

(iii) At the point of being sent for cleaning onsite or at the point of being transported off-site for cleaning, the solvent-contaminated wipes must contain no free liquids as defined in Section 260.10 of this chapter.

(iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes must be managed according to the applicable regulations found in R315-1 through R315-101;

(v) Generators must maintain at their site the following documentation:

(A) Name and address of the laundry or dry cleaner that is receiving the solvent-contaminated wipes;

(B) Documentation that the 180-day accumulation time limit in R315-2-4(a)(23)(ii) is being met;

(C) Description of the process the generator is using to ensure the solvent-contaminated wipes contain no free liquids at the

point of being laundered or dry cleaned on-site or at the point of being transported off-site for laundering or dry cleaning:

(vi) The solvent-contaminated wipes are sent to a laundry or dry cleaner whose discharge, if any, is regulated under sections 301 and 402 or section 307 of the Clean Water Act.

(b) SOLID WASTES WHICH ARE NOT HAZARDOUS WASTES.

The following solid wastes are not hazardous wastes:

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered, such as refuse-derived fuel or reused. "Household waste" means any material, including garbage, trash and sanitary wastes in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of or otherwise managing hazardous wastes for the purposes of regulation under this subtitle, if the facility:

(i) Receives and burns only

(A) Household waste, from single and multiple dwellings, hotels, motels, and other residential sources and

(B) Solid waste from commercial of industrial sources that does not contain hazardous waste; and

(ii) The facility does not accept hazardous wastes and the owner or operator of the facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in the facility.

(2) Solid wastes generated by any of the following and which are returned to the soil as fertilizers:

(i) The growing and harvesting of agricultural crops.

(ii) The raising of animals, including animal manures.

(3) Mining overburden returned to the mine site.

(4) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112, for facilities that burn or process hazardous waste.

(5) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

(6) The following additional solid wastes:

(i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in sections R315-2-10 or R315-2-11 due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(A) The chromium in the waste is exclusively, or nearly exclusively, trivalent chromium; and

(B) The waste is generated from an industrial process which uses trivalent chromium exclusively, or nearly exclusively, and the process does not generate hexavalent chromium; and

(C) The waste is typically and frequently managed in non-oxidizing environments.

(ii) Specific wastes which meet the standard in paragraphs (b)(6)(i)(A),(B), and (C) of this section, so long as they do not fail the

test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic, are:

(A) Chrome blue trimmings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(B) Chrome blue shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair/pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(E) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(F) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

(G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

(H) Wastewater treatment sludges from the production of TiO₂ pigment using chromium-bearing ores by the chloride process.

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals, including coal, phosphate rock, and overburden from the mining of uranium ore, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112 for facilities that burn or process hazardous waste.

(i) For purposes of R315-2-4(b)(7) beneficiation of ores and minerals is restricted to the following activities; crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching.

(ii) For the purposes of R315-2-4(b)(7), solid waste from the processing of ores and minerals includes only the following wastes as generated:

- (A) Slag from primary copper processing;
- (B) Slag from primary lead processing;
- (C) Red and brown muds from bauxite refining;
- (D) Phosphogypsum from phosphoric acid production;

(E) Slag from elemental phosphorus production ;

(F) Gasifier ash from coal gasification;

(G) Process wastewater from coal gasification;

(H) Calcium sulfate wastewater treatment plant sludge from primary copper processing;

(I) Slag tailings from primary copper processing;

(J) Fluorogypsum from hydrofluoric acid production;

(K) Process wastewater from hydrofluoric acid production;

(L) Air pollution control dust/sludge from iron blast furnaces;

(M) Iron blast furnace slag;

(N) Treated residue from roasting/leaching of chrome ore;

(O) Process wastewater from primary magnesium processing by the anhydrous process;

(P) Process wastewater from phosphoric acid production;

(Q) Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;

(R) Basic oxygen furnace and open hearth furnace slag from carbon steel production;

(S) Chloride process waste solids from titanium tetrachloride production;

(T) Slag from primary zinc processing.

(iii) A residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under R315-2-4(b) if the owner or operator:

(A) Processes at least 50 percent by weight normal beneficiation raw materials or normal mineral processing raw materials; and,

(B) Legitimately reclaims the secondary mineral processing materials.

(8) Cement kiln dust waste, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112, for facilities that burn or process hazardous waste.

(9) Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Toxicity Characteristic for Hazardous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.

(10) Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic (TC) of R315-2-9(g), Hazardous Waste Codes D018 through D043 only, and are subject to the corrective action requirements under R311-202, which incorporates by reference 40 CFR 280.

(11) Injected groundwater that is hazardous only because it exhibits the Toxicity Characteristic, Hazardous Waste Codes D018 through D043 only, in R315-2-9(e) that is reinjected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines, and petroleum transportation spill sites until January 25, 1993. This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For groundwater returned through infiltration galleries from such operations at petroleum refineries, marketing terminals, and bulk plants, until October 2, 1991. New operations involving injection wells, beginning after March 25, 1991, will qualify for this compliance date extension until January 25, 1993, only if:

(i) Operations are performed pursuant to a written state agreement that includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed; and

(ii) A copy of the written agreement has been submitted to: Characteristics Section (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 and the Division of Solid and Hazardous Waste, Dept. of Environmental Quality, State of Utah, Salt Lake City, UT 84114-4880.

(12) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

(13) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(14) Non-terme plated used oil filters that are not mixed with wastes listed in R315-2-10(e) and (f) and R315-2-11, which incorporate by reference 40 CFR 261 Subpart D, if these oil filters have been gravity hot-drained using one of the following methods:

(i) Puncturing the filter anti-drain back valve or the filter dome end and hot draining;

(ii) Hot-draining and crushing;

(iii) Dismantling and hot-draining; or

(iv) Any other equivalent hot-draining method that will remove used oil.

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, K178, and K181 if these wastes had been generated after the effective date of the listing;

(ii) The solid wastes described in paragraph R315-2-4(b)(15)(i) were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate does not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under R317-8 of the Utah Water Quality Rules.

(v) As of February 13, 2001, leachate or gas condensate derived from K169-K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. As of November 21, 2003, leachate or gas condensate derived from K176, K177, and K 178 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After February 26, 2007, leachate or gas condensate derived from K181 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation, e.g., shutdown of wastewater treatment system, provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph after the emergency ends.

(16) Solvent-contaminated wipes, except for wipes that are hazardous waste due to the presence of trichloroethylene, that are sent

for disposal are not hazardous wastes from the point of generation provided that

(i) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers must be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container must be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;

(ii) The solvent-contaminated wipes may be accumulated by the generator for up to 180 days from the start date of accumulation for each container prior to being sent for disposal;

(iii) At the point of being transported for disposal, the solvent-contaminated wipes must contain no free liquids as defined in R315-1-1(e)(6).

(iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes must be managed according to the applicable regulations found in R315-1 through R315-101;

(v) Generators must maintain at their site the following documentation:

(A) Name and address of the landfill or combustor that is receiving the solvent-contaminated wipes;

(B) Documentation that the 180 day accumulation time limit in R315-4-(b)(16)(ii) is being met;

(C) Description of the process the generator is using to ensure solvent-contaminated wipes contain no free liquids at the point of being transported for disposal;

(vi) The solvent-contaminated wipes are sent for disposal

(A) To a municipal solid waste landfill:

(1) regulated under R315-301 through R315-320

(2) is a Class I or V Landfill; and

(3) has a composite liner;

(B) or to a hazardous waste landfill regulated under R315-1 through R315-101; or

(C) To a municipal waste combustor or other combustion facility regulated under section 129 of the Clean Air Act or to a hazardous waste combustor, boiler, or industrial furnace regulated under R315-7, R315-8 or R315-14-7, which incorporates by reference 266 subpart H.

(c) HAZARDOUS WASTES WHICH ARE EXEMPTED FROM CERTAIN RULES.

A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit is not subject to these regulations or to the notification requirements of Section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of products or raw materials.

(d) SAMPLES

(1) Except as provided in paragraph (d)(2) of this section, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or compositions, is not subject to any requirements of these rules when:

(i) The sample is being transported to a laboratory for the purpose of testing;

(ii) The sample is being transported back to the sample collector after testing;

(iii) The sample is being stored by the sample collector before transport to a laboratory for testing;

(iv) The sample is being stored in a laboratory before testing;

(v) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

(vi) The sample is being stored temporarily in the laboratory after testing for a specific purpose, for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary.

(2) In order to qualify for the exemption in paragraphs (d)(1)(i) and (ii) of this section, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector shall:

(i) Comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(ii) Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:

(A) Assure that the following information accompanies the sample:

(1) The sample collector's name, mailing address, and telephone number;

(2) The laboratory's name, mailing address, and telephone number;

(3) The quantity of the sample;

(4) The date of shipment; and

(5) A description of the sample.

(B) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(3) This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in paragraph (d)(1) of this section.

(e) TREATABILITY STUDY SAMPLES.

(1) Except as provided in paragraph (e)(2) of this Section, a person who generates or collects samples for the purpose of conducting treatability studies as defined in section R315-1-1, which incorporates by reference the definitions of 40 CFR 260.10, are not subject to any requirement of R315-2, R315-5, and R315-6, or to the notification requirements of Section 3010 of RCRA, nor are these samples included in the quantity determinations of R315-2-5, which incorporates by reference the requirements concerning conditionally exempt small quantity generators of 40 CFR 261.5 and R315-5-3.34, which incorporates by reference the requirements concerning waste accumulation time for generators of 40 CFR 262.34(d) when:

(i) the sample is being collected and prepared for transportation by the generator or sample collector;

(ii) the sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(iii) the sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

(2) The exemption in paragraph (e)(1) of this section is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(i) The generator or sample collector uses, in "treatability studies," no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream;

(ii) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with non-acute hazardous waste, or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of hazardous waste, and 1 kg of acute hazardous waste; and

(iii) the sample shall be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of paragraph A or B of this subparagraph are met;

(A) the transportation of each sample shipment complies with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(B) if the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information shall accompany the sample:

(1) the name, mailing address, and telephone number of the originator of the sample;

(2) the name, address, and telephone number of the facility that will perform the treatability study;

(3) the quantity of the sample;

(4) the date of shipment; and

(5) a description of the sample, including its EPA Hazardous Waste Number.

(iv) the sample is shipped to a laboratory or testing facility which is exempt under R315-2-4(f) (40 CFR 261.4(f)) or has an appropriate RCRA permit or interim status;

(v) the generator or sample collector maintains the following records for a period ending 3 years after completion of the treatability study:

(A) copies of the shipping documents;

(B) a copy of the contract with the facility conducting the treatability study;

(C) documentation showing:

(1) the amount of waste shipped under this exemption;

(2) the name, address, and EPA identification number of the laboratory or testing facility that received the waste;

(3) the date the shipment was made; and

(4) whether or not unused samples and residues were returned to the generator.

(vi) the generator reports the information required under paragraph (e)(v)(C) of this section in its biennial report.

(3) The Director may grant requests on a case-by-case basis for up to an additional two years for treatability studies involving bioremediation. The Director may grant requests on a case-by-case basis for quantity limits in excess of those specified in paragraphs (e)

(2) (i) and (ii) and (f)(4) of this section, for up to an additional 5000 kg of media contaminated with non-acute hazardous waste, 500 kg of non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste and 1 kg of acute hazardous waste:

(i) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process, e.g., batch versus continuous, size of the unit undergoing testing, particularly in relation to scale-up considerations, the time/quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations.

(ii) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when: There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of a previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(iii) The additional quantities and time frames allowed in paragraph (e)(3) (i) and (ii) of this section are subject to all the provisions in paragraphs (e) (1) and (e)(2) (iii) through (vi) of this section. The generator or sample collector must apply to the Director and provide in writing the following information:

(A) The reason why the generator or sample collector requires additional time or quantity of sample for treatability study evaluation and the additional time or quantity needed;

(B) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results on each treatability study;

(C) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(D) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(E) Such other information that the Director considers necessary.

(f) **SAMPLES UNDERGOING TREATABILITY STUDIES AT LABORATORIES AND TESTING FACILITIES.**

Samples undergoing treatability studies and the laboratory or testing facility that conducts these treatability studies, to the extent these facilities are not otherwise subject to RCRA requirements, are not subject to any requirement of this rule, R315-3 through R315-8, and R315-13, or to the notification requirements of Section 3010 of RCRA provided that the conditions of paragraphs (f)(1) through (11) of this Section are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to paragraphs (f)(1) through (11) of this section. Where a group of MTUs are located at the same site, the limitations specified in (f)(1) through (11) of this section apply to the entire group of MTUs collectively as if the group were one MTU.

(1) No less than 45 days before conducting treatability studies, the facility notifies the Director in writing that it intends to conduct treatability studies under this paragraph.

(2) The laboratory or testing facility conducting the treatability study has an EPA identification number.

(3) No more than a total of 10,000 kg of "as received" media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of other "as received" hazardous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(4) The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of non-acute hazardous wastes other than contaminated media, and 1 kg of acute hazardous waste. This quantity limitation does not include treatment materials, including nonhazardous solid waste, added to "as received" hazardous waste.

(5) No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year, two years for treatability studies involving bioremediation, have elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

(6) The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.

(7) The facility maintains records for three years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information shall be included for each treatability study conducted:

(i) the name, address, and EPA identification number of the generator or sample collector of each waste sample;

(ii) the date the shipment was received;

(iii) the quantity of waste accepted;

(iv) the quantity of "as received" waste in storage each day;

(v) the date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

(vi) the date the treatability study was concluded; and

(vii) the date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number.

(8) The facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.

(9) The facility prepares and submits a report to the Director by March 15 of each year that estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year, and includes the following information for the previous calendar year:

(i) the name, address, and EPA identification number of the facility conducting the treatability studies;

(ii) the types, by process, of treatability studies conducted;

(iii) the names and addresses of persons for whom studies have been conducted, including their EPA identification numbers;

(iv) the total quantity of waste in storage each day;

(v) the quantity and types of waste subjected to treatability studies;

(vi) when each treatability study was conducted; and

(vii) the final disposition of residues and unused sample from each treatability study.

(10) The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under R315-2-3 and, if so, are subject to R315-2 through R315-8, and R315-13, unless the residues and unused samples are returned to the sample originator under the exemption of paragraph (e) of this section.

(11) The facility notifies the Director by letter when the facility is no longer planning to conduct any treatability studies at the site.

(g) DREDGED MATERIAL THAT IS NOT A HAZARDOUS WASTE.

Dredged material that is subject to the requirements of a permit that has been issued under 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413) is not a hazardous waste. For this paragraph (g), the following definitions apply:

- (1) The term dredged material has the same meaning as defined in 40 CFR 232.2;
- (2) The term permit means:
- (i) A permit issued by the U.S. Army Corps of Engineers (Corps) or the Utah State Division of Water Quality;
- (ii) A permit issued by the Corps under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or
- (iii) In the case of Corps civil works projects, the administrative equivalent of the permits referred to in paragraphs R315-2-4(g)(2)(i) and (ii), as provided for in Corps regulations.

KEY: hazardous waste, administrative procedures

Date of Enactment or Last Substantive Amendment: [~~April 25, 2013~~2014]

Notice of Continuation: July 13, 2011

Authorizing, and Implemented or Interpreted Law: 19-1-301; 19-6-105; 19-6-106; 63G-4-201 through 205; 63G-4-503

**Environmental Quality, Solid and
Hazardous Waste
R315-15
Standards for the Management of Used
Oil**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 38346
FILED: 03/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division is proposing changes to the Used Oil Rules, Rule R315-15 of the Utah Administrative Code. The proposed changes will make the rule clearer, consistent with current legislation and improve readability.

SUMMARY OF THE RULE OR CHANGE: The majority of the proposed changes clarify existing language and incorporate changes in corresponding federal regulations. Changes include updated PCB standards, containment requirements, and filter regulations. Changes were also made to clarify the standards applicable to burners of on-specification and off-specification used oil. Provisions regarding used oil handler certificates were also clarified.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-106

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The cost to the state budget will not change because the proposed changes do not change the requirements of or administration of the used oil program.

◆ **LOCAL GOVERNMENTS:** The cost to local governments will not change because the proposed changes do not change the requirements of or administration of the used oil program.

◆ **SMALL BUSINESSES:** Secondary containment standards for ancillary piping may result in increased costs for some permitted facilities but that cost should be offset in the long run by reduced cleanup and closure costs. Current permitted facilities already comply with these proposed changes. In addition, some savings may be gained by permitted facilities by allowing flexibility in the secondary containment design. Most small businesses are only slightly affected by these proposed rule changes because most changes relate to permitted facilities. The regulated community provided input in the development of these proposed changes. Minor costs may be incurred by some used oil transporters to increase the size of the lettering on labels on their vehicles, but most already comply with the proposed changes. Rail loading requirements for permitted used oil transporters would only affect about ten or less companies and most of these are already required to follow these industry standards in their permits. Many of the used oil spills by permitted transporters documented during the last 20 years have occurred during rail loading, so transporters may actually lower their costs through minimizing cleanups at unpermitted rail sites.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed changes for permit renewal will result in increased costs for current permittees. Some of the cost would be offset by savings due to reduction in the number of permit modifications.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Estimated one-time cost of less than a \$100 to upgrade signs on vehicles. The cost of permit renewal may be as high as \$2,000 which will occur once every 10 years. Costs associated with other parts of the rule change will be offset by savings in cleanup costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Estimated one-time cost of less than a \$100 to upgrade signs on vehicles. The cost of permit renewal may be as high as \$2,000 which will occur once every 10 years. Costs associated with other parts of the rule change will be offset by savings in cleanup costs.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 SOLID AND HAZARDOUS WASTE
 SECOND FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3097
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Deborah Ng by phone at 801-536-0218, by FAX at 801-536-0222, or by Internet E-mail at dng@utah.gov
 ◆ Ralph Bohn by phone at 801-536-0212, by FAX at 801-536-0222, or by Internet E-mail at rbohn@utah.gov
 ◆ Tina Mercer by phone at 801-536-0259, by FAX at 801-536-0222, or by Internet E-mail at tmmrcer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 05/15/2014

AUTHORIZED BY: Scott Anderson, Director

**R315. Environmental Quality, Solid and Hazardous Waste.
 R315-15. Standards for the Management of Used Oil.
 R315-15-1. Applicability, Prohibitions, and Definitions.**

1.1 APPLICABILITY

This section identifies those materials ~~which~~that are subject to regulation as used oil under ~~[Section]~~R315-15. This section also identifies some materials that are not subject to regulation as used oil under ~~[Rule]~~R315-15, and indicates whether these materials may be ~~subject to regulation~~ a[s] hazardous waste as defined under ~~[Rules]~~R315-~~[1]~~2~~[through R315-14, and R315-50]~~.

(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 ~~[Section]~~R315-15-1.2, the requirements of ~~[Rule]~~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 ~~[Section]~~R315-2-9.

(b) Mixtures of used oil and hazardous waste.

(1) Listed hazardous waste.

(i) Mixtures of used oil and hazardous waste which are~~[that is]~~ listed in ~~[Section]~~R315-2-10 are subject to regulation as hazardous waste under ~~[Rules]~~R315-~~[1]~~2~~[through R315-14, and R315-50]~~, rather than as used oil under ~~[Rule]~~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 ~~[Section]~~R315-2-10. A~~[P]~~person[s] 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 ~~[Section]~~R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII. ~~SW-846, Edition III, is available for review during normal business hours at the Utah Division of Solid and Hazardous Waste office, located at 288 North 1460 West, Salt Lake City, Utah. To schedule an appointment, call 801-538-6170.]~~

(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 ~~[Subsection]~~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~~[M]~~mixture[s] of used oil and hazardous waste that solely exhibits one or more of the hazardous waste characteristics identified in ~~[Section]~~R315-2-9 and a mixtures of used oil and hazardous waste that is listed in ~~[Section]~~R315-2-10 solely because it exhibits one or more of the characteristics of hazardous waste identified in ~~[Section]~~R315-2-9 are subject to:

(i) Except as provided in ~~[Subsection]~~R315-15-1(b)(2)(iii), regulation as hazardous waste under ~~[Rules]~~R315-1 through R315-14, and R315-50 rather than as used oil under ~~[Rule]~~R315-15, if the resultant mixture exhibits any characteristics of hazardous waste identified in ~~[Section]~~R315-2-9; or

(ii) Except as specified in ~~[Subsection]~~R315-15-1.1(b)(2)(iii), regulation as used oil under ~~[Rule]~~R315-15, if the resultant mixture does not exhibit any characteristics of hazardous waste identified under ~~[Section]~~R315-2-9.

(iii) Regulation as used oil under ~~[Rule]~~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 ~~[Subsection]~~R315-2-9(d).

(3) Conditionally exempt small quantity generator hazardous waste. Mixtures of used oil and conditionally exempt small quantity generator hazardous waste regulated under ~~[Section]~~ R315-2-5, which incorporates by reference 40 CFR 261.5, are subject to regulation as used oil under ~~[Rule]~~ R315-15.

(c) Materials containing or otherwise contaminated with used oil.

(1) Except as provided in ~~[paragraph]~~ R315-15-1.1(c)(2) ~~[of this section]~~, 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 ~~[Rule]~~ R315-15, and

(ii) If applicable, are subject to the hazardous waste regulations ~~[of Rules]~~ R315-1 through R315-14, ~~[and]~~ R315-50, ~~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 ~~[Rule]~~ 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 ~~[Rule]~~ R315-15.

(d) Mixtures of used oil with products.

(1) Except as provided in ~~[paragraph]~~ (d)(2) ~~[of this section]~~, mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under ~~[Rule]~~ 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 ~~[Rule]~~ R315-15 ~~[one]~~ after the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of ~~[Section]~~ 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 ~~[Rule]~~ R315-15, and

(ii) Not solid wastes and are thus not subject to the hazardous waste regulations of ~~[Rules]~~ R315-1 through R315-14 ~~;~~ and R315-50 as provided in ~~[Subsection]~~ R315-2-3(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 ~~[Rule]~~ R315-15.

(3) Except as provided in R315-15.1.1 ~~[paragraph]~~ (e)(4) ~~[of this section]~~, 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 ~~[Rule]~~ R315-15, and

(ii) Are solid wastes and thus are subject to the hazardous waste regulations ~~[of Rules]~~ R315-1 through R315-14, and R315-50 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 ~~[Rule]~~ 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 ~~[which]~~ that have

eliminated the discharge of wastewater, ~~[contaminated with de minimis quantities of used oil]~~ 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 ~~[Rule]~~ R315-15. The used oil is subject to the requirements of ~~[Rule]~~ 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 ~~[Rule]~~ 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 ~~[Rule]~~ 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 ~~[Rule]~~ R315-15.

(4) Except as provided in ~~[paragraph]~~ R315-15-1.1 (g)(5) ~~[of this section]~~, used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of ~~[Rule]~~ R315-15 only if the used oil meets the specification of ~~[Section]~~ R315-15-1.2. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of ~~[Rule]~~ 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 ~~[Rule]~~ R315-15. This exemption does not extend to used oil ~~[which]~~ 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 ~~[Rule]~~ 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 ~~[Rule]~~ R315-15, marketers and burners of used oil who market used oil containing ~~[any quantifiable level of]~~ PCBs at concentrations greater than or equal to 2 ppm are subject to the requirements found in R315-15-8 and 40 CFR 761.20(e).

(j) Inspections. Any duly authorized ~~[officer]~~ employee ~~[or representative of the Department or the Board may]~~ of the Director, may, at any reasonable time and upon presentation of ~~[appropriate]~~ credentials, ~~[and upon providing the opportunity to have a~~

representative of the owner, operator, or agent in charge to be present, enter upon and inspect any property, premise, or place on or at which used oil is generated, transported, stored, treated or disposed of, and may have access to and the right to copy any records relating to used oil, and inspect, audit, or sample [for purpose of ascertaining the compliance with Rule R315-15.] The employee [These persons referred to in this section] may also make record of the inspection by photographic, electronic, audio, video, or any other reasonable means, [inspect any waste and obtain samples thereof, including samples from any vehicle in which wastes are being transported or samples of any containers or labels. Any person 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. If any analysis is made of those samples, a copy of the results of that analysis shall be furnished promptly to the owner, operator, or agent in charge.]

(k) Violations, Orders, and Hearings. If the [Executive Secretary] Director has reason to believe a person is in violation of any provision of [Rule] R315-15, procedural requirements for compliance [or cessation] shall follow [Section] 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 [Rule] R315-15 until [unless it is shown not to exceed any of the allowable levels of the constituents and properties in the specification shown in Table 1.]

(a) It has been demonstrated not to exceed any allowable levels of the constituents and properties shown in Table 1;

(b) [Once used oil that is to be burned for energy recovery has been shown not to exceed any specification and t] The person making that claim complies with [Sections] R315-15-7.3, R315-15-7.4, and [Subsection] R315-15-7.5(b)[5]; and

(c) The used oil is delivered to a used oil burner [the used oil is no longer subject to Section R315-15-6.]

TABLE 1
USED OIL NOT EXCEEDING ANY ALLOWABLE [SPECIFICATION] LEVEL IS NOT SUBJECT TO R315-15-6 WHEN BURNED FOR ENERGY RECOVERY (1)

Constituent/property	Allowable level
Arsenic	5 ppm maximum
Cadmium	2 ppm maximum
Chromium	10 ppm maximum
Lead	100 ppm maximum
Flash point	100 degrees F minimum
Total halogens	4,000 ppm maximum(2)

(1) The [specification] allowable levels in Table 1 do [es] not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste. [7] §[5]ee [Subsection] 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 [provided under] described in [Subsection] R315-15-1.1(b)(1). Such used oil is subject to [Section] R315-14-7 [5, which incorporates by reference 40 CFR 266 Subpart H], rather than [Rule] 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 [imposed by] 40 CFR 761.20(e), incorporated by

reference, and R315-15-18. Prohibition of PCB oil dilution is described in 40 CFR 279.10 and 40 CFR 761.2(e).

1.3 PROHIBITIONS

Except as authorized by the [Board] 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 [prohibition]. Used oil shall not be managed in surface impoundments or waste piles unless the units are subject to regulation under [Rule] R315-7 or R315-8.

(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 [Subsection] 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 [Board] Director; or

(2) Any hazardous waste so the resulting mixture may not be recycled or used for other beneficial purpose as authorized under [Rule] 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 R315-2.

(e) Used oil shall not be disposed in sewers, drainage systems, septic tanks, surface or ground waters, watercourses, or any body of water. [5]

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 [Subsection] R315-15-6.2(a).

1.5 DISPOSAL OF DE MINIMIS USED OIL

(a) [Section] R315-15-1.3 does not apply to release of de minimis quantities of used oil identified under [Subsection] 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 [possible all oil has been] removed from the item or substance; and

(2) No free flowing oil remains in the item or substance.

1.6 [DISPOSAL OF] USED OIL FILTERS

(a) Disposal of Used Oil Filters. A person may dispose of a nonterme 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 R315-2 [that meets the exclusion of Subsection R315-2-4(b)(14) and is not mixed with hazardous waste defined by Rule R315-2.]

(b) "Gravity hot-drained" means drained for not less than 12 hours near operating temperature but above 60 degrees Fahrenheit. A nonterme used oil filter is a container of used oil and is subject to R315-15 until it is gravity hot-drained by one of the following methods:

(1) puncturing the filter anti-drain back valve or the filter dome end and gravity hot-draining;

- ~~(2) gravity hot-draining and crushing;~~
~~(3) dismantling and gravity hot-draining; or~~
~~(4) any other equivalent gravity hot-draining method authorized by the Director that will remove used oil from the filter at least as effectively as the methods listed in R315-15-1.6(b)(1) through (3).~~

1.7 DEFINITIONS

(a) Definitions of terms used in ~~[Rule]~~R315-15 are found in: R315-1.7(b) through (j); and R315-1-1.~~[incorporated by reference in Section R315-1-1.]~~

(b) ~~The [definition of the]term "de minimis[" quantities of used oil" [as used in Rule R315-15]defined in [has the same meaning as in Subsection]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) ~~[The definition of the term]"["financial responsibility" [as used in Rule R315-15] 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, ~~[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 ~~[Rule]~~R315-15, except for the prohibitions of ~~[Section]~~R315-15-1.3 and cleanup requirements of R315-15-9.

(2) Vessels. Vessels at sea or at port are not subject to ~~[Section]~~R315-15-2. For purposes of ~~[Section]~~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~~[waste]~~ in compliance with ~~[Section]~~R315-15-2 once the used oil is transported ashore. The co-generators may decide among themselves which party will fulfill the requirements of ~~[Section]~~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 ~~[Rule]~~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 ~~[Section]~~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 ~~[Rule]~~R315-15, except for the prohibitions of ~~[Section]~~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 ~~[Rule]~~R315-15 as indicated in ~~[paragraphs]~~R315-15.2.1(b)(1) through (5) ~~[of this section]~~:

(i) Generators who transport used oil, except under the self-transport provisions of ~~[Subsections]~~R315-15-2.5(a) and (b), shall also comply with ~~[Section]~~R315-15-4.

(2)(i) Except as provided in ~~[paragraph]~~R315-15-2.1(b)(2) ~~[of this section]~~, generators who process or re-refine used oil must also comply with ~~[Section]~~R315-15-5.

(ii) Generators who perform the following activities are not processors, provided that the used oil is generated on[-]site and is not being sent off[-]site 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 on[-]site to make the wastewater acceptable for discharge or reuse ~~[pursuant]in accordance with [to] 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 ~~[pursuant]in accordance with [to Subsection]~~R315-15-1.1(c); or

(E) Filtering, separating or otherwise reconditioning used oil before burning it in a space heater in accordance with ~~[pursuant to Section]~~R315-15-2.4.

(3) Generators who burn off-specification used oil for energy recovery, ~~[except under the on-site space heater provisions of Section R315-15-2.4,]~~shall also comply with ~~[Section]~~R315-15-6.

(4) Generators who direct shipments of off-specification used oil from their facility to a used oil burner or first ~~certify~~claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in ~~Section~~ R315-15-1.2 shall also comply with ~~Section~~ R315-15-7.

(5) Generators who dispose of used oil shall also comply with ~~Section~~ R315-15-8.

2.2 HAZARDOUS WASTE MIXING

(a) Mixtures of used oil and hazardous waste shall be managed in accordance with ~~Subsection~~ R315-15-1.1(b).

(b) The rebuttable presumption for used oil found in ~~of Subsection~~ R315-15-1.1(b)(1)(ii) applies to used oil managed by generators. Under this~~the~~ rebuttable presumption~~for used oil of Subsection R315-15-1.1(b)(1)(ii)]~~, 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 ~~[f]luids 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 ~~[part]~~ 112, in addition to the requirements of ~~Section~~ R315-15-2. Used oil generators are also subject to the standards and requirements of ~~Rules~~ 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~~in~~ addition, used oil generators are subject to the requirements of ~~Section~~ 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 ~~Rule~~ R315-7 or R315-8.

(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~~[(no visible leaks)]~~.

(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:

~~(a)1~~ The heater burns only used oil that the owner or operator generates;

~~(b)2~~ The heater is designed to have a maximum capacity of not more than 0.5 million Btu per hour;

~~(e)3~~ The combustion gases from the heater are vented to the outside ambient air;

~~(d)4~~ The generator has knowledge that the used oil has not been mixed with hazardous waste; and~~[If registered as a Used Oil Collection Center as authorized in Section R315-15-3, the generator may burn used oil received from household do-it-yourselfer generators or farmers described in Subsection R315-15-2.1(a)(4); and]~~

~~(e)5~~ The used oil is being legitimately burned~~[recycled]~~ 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 ~~[paragraphs]~~ R315-15-2.5(a) through (c) ~~[of this section]~~, a generator[s] shall ensure that its~~their~~ used oil is transported only by a transporter[s] who ~~has~~~~ve~~ obtained a Utah used oil transporter permit and has a current used oil handler certificate issued by the Director and an EPA identification number[s].

(a) Self-transportation of small amounts to approved collection centers. A~~[G]~~generator[s] 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~~[G]~~generator[s] 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~~[and/or operated]~~ 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 ~~[pursuant to]~~ 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~~ ~~[This section]~~ applies to owners or operators of ~~[all do-it-yourselfer (DIYer)]~~ Type A and B used oil collection centers~~[-]~~:

~~(1) Type A used oil collection center. Type A and B [A DIYer used oil collection center] 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 [DIYer] used oil collection center requirements. Owners or operators of Type A or B [all DIYer] used oil collection centers shall:~~

~~(1) [e] Comply with the generator standards in [Section-] R315-15-2.~~

~~(2) Be registered with the Division of Solid and Hazardous Waste 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.~~

~~[and the record-keeping requirements of Subsections R315-15-3.2(b) (3)(i) through (iv).]~~

~~(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 [GENERATOR—]USED OIL COLLECTION CENTERS - Types C and D

(a) Applicability. ~~[This section]~~ R315-15-3.2 applies to owners or operators of Type C and D ~~[generator]~~ used oil collection centers.~~[-]~~

~~(1) Type C [A generator] used oil collection center is any site or facility that accepts/aggregates and stores used oil collected from used oil generators regulated under [Section-] R315-15-2 who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of [Subsection-] R315-15-2.5(a). Type C used oil collection [Used generator oil collection] centers may also accept used oil from household do-it-yourselfers and farmers described in [Subsection-] R315-15-2.1(a)(4) ~~[- if registered to do so].~~~~

~~(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) [Generator-][u] Used oil collection center Type C and D requirements. Owners or operators of [all generator-] Types C and D used oil collection centers shall:~~

~~(1) Comply with the generator standards in [Section-] R315-15-2;~~

~~(2) Be registered with the Division of Solid and Hazardous Waste to manage used oil; and~~

~~(3) Keep records of used oil received from off-site sources and ~~[picked up/]~~ transported from the collection center. This does not include used oil generated on ~~[the]~~ 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) Volumes of used oil collected ~~[picked up-]~~ 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~~ ~~[This section]~~ applies to owners or operators of all used oil aggregation points. A used oil aggregation point is any site or facility that accepts, aggregates, ~~[and/]~~ 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 ~~[no more than]~~ 55 gallons or less under the provisions of ~~[Subsection-] 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 ~~[Section-] R315-15-13.1~~, and comply with do-it-yourselfer collection center standards in ~~[Section-] R315-15-3.1~~. Used oil aggregation points that accept used oil from other generators ~~[must]~~ ~~[shall]~~ register as collection centers, as described in ~~[Section-] R315-15-13.2~~, and comply with collection center standards in ~~[Section-] 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 ~~[Section-] 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 paragraphs R315-15-4.1(a)(1) through (a)(4) of this section, Section R315-15-4 applies to all used oil transporters. [Used oil transporters are] 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 Subsection R315-15-13.4(f), used oil transporters or operators of used oil transfer facilities shall obtain a permit from the Executive Secretary Director prior to accepting any used oil for transportation or transfer. The application for a permit shall include the information required by Section 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) ~~Section~~ R315-15-4 does not apply to on-site transportation.

(2) ~~Section~~ 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) ~~Section~~ 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 ~~Subsection~~ R315-15-2.5(b).

(4) ~~Section~~ R315-15-4 does not apply to transportation of used oil from household do-it-yourselfers to a regulated used oil generator, collection center, aggregation point, processor/re-refiner, or burner subject to the requirements of ~~Rule~~ R315-15. Except as provided in ~~paragraphs~~ R315-15-4.1(a)(1) through (a)(3) ~~of this section~~, ~~Section~~ R315-15-4 does, ~~however,~~ 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 ~~who import used oil from abroad or export used oil outside of the United States~~ are subject to the requirements of ~~Section~~ R315-15-4 from the time the used oil enters and until the time it exits Utah.

(c) ~~Trucks~~ Vehicles used to transport hazardous waste. Unless ~~trucks~~ vehicles previously used to transport hazardous waste are emptied as described in ~~Section~~ R315-2-7 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 ~~Subsection~~ 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, 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.

(~~d~~) Other applicable provisions. Used oil transporters who conduct the following activities are also subject to other applicable provisions of ~~Rule~~ R315-15 as indicated in ~~paragraphs~~ R315-15-4.1 (~~d~~) (1) through (5) ~~of this section~~:

(1) Transporters who generate used oil shall also comply with ~~Section~~ R315-15-2;

(2) Transporters who process or re-refine used oil, except as provided in ~~Section~~ R315-15-4.2, shall also comply with ~~Section~~ R315-15-5;

(3) Transporters who burn off-specification used oil for energy recovery shall also comply with ~~Section~~ 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 ~~Section~~ R315-15-1.2 shall also comply with ~~Section~~ R315-15-7; and

(5) Transporters who dispose of used oil shall also comply with ~~Section~~ 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 ~~paragraph~~ R315-15-4.2(b) ~~of this section~~, used oil transporters may not process used oil unless they also comply with the requirements for processors/re-refiners in ~~Section~~ 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 ~~Section~~ 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 ~~Section~~ 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 ~~Executive Secretary~~ Director of his used oil activity by submitting either:

(1) A completed EPA Form 8700-12 ~~to obtain EPA Form 8700-12 call Utah Division of Solid and Hazardous Waste at 801-538-6170;~~ 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 [~~which~~]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 [~~which~~]that has obtained an EPA identification number[;], off-specification used oil burner permit, and current used oil handler certificate issued by the Director;~~or~~

(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

(~~4~~)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 ~~[Section]~~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 ~~[Subsection]~~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 ~~above or~~ 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 ~~[Section]~~R315-2-10. 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 R315-50-10~~, which incorporates by reference 40 CFR 261 Appendix VIII: SW-846, Edition III, is available for review during normal business hours at the Utah Division of Solid and Hazardous Waste office, located at 288 North 1460 West, Salt Lake City, Utah. To schedule an appointment, call 801-538-6170.~~

(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 ~~[Subsection]~~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 ~~[paragraphs]~~R315-15-4.5(a), (b), and (c) ~~[of this section]~~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 ~~[Section]~~R315-15-4. Used oil transporters are also subject to the standards of ~~[Title]~~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 ~~[Section]~~R315-15-4.

(a) Applicability. ~~[This section]~~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 ~~[as]~~found in ~~[Section]~~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 ~~[Rule]~~R315-7 or R315-8.

(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~~[(no visible leaks)]~~.

(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 R315-8-9.

(d) Secondary containment. Containers~~;~~ and ~~[existing]~~ aboveground tanks~~;~~ and new 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~~;~~ at a minimum:

(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 [Section] R311-202-1, which incorporates by reference 40 CFR 280, Subpart F, the owner/operator of a transfer facility shall comply with [Section] 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 [R]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;

~~(3)~~4 The quantity of used oil accepted;

~~(4)~~5 The date of acceptance; and

~~(5)~~6(i) Except as provided in [paragraph] R315-15-4.7(a) ~~(ii) of this section~~, 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, ~~or to a used oil~~ 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 [paragraph] R315-15-4.7(a) ~~(ii) of this section~~, 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 [paragraphs] R315-15-4.7(b)(1) through (b)(4) ~~of this section~~ for each shipment of used oil exported ~~to any~~ outside of Utah ~~foreign country~~.

(d) Record retention. The records described in [paragraphs] R315-15-4.7(a), (b), and (c) ~~of this section~~ shall be maintained for at least three years at a specified facility approved by the Director.

(e) Reporting. ~~A~~Used oil transporter~~s~~ and transfer facilit~~y~~ies shall report annually by March 1 to the ~~Executive Secretary~~Director ~~by March 1 of each year~~. The report shall be consistent with the requirements of [Subsection] 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 [Subsection] 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 ~~[Section]~~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 ~~[Section]~~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 ~~[Section]~~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 ~~[Subsection]~~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 ~~[Rule]~~R315-15 as indicated in ~~[paragraphs]~~R315-15-5.1(b)(1) through (b)(5)~~]~~~~[of this section]~~.

(1) Processors/re-refiners who generate used oil shall also comply with ~~[Section]~~R315-15-2.

(2) Processors/re-refiners who transport used oil shall also comply with ~~[Section]~~R315-15-4.

(3) ~~[Except as provided in paragraphs (b)(3)(i) and (b)(3)(ii) of this section, processors/re-refiners who burn off-specification used oil for energy recovery shall also comply with Section R315-15-6.]~~ Processor/re-refiners who burn~~ing~~ off-specification used oil for energy recovery shall also comply with R315-15-6 except where~~[under the following conditions are not subject to Section R315-15-6]~~:

(i) The used oil is only burned in an on-site space heater that meets the requirements of ~~[Section]~~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 ~~[Section]~~R315-15-1.2 shall also comply with ~~[Section]~~R315-15-7.

(5) Processors/re-refiners who dispose of used oil shall also comply with ~~[Section]~~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 R315-2-7 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 ~~[Executive Secretary]~~Director prior to processing or re-refining used oil. An application for a permit shall contain the information required by ~~[Section]~~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 ~~[Executive Secretary]~~Director of their used oil activity by submitting either:

(1) A completed EPA Form 8700-12~~[To obtain EPA Form 8700-12 call Utah Division of Solid and Hazardous Waste at 801-538-6170]; 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, ~~or~~ surface water, or groundwater that [which] could threaten human health or the environment.

(2) Unleashed equipment. ~~[Unless none of the hazards posed by used oil handled at the facility could require a particular kind of equipment specified in paragraphs (a)(2)(i) through (iv) of this section, a]~~All facilities shall be equipped with the following:

(i) An internal communications or alarm system capable of providing immediate emergency instruction, voice ~~or~~ 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 ~~[paragraph] R315-15-5.3(a)(2) [of this section]~~.

(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 ~~[paragraph] R315-15-5.3(a)(2) [of this section]~~.

(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 ~~[which] 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[s] and re-refiner[s] 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 ~~[which] 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 ~~[paragraphs] R315-15-5.3(b)(1)~~ and (6) ~~[of this section]~~ 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, ~~[pursuant to paragraph] in accordance with R315-15-5.3(a)(6) [of this section]~~.

(iv) The plan shall list names, addresses, and phone numbers, ~~[office and home]~~ 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 ~~[paragraph] R315-15-5.3(b)(5) [of this section]~~.

(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. ~~He~~ 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 ~~or~~ 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 ~~which~~ that could threaten human health, or the environment, outside the facility, the coordinator shall report ~~the~~ his findings as follows:

(A) If the emergency coordinator ~~his~~ assessment indicates ~~d~~ that evacuation of local areas may be advisable, he shall immediately notify appropriate local authorities. ~~He~~ The coordinator shall be available to help appropriate officials decide whether local areas should be evacuated; and

(B) ~~He~~ 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 ~~Executive Secretary~~ Director, and appropriate local authorities that the facility is in compliance with ~~paragraphs~~ R315-15-5.3(b)(6)(viii)(A) and (B)

~~of this section~~ 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, ~~he~~ the owner or operator shall submit a written report on the incident to the ~~Executive Secretary~~ Director. The report shall include:

(A) Name, address, and telephone number of the owner or operator;

(B) Name, address, and telephone number of the facility;

(C) Date, time, and type of incident, e.g., fire, explosion;

(D) Name and quantity of material(s) involved;

(E) The extent of injuries, if any;

(F) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(G) Estimated quantity and disposition of recovered material that resulted from the incident.

5.4 REBUTTABLE PRESUMPTION FOR USED OIL

(a) To ensure that used oil managed at a processing/re-refining facility is not hazardous waste under the rebuttable presumption of ~~Subsection~~ 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 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 ~~Section~~ R315-2-10. 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 ~~Section~~ R315-50-10, ~~which incorporates by reference 40 CFR 261 Appendix VIII. SW-846, Edition III, is available for review during normal business hours at the Utah Division of Solid and Hazardous Waste office, located at 288 North 1460 West, Salt Lake City, Utah. To schedule an appointment, call 801-538-6170.~~

(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 ~~Section~~ R315-15-5. Used oil processors/re-refiners are also subject to the standards and

requirements ~~found in [of Rules]~~ 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 ~~[Section]~~ R315-15-5.

(a) Management of units. Used oil processors/re-refiners may not store used oil in units other than tanks, containers, or units subject to regulation under ~~[Rule]~~ R315-7 or R315-8.

(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; ~~[and]~~

(2) Not leaking ~~[(no visible leaks)]~~; and

(3) Closed during storage except when used oil is being added or removed.

(c) Secondary containment. Containers ~~[,] existing aboveground tanks,~~ and ~~[new]~~ 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 ~~[,] at a minimum~~:

(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 ~~[existing]~~ 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 ~~[Section]~~ R311-202-1, which incorporates by reference 40 CFR 280, Subpart F, an owner/operator shall comply with ~~[Section]~~ 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 ~~[Section]~~ R315-301-4.

(ii) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in ~~[paragraph]~~ R315-15-5.5(f)(1)(i) ~~[-of this section]~~, 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, ~~[Section]~~ R315-7-21.4.

(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 ~~[Rule]~~ R315-2.

5.6 ANALYSIS PLAN

Owners or operators of used oil processing ~~[,] and~~ 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 ~~[Section]~~ R315-15-5.4, R315-15-18, and, if applicable, the marketer requirements in ~~[Section]~~ R315-15-7.3. The owner or operator shall keep the plan at the facility.

(a) Rebuttable presumption for used oil in ~~[Section]~~ R315-15-5.4. ~~[At a minimum, t]~~ The plan shall specify the following:

(1) Whether sample analyses ~~[-or]~~ 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 ~~[Section]~~ R315-50-6 ~~[,] which incorporates by reference 40 CFR 261, Appendix I~~; or

(B) A method shown to be equivalent under ~~[Section]~~ R315-2-15;

(ii) The frequency of sampling to be performed, and whether the analysis will be performed on ~~[-]site or off~~ ~~[-]site~~; and

(iii) The methods used to analyze used oil for the parameters specified in ~~[Section]~~ 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 ~~[Section]~~ R315-15-7.3. At a minimum, the plan shall specify the following if ~~[Section]~~ 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 ~~[Section]~~ R315-50-6, which incorporates by reference 40 CFR 261, Appendix I; or

(B) A method shown to be equivalent under ~~[Section]~~ R315-2-15;

(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 ~~[Section]~~ 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 ~~may~~ 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; ~~and~~

(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 ~~which~~ 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 ~~which~~ 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 ~~[Subsection]~~ 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 ~~[Executive Secretary]~~ Director ~~[by March 1 of each year]~~. The report shall be consistent with the requirements of ~~[Subsection]~~ R315-15-13.5(d).

5.9 OFF-SITE SHIPMENTS OF USED OIL

Used oil processors/re-refiners who initiate shipments of used oil off-site 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.

5.1[0] 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 ~~[Subsection]~~ 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. ~~[The requirements of Section R315-15-6 apply to used oil burners except as specified in paragraphs (a)(1) through (a)(3) of this section.]~~ An off-specification used oil burner is a person who burns ~~[facility where]~~ used oil not meeting the specifications found ~~[requirements]~~ in ~~[Section]~~ R315-15-1.2 ~~[is burned]~~ for energy recovery ~~[in devices identified in Subsection R315-15-6.2(a)].~~ Facilities burning used oil for energy recovery under the following conditions are ~~not~~ subject to ~~[Section R315-15-6]~~ 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 ~~[Section]~~ 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 ~~[Section]~~ R315-15-1.2 and who delivers the used oil in the manner set forth in ~~[Subsection]~~ R315-15-7.5(b).

(b) Other applicable provisions. In addition to the requirements of R315-15-6.1(a), used ~~[Used]~~ oil burners who conduct

the following activities are ~~[also]~~ subject to the requirements ~~[of other applicable provisions]~~ of ~~[Rule]~~ R315-15 as indicated below.

(1) Burners who generate used oil shall ~~[also]~~ comply with ~~[Section]~~ R315-15-2;

(2) Burners who transport used oil shall ~~[also]~~ comply with ~~[Section]~~ R315-15-4;

(3) Except as provided in ~~[Subsection]~~ R315-15-6.2(b)(2), burners who process or re-refine used oil shall ~~[also]~~ 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 ~~[Section]~~ R315-15-1.2 shall ~~[also]~~ comply with ~~[Sections]~~ R315-15-7 and R315-15-13.7;

(5) Burners who dispose of used oil shall comply with ~~[Section]~~ R315-15-8; and

(6) Burners who collect used oil ~~[must]~~ shall also comply with the collection center requirements in ~~[Section]~~ R315-15-3. Burners ~~[who]~~ 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 ~~[must become marketers and comply with the provisions of Section]~~ R315-15-7. Burners who collect and burn used oil that is not ~~[does not fall into the categories of]~~ "do-it-yourselfer" or farmer-generated ~~[used oil]~~ as described in ~~[Subsections]~~ R315-15-2.1(a)(1) and (4), ~~[must also become]~~ shall obtain a used oil marketer[s] registration before burning such oil and shall ~~[and]~~ comply with the provisions of ~~[Section]~~ 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 R315-2-7 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.

(e) Specification fuel. Persons burning used oil that meets the used oil fuel specifications of Section R315-15-1.2 under the

conditions described in Subsections R315-15-6.1(a)(1) through (3) are not subject to Section R315-15-6, provided that the burner complies with the requirements of Section R315-15-7 and Subsection R315-15-13.6(a).

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 ~~[Section]~~ R315-1-1(b), which incorporates by reference 40 CFR 260.10;

(2) Boilers, as defined in ~~[Section]~~ R315-1-1(b), which incorporates by reference 40 CFR 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 ~~[Section]~~ R315-15-2.4; or

(3) Hazardous waste incinerators subject to regulation under ~~[Section]~~ R315-7-22 or R315-8-15.

(b)(1) With the ~~[following]~~ exception of the aggregation activity described in R315-15-6.2(b)(2), ~~[off-specification]~~ used oil burners may not process used oil unless they also comply with ~~[the requirements of Section]~~ 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 ~~[producing]~~ marketing on-specification used oil without also complying with the processor/re-refiner requirements in ~~[Section]~~ 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 ~~[which]~~ 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 ~~[Executive Secretary]~~ Director of their used oil activity by submitting either:

(1) A completed EPA Form 8700-12. ~~[To obtain EPA Form 8700-12 call Utah Division of Solid and Hazardous Waste at 801-538-6470]; or~~

(2) A letter to the ~~[Division]~~ 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 or 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 ~~[Section]~~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 ~~[Section]~~ R315-2-10. 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 R315-50-10, which incorporates by reference 40 CFR 261 Appendix VIII. ~~[SW-846, Edition III, is available for review during normal business hours at the Utah Division of Solid and Hazardous Waste office, located at 288 North 1460 West, Salt Lake City, Utah. To schedule an appointment, call 801-538-6170.]~~

(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 ~~[Subsection]~~ 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 ~~[paragraphs]~~R315-15-6.4(a), (b), and (c) ~~[of this section]~~ shall be maintained at the burner facility or another facility approved by the Director~~[by the burner]~~ for at least 3 years.

6.5 USED OIL STORAGE AT OFF-SPECIFICATION USED OIL BURNER FACILITIES

Off-specification used~~[Used]~~ oil burners are subject to all applicable Spill Prevention, Control and Countermeasures, 40 CFR part 112, in addition to the requirements of ~~[Section]~~R315-15-6. Used oil burners are also subject to the standards and requirements of ~~[Rules]~~ R311-200 through R311~~[5]~~-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 ~~[Section]~~R315-15-6.

(a) Storage units. Off-specification used~~[Used]~~ oil burners may not store used oil in units other than tanks, containers[;] or units subject to regulation under ~~[Rule]~~R315-7 ~~[or]~~and R315-8.

(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~~[(no visible leaks)]~~.

(c) Secondary containment. Containers~~[, existing aboveground tanks,]~~ and ~~[new]~~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~~[, at a minimum]~~:

(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 ~~[existing]~~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 ~~[Section]~~ R311-202-1, ~~[which incorporates by reference 40 CFR 280, Subpart F,]~~a burner shall comply with ~~[Section]~~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;~~[-and]~~

(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 ~~[Executive Secretary]~~ Director ~~[stating]~~ of the location and general description of ~~[his]~~ 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 ~~[Subsection]~~ R315-15-6.2(a).

(b) Certification retention. The certification described in ~~[paragraph]~~ R315-15-6.7(a) ~~[of this section]~~ 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 ~~[B]~~ burners who generate residues from the storage or burning of used oil shall manage the residues as specified in ~~[Subsection]~~ 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 ~~[Sections]~~ 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 ~~[Section]~~ R315-15-1.2.

(b) The following persons are not used oil fuel marketers subject to ~~[Section]~~ 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 ~~[Section]~~ 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 ~~[Section]~~ R315-15-1.2.

(c) Any person subject to the requirements of ~~[Section]~~ R315-15-7 shall also comply with one of the following:

(1) ~~[Section]~~ R315-15-2 - Standards for Used Oil Generators;

(2) ~~[Section]~~ R315-15-4 - Standards for Used Oil Transporters and Transfer Facilities;

(3) ~~[Section]~~ R315-15-5 - Standards for Used Oil Processors and Re-refiners; or

(4) ~~[Section]~~ 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 ~~[Executive Secretary]~~ Director as required by ~~[pursuant to Section]~~ 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 ~~[Subsection]~~ 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 ~~[Section]~~ 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 ~~[claims]~~ that used oil that is to be burned for energy recovery meets the specifications for used oil fuel under ~~[Section]~~ 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 ~~[Section]~~ 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 ~~[Executive Secretary]~~ Director of their used oil activity by submitting either:

(1) A completed EPA Form 8700-12 ~~[, which can be obtained by calling the Utah Division of Solid and Hazardous Waste at 801-538-6170];~~ or

(2) A letter to the ~~[Division]~~ 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 ~~claims~~ that used oil that is to be burned for energy recovery meets the fuel specifications under ~~[Section]~~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 ~~as~~ required under ~~[Subsection]~~R315-15-7.3(a) and the PCB requirements of R315-15-18.

(c) Record retention. The records described in R315-15-7.5 ~~paragraphs~~ (a) and (b) ~~of this section~~ 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 ~~[Executive Secretary]~~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

(~~2~~)³ The burner will burn the off-specification used oil only in an industrial furnace or boiler identified in ~~[Subsection]~~R315-15-6.2(a).

(b) Certification retention. The certification described in ~~[paragraph]~~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 ~~[Section]~~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 cannot be recycled in accordance with ~~[Rule]~~R315-15 shall be managed in accordance with the hazardous waste management requirements of ~~[Rules]~~R315-1 through R315-14, and R315-50.

(b) Disposal of nonhazardous used oils. Used oil may not be disposed in any solid waste treatment, storage, or disposal facility operated by a political subdivision or a private entity, except as authorized for the disposal of used oil that is hazardous waste under law or in sewers, drainage systems, septic tanks, surface or ground waters, watercourses, or any body of water or on the ground.

(c) Materials containing or otherwise contaminated with nonhazardous used oil. Materials containing or otherwise contaminated with nonhazardous used oil, shall be handled in accordance with R315-15-1.1(c). ~~[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 and authorized by the Board.]~~

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 ~~[Executive Secretary]~~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 ~~[Executive Secretary]~~Director ~~[to the EPA Identification Number requirement for used oil transporters]~~ 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 ~~[Executive Secretary]~~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 ~~[Executive Secretary]~~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 Board or]~~ the ~~[Executive Secretary]~~Director a written report ~~[which]~~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 ~~[Executive Secretary]~~Director of its ability to meet these financial requirements.

~~(B)~~ The owner or operator shall present with its permit application the information the ~~[Executive Secretary]~~Director requires to demonstrate its general comprehensive liability coverage.

~~(C)~~ The owner or operator shall use the financial mechanisms described in ~~[Section]~~R315-15-12 to demonstrate its ability to meet the financial requirements of ~~[Subsection]~~R315-15-10(a)(1) and (a)(3).

~~(ii)~~ In approving the financial mechanisms used to satisfy the financial requirements, the ~~[Executive Secretary]~~Director will take into account existing financial mechanisms already in place by the facility if required by ~~[Sections]~~R315-7-15, R315-8-8, and R311-201-6. Additionally, the ~~[Executive Secretary]~~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 ~~[Executive Secretary]~~Director as part of the permit application and approval process and shall be maintained until released by ~~[Executive Secretary]~~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 ~~[Executive Secretary]~~Director.

~~(b)(1)~~ Environmental pollution legal liability coverage for third party damages at used oil facilities. Each used oil processor, re-refiner, transfer facility, and off-specification burner shall obtain and maintain environmental pollution liability coverage for bodily injury and property damage to third parties resulting from sudden and non-sudden accidental releases of used oil at its facility. This liability coverage shall be maintained for the duration of the permit or until released by the ~~[Executive Secretary]~~Director as provided for in ~~R315-15-10~~ ~~[this section]~~.

~~(2)~~ Changes in extent, type, or amount of the financial mechanism will be considered a permit modification requiring notification to and approval from the ~~[Executive Secretary]~~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

~~(2)ii)~~ For operations in whole or part that do not qualify under ~~[Subsection]~~R315-15-10(b)(1), 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~~[-]~~;

~~(3)iii)~~ For operations covered under ~~[Subsection]~~R315-15-10(b)(2), 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 ~~[Executive Secretary]~~ Director as provided for ~~R315-15-10~~ ~~[in this section]~~. 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 ~~[Executive Secretary]~~ Director.

(d) An owner or operator responsible for cleanup and closure under ~~[Section]~~ R315-15-11 or environmental pollution legal liability for bodily injury and property damage to third parties under ~~[Subsections]~~ R315-15-10(b) and (c) shall demonstrate its ability to satisfy its responsibility to the ~~[Executive Secretary]~~ Director through the use of an acceptable financial assurance mechanism indicated under ~~[Section]~~ R315-15-12.

(e) Used Oil Collection Centers. Except for DIYers, who are subject to Utah Code Annotated 19-6-718, [A] an owner of a used oil collection center shall be subject to the same liability requirements as a permitted facility under ~~[Subsection]~~ R315-15-10(a) and (b) unless these requirements are waived by the ~~[Executive Secretary]~~ Director. [Pursuant] In accordance with [to Section] Utah Code Annotated 19-6-710, the [Executive Secretary] 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 ~~[Executive Secretary]~~ Director shall ~~[release]~~ waive an owner or operator from its existing financial responsibility mechanism as described in ~~[Section]~~ R315-15-10 when:

(1) The ~~[Executive Secretary]~~ Director approves an alternative mechanism;

(2) The owner or operator has achieved cleanup and closure according to ~~[Section]~~ R315-15-11; or

(3) The ~~[Executive Secretary]~~ Director determines that financial responsibility is no longer applicable under ~~[Rule]~~ R315-15.

(g) State of Utah and Federal government used oil permittees are exempt from the requirements of ~~[Section]~~ 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 ~~[Section]~~ R315-15-11 or supplies evidence acceptable to the ~~[Executive Secretary]~~ Director demonstrating a closure mechanism meeting the requirements of ~~[Section]~~ R315-7-15~~;~~ and R315-8-8~~;~~ ~~or 311-201-6~~.

(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 ~~[Executive Secretary]~~ 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 ~~[Executive Secretary]~~ 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 ~~[Executive Secretary]~~ 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 ~~[Executive Secretary]~~ 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 ~~[Section]~~ 40 CFR 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 ~~which~~ that will be cleaned, closed, or both during the active life of the facility.

(iii) ~~An~~ 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 ~~Subsection~~ 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 ~~Executive Secretary~~ Director, in writing, within 60 days following a facility modification that causes an increase in the amount of the financial responsibility required under ~~Section~~ R315-15-10. Within 30 days of the ~~Executive Secretary's~~ 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 ~~Executive Secretary~~ 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 ~~Sections~~ 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 ~~Executive Secretary~~ Director ~~[of this fact]~~ that closure has been initiated:

(1) Within 90 days after the owner or operator receives the final volume of used oil; or

(2) ~~The Executive Secretary~~ 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 ~~Executive Secretary~~ Director determines that the owner or operator has failed to comply with ~~Rule~~ R315-15, the ~~Executive Secretary~~ Director may, after 30 days following ~~on~~ 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 ~~Section~~ 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 ~~Executive Secretary~~ 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 ~~Executive Secretary~~ Director shall make the determination of whether cleanup and closure has been completed according to the cleanup and closure plan and ~~Rule~~ R315-15.

R315-15-12. Financial Assurance.

12.1 DEFINITIONS

For the purposes of ~~Section~~ 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 ~~Executive Secretary~~ Director in accordance with ~~Section~~ 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 ~~Section~~ R315-15-13 from the ~~Executive Secretary~~ Director after July 1, 1993.

(c) "Financial assurance mechanism" means "reclamation surety" as used in ~~Sections~~ 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 ~~Section~~ R315-15-13 shall establish a financial assurance mechanism as evidence of financial responsibility under ~~Section~~ R315-15-10 sufficient to assure cleanup and closure of the facility in conformance~~ity~~ with ~~Subsection~~ R315-15-11.1 with one or more of the financial assurance mechanisms of ~~Subsection~~

R315-15-12.3 prior to receiving a permit from the ~~[Executive Secretary]~~Director.

(b) Any increase in capacity to store or process used oil at a used oil facility permitted by the ~~[Executive Secretary]~~Director, above the storage or processing capacity identified in the permit application approved by the ~~[Executive Secretary]~~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 ~~[Subsections]~~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 ~~[Sections]~~R315-15-10 and R315-15-11 unless they have received a waiver in writing from the ~~[Executive Secretary]~~Director ~~[under Subsection]~~as identified in R315-15-10(e).

12.3 FINANCIAL ASSURANCE MECHANISMS

(a) Any financial assurance mechanism used to show financial responsibility under ~~[Sections]~~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 ~~[Executive Secretary]~~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 ~~[Executive Secretary]~~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 ~~[Executive Secretary]~~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 ~~[Executive Secretary]~~Director for approval as part of the permit application:

(1) Trust Fund.

(i) The trustee shall be an entity ~~[which]~~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 ~~[Executive Secretary]~~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 [Executive Secretary]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 [Executive Secretary's]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 [Executive Secretary]Director [in writing]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.~~

~~(i)v For a new used oil facility, the payment into the trust fund shall be made before the initial receipt of used oil.~~

~~[_____ (v) For an existing used oil facility, the payment into the trust fund shall be made on or before April 1, 1994.~~

~~] (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 [Executive Secretary]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 [Executive Secretary]Director in writing prior to the trustee granting reimbursement.~~

~~(viii) The [Executive Secretary]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 [Section]R315-15-12 under the following conditions:~~

~~(A) upon the insolvency of the permittee, or~~

~~(B) when a violation of [Sections]R315-15-10, 11 or 12 has been determined.~~

~~(ix) The trust agreement shall follow the wording provided by the [Executive Secretary]Director ~~[found]~~as identified in [Subsection]R315-15-17.2.~~

~~(2) Surety Bond Guaranteeing Payment.~~

~~(i) The bond shall be effective [as follows]:~~

~~_____ (A) For a new used oil facility,]before the initial receipt of used oil.[=or]~~

~~[_____ (B) For an existing used oil facility, on or before April 1, 1994.~~

(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 ~~[Executive Secretary]~~ 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 ~~[Subsection]~~ R315-15-11.2.

(iv) Under the terms of the bond, the surety ~~[will]~~ 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 ~~[Subsection]~~ 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 wording provided by the ~~[Executive Secretary]~~ Director ~~[found]~~ as identified in ~~[Subsection]~~ 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 ~~[Executive Secretary]~~ 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 ~~[Executive Secretary]~~ 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 ~~[Executive Secretary]~~ Director 120 days prior to termination.

(viii) Any change to the form or content of the surety bond shall be submitted to the ~~[Executive Secretary]~~ Director for approval and acceptance.

(ix) The surety bond shall follow the language provided by the ~~[Executive Secretary]~~ Director found in ~~[Subsection]~~ R315-15-17.3.

(3) Letter of Credit

(i) The letter of credit shall be effective ~~[as follows]:~~

~~_____ (A) For a new used oil facility,~~ before the initial receipt of used oil ~~[; or]~~

~~_____ (B) For an existing used oil facility, on or before April 1, 1994.~~

(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 ~~[Subsection]~~ 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 ~~[Subsection]~~ R315-15-12.3(b)(1), except for Subsections R315-15-12.3(b)(1)(iii), (viii), and (ix) and the ~~[surety bond]~~ standby trust agreement shall follow the language incorporated by reference in ~~[Subsection]~~ 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 ~~[Executive Secretary]~~ Director.

(vi) The letter of credit shall follow the wording provided by the ~~[Executive Secretary]~~ Director ~~as identified~~ [found] ~~[in]~~ [Subsection] R315-15-17.4.

(4) Insurance.

(i) The insurance shall be effective ~~[as follows]:~~

~~_____ (A) For a new used oil facility,~~ before the initial receipt of used oil ~~[; or]~~

~~_____ (B) For an existing used oil facility on or before April 1, 1994.~~

(C) 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 ~~[Executive Secretary]~~ 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 ~~[Executive Secretary]~~ 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 ~~[Executive Secretary]~~ Director.

(A) The Insurer shall establish at a standby trust agreement for only the benefit of the ~~[Executive Secretary]~~ Director when the ~~[Executive Secretary]~~ Director notifies the Insurer that the ~~[Executive Secretary]~~ Director is making a claim, as provided for in ~~[Rule]~~ 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 ~~[thirty-(30)]~~ days of establishing the standby trust agreement.

(C) The standby trust agreement shall meet the requirements of ~~[Subsection]~~ R315-15-12.3(b)(1), except for ~~[Subsections]~~ R315-15-12.3(b)(1)(iii), (iv), (v), (viii), and (xi), and the standby trust agreement shall follow the language provided by the ~~[Executive Secretary]~~ Director incorporated by reference in ~~[Subsection]~~ 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 ~~[Subsection]~~ R315-15-11.2.

(vi) An owner or operator, or other ~~[authorized]~~ 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 ~~[Executive Secretary]~~ 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 ~~[Executive Secretary]~~ 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 ~~[Section]~~ 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 ~~[Section]~~ R315-15-12.

(xii) Whenever requested by the ~~[Executive Secretary]~~ Director, the Insurer agrees to furnish to the ~~[Executive Secretary]~~ 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 ~~[Executive Secretary]~~ Director for those facilities ~~[which] 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 ~~[Executive Secretary]~~ Director for those facilities ~~[which] that~~ are located in Utah.

(xv) All policy provisions related to ~~[Rule]~~ R315-15 shall be construed ~~[pursuant] in accordance with~~ ~~[to]~~ 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 ~~[Executive Secretary]~~ 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 ~~[Executive Secretary]~~ Director at the time the ~~[Executive Secretary]~~ Director first makes a claim against the insurance policy.

(A) The standby trust fund shall meet the requirements of ~~[Subsection]~~ R315-15-12.3(b)(1), except for item ~~[Subsections]~~ R315-15-12.3(b)(1)(iii), (iv), (v), (viii), and (ix) and the standby trust

agreement shall follow the wording found in ~~[Subsection]~~ 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 ~~[Executive Secretary]~~ 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 ~~[Executive Secretary]~~ 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 ~~[Rule]~~ 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 ~~[Subsection]~~ R315-15-10(b). This liability coverage shall be demonstrated by one or more of the financial mechanisms in ~~[Subsection]~~ R315-15-12.3(c)(3).

(2) An owner or operator that is a used oil transporter regulated under ~~[Rule]~~ 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 ~~[Subsection]~~ R315-15-10(c). This liability coverage shall be demonstrated by one or more of the financial mechanisms in ~~[Subsection]~~ R315-15-12.3(c)(3).

(3) The owner or operator ~~[using insurance to]~~ shall demonstrate compliance with ~~[Subsection]~~ R315-15-10(b) or (c) ~~[shall use]~~ by using one or more of the following financial assurance mechanisms:

(i) Insurance. The owner or operator shall follow the wording provided by the ~~[Executive Secretary]~~ Director ~~[found]~~ identified in ~~[Subsections]~~ 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 ~~[Executive Secretary]~~ Director ~~[found]~~ identified in ~~[Subsection]~~ R315-15-17.12.

(iii) Surety Bond. The owner or operator shall follow the wording provided by the ~~[Executive Secretary]~~ Director ~~[found]~~ identified in ~~[Subsection]~~ R315-15-17.11.

(iv) Letter of Credit. The owner or operator shall follow the wording provided by the ~~[Executive Secretary]~~ Director ~~[found]~~ identified in ~~[Subsection]~~ R315-15-17.10.

(d) Adjustments by the ~~[Executive Secretary]~~ Director. If the ~~[Executive Secretary]~~ Director determines that the levels of financial responsibility required by ~~[Subsection]~~ 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 ~~[Executive Secretary]~~ Director may adjust the level of financial responsibility required under ~~[Subsection]~~ 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 ~~[Executive Secretary's]~~ Director's assessment of the degree and duration of risk associated with the used oil operations or facilities. In addition, if the ~~[Executive Secretary]~~ 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 ~~[Executive Secretary]~~ Director may require that an owner or operator of the used oil facility or operation comply with ~~[Subsection]~~ R315-15-10(b) and (c), as applicable. An owner or operator must furnish, within a reasonable time to the ~~[Executive Secretary]~~ Director when requested in writing, any information ~~[which]~~ the ~~[Executive Secretary]~~ Director requests to determine whether cause exists for an adjustment to the financial responsibility under ~~[Subsection]~~ 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 ~~[Executive Secretary]~~ 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 ~~[Subsection]~~ R315-15-10(d) has changed, it may submit a written request to the ~~[Executive Secretary]~~ Director to modify its permit to reflect the changed responsibility.

(f) The ~~[Executive Secretary]~~ Director may release the requirement for cleanup and closure financial assurance after the owner or operator has clean-closed the facility according to ~~[Section]~~ R315-15-11.

(g) The owner or operator of a permitted used oil facility or operation may request the ~~[Executive Secretary]~~ Director to modify its permit to change its financial assurance mechanism or mechanisms as described in ~~[Section]~~ R315-15-12.

(h) The ~~[Executive Secretary]~~ 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 ~~[Executive Secretary]~~ 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 ~~[Executive Secretary]~~ Director by certified mail within ~~[40]~~ 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 ~~[Sections]~~ R315-15-10, 11, and 12 and submitted to the ~~[Executive Secretary]~~ 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 ~~[Executive Secretary]~~ 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 ~~[Subsection]~~ 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 ~~[Sections]~~ R315-15-10, 11, and 12, shall be provided upon request by the ~~[Executive Secretary]~~ 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 ~~[Executive Secretary]~~ 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 Code Section 19-6-710, the Executive Secretary~~ Pursuant to Section 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~~ Permit. Waiver of proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil. ~~Pursuant to Section 19-6-710, the Executive Secretary~~ In accordance with Utah Code Annotated 19-6-710, the Director may waive the requirement of proof of liability insurance or other means of financial responsibility if the following criteria are satisfied:

(1) The used oil storage tank or container is in good condition with no severe rusting, apparent structural defects or deterioration, and no visible leaks;

(2) There is adequate secondary containment for the tank or container that is impervious to used oil to prevent any used oil released into the secondary containment system from migrating out of the system to the soil, groundwater or surface water;

(3) The storage tank or container is clearly labeled with the words "Used Oil;"

(4) DIYer log entries are complete including the name and address of the generator, date and quantity of used oil received;

(5) EPA-approved test kits for total halogens are readily available and operators are trained to perform halogen tests on any used oil received that may have been mixed with hazardous waste; and

(6) Oil sorbent material is readily available on site for immediate clean up of spills.

(d) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a registration number within 20 days of the change.

13.3 USED OIL AGGREGATION POINTS

(a) Applicability. A person may operate a used oil aggregation point without holding a registration number issued by the Director unless 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 Section R315-15-3.2.

13.4 USED OIL TRANSPORTERS AND USED OIL TRANSFER FACILITIES

(a) Applicability. Except as provided by Section R315-15-13.4(f), a person may not operate as a used oil transporter ~~or operate a transfer facility~~ 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; ~~and~~

(12) A closure plan meeting the requirements of ~~[Section]~~ R315-15-11.1; ~~[-]~~

~~(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 R315-8-10 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 ~~[Section]~~ Utah Code Annotated 63J-1-~~303~~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~~ permit approvals and annual used oil handler certificates.

(d) Annual Reporting. Each transporter~~[-]~~ and transfer facility shall submit an annual report to the ~~[Division]~~ Director of ~~[their]~~ its activities during the calendar year. The annual report shall be submitted to the ~~[Division]~~ 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 ~~[Division]~~ 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/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 ~~[of]~~ 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 ~~[Executive Secretary]~~ 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[s] by rule. Notwithstanding any other provisions of ~~[Section]~~ R315-15-13.4, a used oil generator who self-transported 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 ~~[for the purpose of storing it]~~ shall be deemed to have an approved used oil transporter permit or used oil transfer facility permits, or both if the generator meets all ~~[of the following conditions:]~~ 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 2007, by the US Economic Classification Policy Committee, with a NAICS code of 21 (Mining), 23 (Construction), or 541360 (Geophysical Surveying and Mapping Services);

(ii) The generator self-transported 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-transported 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-transported 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-transported 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 use 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.

~~_____ (1) Transports only used oil generated by the generator;~~

~~_____ (2) Transports the used oil in a service vehicle owned by the generator;~~

~~_____ (3) Transports the used oil to a facility that the generator owns, operates, or both;~~

~~_____ (4) Subsequently burns the stored used oil for energy recovery at that facility, or arranges for a permitted used oil transporter to pick up the used oil;~~

~~_____ (5) Complies with Sections R315-15-4.3, R315-15-4.4, and R315-15-4.8, and Subsections R315-15-4.6(b) through (f) and R315-15-4.7(b) and (d);~~

~~_____ (6) Notifies the Executive Secretary with the information required by Subsection R315-15-13.4(b)(6);~~

~~_____ (7) Registers as a used oil fuel marketer and complies with Section R315-15-7; and~~

~~_____ (8) Is defined by one of the following Standard Industrial Classification (SIC) codes found in the Standard Industrial Classification Manual, 1987, published by the US Office of Management and Budget:~~

~~_____ (i) 10 (metal mining);~~

~~_____ (ii) 12 (coal mining);~~

~~_____ (iii) 13 (oil and gas extraction);~~

~~_____ (iv) 14 (mining and quarrying of nonmetallic minerals, except fuels);~~

~~_____ (v) 15 (building construction-general contractors and operative builders);~~

~~_____ (vi) 16 (heavy construction other than building construction);~~

~~_____ (vii) 1791 (miscellaneous special trade contractors);~~

~~_____ (viii) 1794 (excavation work); and~~

~~_____ (ix) 1795 (wrecking and demolition work).~~

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 [Executive Secretary]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; [and]

(12) Any other information the Director finds necessary to ensure the safe handling of used oil;

(1[2]3) A closure plan meeting the requirements of [Section]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 R315-8-10 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 [Section]Department fee schedule 63J-1-[303]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]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 [Division-]Director of [their-]its activities during the calendar year. The annual report shall be submitted to the [Division-]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 [Division-]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 rerefined during the reporting period year specifying the type and amounts of products produced, i.e., lubricating oil, fuel oil, etc.; and

(6) the amounts of used oil prepared for reuse as a lubricating oil, as a fuel, and for other uses, specifying each type of use, the amounts of used oil consumed or used in the process of preparing used oil for reuse, specifying the amounts and types of waste by-products generated including waste, water, and the methods and specific locations utilized for disposal.

(e) Changes in information. The owner or operator of the facility shall notify the ~~[Executive Secretary]~~ 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-~~~~[S]~~pecification used oil fuel burners. Facilities burning only on-specification used oil fuel are not required to register as used oil burners with the ~~[Executive Secretary]~~ Director.:

~~(1) Applicability. These requirements apply to persons burning only used oil that meets the used oil fuel specification of Section R315-15-1.2, provided that the burner also complies with the requirements of Section R315-15-7.3. Persons burning specification used oil fuel shall be considered to have an authorization from the Department, for the purpose of [this section] R315-15-13.6, if they hold a valid air quality operating order[-] or are exempt under [Section] R315-15-2.4.~~

~~(2) Notification. Specification used oil fuel burners are required to notify the Executive Secretary by submitting a letter that includes the following information:~~

- ~~(i) Company name and location;~~
- ~~(ii) Owner of the company; and~~
- ~~(iii) Name and telephone number for the company point of contact.~~

(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 ~~[Subsections]~~ 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 ~~[Executive Secretary]~~ Director.

(2) Permit application. The application for a permit shall include the following information regarding the facility:

- (i) ~~[t]~~The name and address of the operator;
- (ii) ~~[t]~~The location of the facility;
- (iii) ~~[t]~~The type of containment and type and capacity of storage;
- (iv) ~~[t]~~The type of burner to be used;
- (v) ~~[t]~~The methods of disposing of any waste by-products;
- (vi) ~~[t]~~The status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities;

(vii) ~~[a]~~An emergency spill containment plan; including a list of spill containment equipment to be maintained at the used oil processor facility.

(viii) ~~[p]~~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) ~~[p]~~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 ~~[Section]~~ R315-15-11.1.:

(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 R315-8-10 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 ~~[Section]~~ Utah Code Annotated 63J-1-~~303~~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 or]~~ permit approvals and annual used oil handler certificates.

(4) Changes in information. The owner or operator of the facility shall notify the ~~[Executive Secretary]~~ 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 ~~[Subsection]~~ R315-15-13.6(b)(1), but may be required to follow operational practices, as determined by the ~~[Executive Secretary]~~ 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 ~~[Executive Secretary]~~ Director. Notwithstanding any other provisions of ~~[Section]~~ R315-15-13.6, a hazardous waste incinerator facility ~~[which]~~ that has been issued a final permit under R315-3-1, and ~~[which]~~ that implements the requirements of R315-8-15, shall be deemed to have an approved off-specification used oil burner permit if that facility meets all of the following conditions:

(i) ~~[Burns]~~ It burns off-specification used oil only in devices specified in R315-15-6.2(a);

(ii) ~~[Stores]~~ It stores used oil in the manner described in R315-15-6.5;

(iii) ~~[Tracks]~~ It tracks off-specification used oil shipments as described in R315-15-6.6;

(iv) ~~[Complies]~~ It complies with ~~[Sections]~~ R315-15-6.3 and R315-15-6.7;

(v) It ~~[M]~~ modifies its closure plan required under ~~[Section]~~ R315-8-7 (Closure and Post Closure), to include used oil storage and burning devices, taking into account any used oil activities at this facility;

(vi) ~~[Modify]~~ It modifies its financial mechanism or mechanisms required under ~~[Section]~~ R315-8-8 (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 ~~[S]~~ submits to the ~~[Executive Secretary]~~ Director the information required by ~~[Subsection]~~ 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 ~~[Division]~~ Director of their activities during the calendar year. The annual report shall be submitted to the ~~[Division]~~ 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 ~~[Division]~~ Director or shall contain the following information:

(i) ~~[t]~~The EPA identification number, name, and address of the burner facility;

(ii) ~~[t]~~The calendar year covered by the report; and

(iii) ~~[t]~~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 ~~[Section]~~ R315-15-7, without holding a registration number issued by the ~~[Executive Secretary]~~ 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) ~~[t]~~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 R315-50-6, which incorporates by reference 40 CFR 261, Appendix I; or a method shown to be equivalent under R315-2-15.

(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.

([4]e) Registration fees. Registration and permitting fees are established under the terms and conditions of ~~[Section]~~ Utah Code Annotated 63J-1-~~[303]~~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.

([5]e) Changes in information. The owner or operator of the facility shall notify the ~~[Executive Secretary]~~ Director in writing of any changes in the information submitted to apply for a registration within 20 days of the change.

(f) 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.

13.8 USED OIL HANDLER CERTIFICATES

(a) Applicability. As well as obtaining permits and registration described in R315-15-13.4 through 13.8, a person shall not act as a used oil transporter, operator of a transfer facility, processor/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 ~~[Division]~~Director shall pay a quarterly recycling fee incentive to registered DIYer used oil collection centers and curbside programs approved by the ~~[Executive Secretary]~~Director for each gallon of used oil collected from DIYer used oil generators ~~[on and after July 1, 1994]~~, and transported by a permitted used oil transporter to a permitted used oil processor/re-refiner, burner, ~~[or]~~ registered marketer or burned in accordance with 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 ~~[Section]~~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 ~~[from permitted transporters]~~ 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, ~~[quarterly, beginning July 1, 1994 and ending September 30, 1994, and each quarter thereafter]~~. 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 ~~[Executive Secretary]~~Director within 30 days following the report ~~[filling]~~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) [In considering permit applications under these Rules,] [The [Executive Secretary] Director shall, [adhere to the requirements of Section 19-6-712.]~~

~~(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, [AND] 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^[f] or registration conditions or failure to comply with any provisions of the applicable statutes and rules, shall be grounds for imposing statutory sanctions, including [revocation of the permit or registration and] denial of an application for permit, [or] registration, or used oil handler certificate. [The Executive Secretary shall notify, in writing, the owner or operator of any facility of intent to revoke a permit or registration.]~~

~~(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.**

~~[Section] Utah Code Annotated 19-6-720 authorizes the Division of Solid and Hazardous Waste 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 ~~[Division]~~Director, shall be completed and submitted to the ~~[Executive Secretary]~~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

~~[Section]~~R315-15-17 presents the standard wording forms to be used for the financial assurance mechanisms found in ~~[Section]~~R315-15-12. The following forms are hereby incorporated by reference and are available at the Division of Solid and Hazardous Waste located at ~~[288 North 1460 West]~~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)~~~~[17.1.2]~~ The Division requires that the forms described in ~~[this rule]~~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 R315-15-17.4. ~~[Actual copies may be used or facilities may adapt them to their word processing system. If adapted, the content, size, font, and format must be similar.]~~

~~(b)~~~~[17.1.3]~~ The ~~[Executive Secretary]~~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 ~~[Executive Secretary]~~Director.

17.2 TRUST AGREEMENTS

The trust agreement for a trust fund must be worded as found in the Trust Agreement Form ~~[published January 10, 2008]~~ approved by the ~~[Executive Secretary]~~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 ~~[published January 10, 2008]~~ approved by the ~~[Executive Secretary]~~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 ~~[published January 10, 2008]~~ approved by the ~~[Executive Secretary]~~Director.

17.5 UTAH USED OIL POLLUTION LIABILITY INSURANCE ENDORSEMENT FOR CLEANUP AND CLOSURE

The insurance endorsement of cleanup and closure must be worded as found in the Utah Used Oil Pollution Liability Insurance Endorsement for Cleanup and Closure Form ~~[published January 10, 2008]~~ approved by the ~~[Executive Secretary]~~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 ~~[published January 10, 2008]~~ approved by the ~~[Executive Secretary]~~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 ~~[published January 10, 2008]~~ approved by the ~~[Executive Secretary]~~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 ~~[published January 10, 2008]~~ approved by the ~~[Executive Secretary]~~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 ~~[published January 10, 2008]~~ approved by the ~~[Executive Secretary]~~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 ~~[published January 10, 2008]~~ approved by the ~~[Executive Secretary]~~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 ~~[published January 10, 2008]~~ approved by the ~~[Executive Secretary]~~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 [~~published January 10, 2008~~] approved by the [~~Executive Secretary~~] 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 [~~published January 10, 2008~~] approved by the [~~Executive Secretary~~] 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 [~~published January 10, 2008~~] approved by the [~~Executive Secretary~~] 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 whether the PCB content of used oil being transported is less than 2 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 2 ppm prior to loading to the transporter's vehicle 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 2 ppm PCBs based on manufacturing specifications and process knowledge.

(2) Other used oils historically containing PCBs. Used oils that have historically contained PCBs, including high pressure hydraulic oils, capacitors, heat transfer fluids, oil cooled electric motors, and lubricants shall be certified to be less than 2 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 2 ppm PCBs based on manufacturing specifications and process knowledge.

(3) Suspicious oil. If a transporter suspects or has knowledge that used oil may have an increased likelihood of containing PCBs, the used oil transporter shall make a PCB determination in the same manner as described under (1) above.

(4) Used oils not falling into categories described under (1) to (3) above are not required to be tested for PCBs under R315-15-18(b).

(c) Used oil marketer PCB testing. To ensure that used oil destined for burning is not a regulated waste under the TSCA regulations, used oil fuel marketers shall also 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 (registered trademark): 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 (registered trademark) 1262 and 1268. If other Aroclors (registered trademark) are known or suspected to be present, then the used oil shall be analyzed for those additional Aroclors (registered trademark).

(e) The following Utah Certified Laboratory SW-846 methodologies shall be used:

(1) Preparation method 3580A, clean up method 3665A, and analytical method 8082A.

(2) Individual Aroclors (registered trademark) shall be reported with a reporting limit of 0.5 ppm or less.

(3) If the source of the PCBs is known to be an Aroclor (registered trademark), and the Aroclor (registered trademark) is unlikely to be significantly altered in homologue composition such as weathering, Aroclors (registered trademark) 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

Date of Enactment or Last Substantive Amendment: [September 1, 2009]2014

Notice of Continuation: May 17, 2012

Authorizing, and Implemented or Interpreted Law: 19-6-704

**Health, Family Health and
Preparedness, Licensing
R432-270
Assisted Living Facilities**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 38341

FILED: 03/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The admission criteria rules are spread throughout several sections in the assisted living rule,

creating confusion when trying to determine the types of residents that are appropriate for assisted living. There are also some rules that need clarification so they can be easily understood and consistently applied by providers and the Department of Health. These amendments organize the rules in a more understandable format without changing the basic requirements. The Health Facility Committee reviewed and approved these rule amendments on 02/12/2014.

SUMMARY OF THE RULE OR CHANGE: The changes in Section R432-270-3 are to amend the definition of activities of daily living so it can be easily determined by the facility and the Department of Health staff if the resident is dependent and does not qualify for placement in the Assisted Living. The change in Section R432-270-8 is to add a certified nurse aide as a person who can work in a Type I Assisted Living. The changes in Section R432-270-10 are: at Subsections (4) and (5) to separate and clarify the admitting requirements for the Type I and Type II Assisted Living, at Subsection (6)(c) to add a section that was removed from the definitions as it is an admission requirement; and at Subsections (8) and (9) to clarify the hospice resident requirements. The changes in Subsection R432-270-19(2)(e), clarify the medication requirements so the facilities are able to comply when Home Health or Hospice agencies are involved in medication administration.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This rule amendment will have no effect on state budgets since there will be no change in current practice.
- ◆ **LOCAL GOVERNMENTS:** This rule amendment will have no effect on local government budgets since there will be no change in current practice.
- ◆ **SMALL BUSINESSES:** This rule amendment will have no effect on small businesses since there will be no change in current practice.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule amendment will have no effect on persons since there will be no change in current practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule amendment will have no effect on persons since there will be no change in current practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No impact on business as these changes do not modify current practices.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HEALTH
 FAMILY HEALTH AND PREPAREDNESS,
 LICENSING

CANNON HEALTH BLDG
 288 N 1460 W
 SALT LAKE CITY, UT 84116-3231
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
- ◆ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

R432. Health, Family Health and Preparedness, Licensing.

R432-270. Assisted Living Facilities.

R432-270-3. Definitions.

- (1) The terms used in these rules are defined in R432-1-3.
- (2) In addition:
 - (a) "Assessment" means documentation of each resident's ability or current condition in the following areas:
 - (i) memory and daily decision making ability;
 - (ii) ability to communicate effectively with others;
 - (iii) physical functioning and ability to perform activities of daily living;
 - (iv) continence;
 - (v) mood and behavior patterns;
 - (vi) weight loss;
 - (vii) medication use and the ability to self-medicate;
 - (viii) special treatments and procedures;
 - (ix) disease diagnoses that have a relationship to current activities of daily living status, behavior status, medical treatments, or risk of death;
 - (x) leisure patterns and interests;
 - (xi) assistive devices; and
 - (xii) prosthetics.
- (b) "Activities of daily living (ADL)" are the following:
 - (i) ~~personal grooming, including oral hygiene and denture care;~~
 - (ii) ~~dressng;~~
 - (iii) ~~bathing;~~
 - (iv) ~~toileting and toilet hygiene;~~
 - (v) ~~eating during mealtime;~~
 - (vi) ~~self administration of medication; and~~
 - (vii) ~~independent transferring, ambulation and mobility.~~
- (b) "Activities of daily living (ADL)":
 - (i) means those personal functional activities required for an individual for continued well-being, including:
 - (A) personal grooming, including oral hygiene and denture care;
 - (B) dressng;
 - (C) bathing;
 - (D) toileting and toilet hygiene;

~~(E) eating/nutrition;~~
~~(F) administration of medication; and~~
~~(G) transferring, ambulation and mobility.~~
~~(ii) are divided into the following levels:~~
~~(A) "Independent" means the resident can perform the ADL without help.~~
~~(B) "Assistance" means the resident can perform some part of an ADL, but cannot do it entirely alone.~~
~~(C) "Dependent" means the resident cannot perform any part of an ADL; it must be done entirely by someone else.~~
~~(e) "Dependent" means a person who meets one or all of the following criteria:~~
~~(i) requires inpatient hospital or 24-hour continual nursing care that will last longer than 15 calendar days after the day on which the nursing care begins;~~
~~(ii) is unable to evacuate from the facility without the physical assistance of two persons.~~
] ~~(d)c~~ "Home-like" as used in statute and this rule means a place of residence which creates an atmosphere supportive of the resident's preferred lifestyle. Home-like is also supported by the use of residential building materials and furnishings.
(e)d "Hospice patient" means an individual who is admitted to a hospice program or agency.
(f)f "Licensed health care professional" means a registered nurse, physician assistant, advanced practice registered nurse, or physician licensed by the Utah Department of Commerce who has education and experience to assess and evaluate the health care needs of the resident.
(g)g "Self-direct medication administration" means the resident can:
(i) recognize medications offered by color or shape; and
(ii) question differences in the usual routine of medications.
[~~(h) "Semi-independent" means a person who is:~~
~~(i) physically disabled but able to direct his own care; or~~
~~(ii) cognitively impaired or physically disabled but able to evacuate from the facility or to a zone or area of safety with limited physical assistance of one person.~~
] (i)g "Service Plan" means a written plan of care for services which meets the requirements of R432-270-13.
(j)h "Services" means activities which help the residents develop skills to increase or maintain their level of psycho-social and physical functioning, or which assist them in activities of daily living.
(k)i "Significant change" means a major change in a resident's status that is self-limiting or impacts on more than one area of the resident's health status.
(H)i "Significant assistance" means the resident is unable to perform any part of an ADL and is dependent upon staff or others to accomplish the ADL as defined in R432-270-3(2)(b).
(m)k "Social care" means:
(i)l providing opportunities for social interaction in the facility or in the community; or
(ii) providing services to promote independence or a sense of self-direction.
(n)m "Unit" means an individual living space, including living and sleeping space, bathroom, and optional kitchen area.

R432-270-8. Personnel.

(1) Qualified competent direct-care personnel shall be on the premises 24 hours a day to meet residents needs as determined by

the residents' assessment and service plans. Additional staff shall be employed as necessary to perform office work, cooking, housekeeping, laundering and general maintenance.

(2) The services provided or arranged by the facility shall be provided by qualified persons in accordance with the resident's written service plan.

(3) All personnel who provide personal care to residents in a Type I facility shall be at least 18 years of age or be a certified nurse aide and shall have related experience in the job assigned or receive on the job training.

(4) Personnel who provide personal care to residents in a Type II facility must be certified nurse aides or complete a state certified nurse aide program within four months of the date of hire.

(5) Personnel shall be licensed, certified, or registered in accordance with applicable state laws.

(6) The administrator shall maintain written job descriptions for each position, including job title, job responsibilities, qualifications or required skills.

(7) Facility policies and procedures must be available to personnel at all times.

(8) All personnel must receive documented orientation to the facility and the job for which they are hired. Orientation shall include the following:

- (a) job description;
- (b) ethics, confidentiality, and residents' rights;
- (c) fire and disaster plan;
- (d) policy and procedures; and
- (e) reporting responsibility for abuse, neglect and exploitation.

(9) Each employee shall receive documented in-service training. The training shall be tailored to include all of the following subjects that are relevant to the employee's job responsibilities:

- (a) principles of good nutrition, menu planning, food preparation, and storage;
- (b) principles of good housekeeping and sanitation;
- (c) principles of providing personal and social care;
- (d) proper procedures in assisting residents with medications;
- (e) recognizing early signs of illness and determining when there is a need for professional help;
- (f) accident prevention, including safe bath and shower water temperatures;
- (g) communication skills which enhance resident dignity;
- (h) first aid;
- (i) resident's rights and reporting requirements of Section 62A-3-201 to 312; and
- (j) special needs of the Dementia/Alzheimer's resident.

(10) An employee who reports suspected abuse, neglect, or exploitation shall not be subject to retaliation, disciplinary action, or termination by the facility for that reason alone.

(11) The facility shall establish a personnel health program through written personnel health policies and procedures which protect the health and safety of personnel, residents and the public.

(12) The facility must complete an employee placement health evaluation to include at least a health inventory when an employee is hired. Facilities may use their own evaluation or a Department approved form.

(a) A health inventory shall obtain at least the employee's history of the following:

(i) conditions that may predispose the employee to acquiring or transmitting infectious diseases; and

(ii) conditions that may prevent the employee from performing certain assigned duties satisfactorily.

(b) The facility shall develop employee health screening and immunization components of the personnel health program.

(c) Employee skin testing by the Mantoux Method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(i) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

(A) initial hiring;

(B) suspected exposure to a person with active tuberculosis; and

(C) development of symptoms of tuberculosis.

(ii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(d) All infections and communicable diseases reportable by law shall be reported to the local health department in accordance with the Communicable Disease Rule, R386-702-3.

(e) The facility shall comply with the Occupational Safety and Health Administration's Blood-borne Pathogen Standard.

R432-270-10. Admissions.

(1) The facility shall have written admission, retention, and transfer policies that are available to the public upon request.

(2) Before accepting a resident, the facility must obtain sufficient information about the person's ability to function in the facility through the following:

(a) an interview with the resident and the resident's responsible person; and

(b) the completion of the resident assessment.

(3) If the Department determines during inspection or interview that the facility knowingly and willfully admits or retains residents who do not meet license criteria, then the Department may, for a time period specified, require that resident assessments be conducted by an individual who is independent from the facility.

(4) ~~The facility shall accept and retain only residents who meet the following criteria:~~

~~(a) Residents admitted to a~~ Type I facility;

~~(a) shall~~ ~~meet the following criteria before being admitted~~ accept and retain residents who meet the following criteria:

(i) ~~be~~ are ambulatory or mobile and ~~be~~ are capable of taking life saving action in an emergency without the assistance of another person;

(ii) have stable health;

(iii) require no assistance or only limited assistance in the activities of daily living (ADL); and

~~(iv) do not require total assistance from staff or others with more than two ADLs.~~

~~(b) may accept and retain residents who meet the following criteria:~~

~~(i) are cognitively impaired or physically disabled but able to evacuate from the facility without the assistance of another person;~~ and

~~(i)~~ require and receive intermittent care or treatment in the facility from a licensed health care professional either through contract or by the facility, if permitted by facility policy.

~~(b)~~ ~~Residents admitted to a~~ Type II facility may ~~be independent and semi-independent, but shall not be dependent.~~ accept and retain residents who meet the following criteria:

~~(a) require total assistance from staff or others in more than two ADLs, provided that:~~

~~(i) the staffing level and coordinated supportive health and social services meet the needs of the resident; and~~

~~(ii) the resident is capable of evacuating the facility with the limited assistance of one person.~~

~~(b) are physically disabled but able to direct their own care;~~ or

~~(c) are cognitively impaired or physically disabled but able to evacuate from the facility with the limited assistance of one person.~~

~~(5)~~ Type I and Type II assisted living facilities shall not admit or retain a person who:

(a) manifests behavior that is suicidal, sexually or socially inappropriate, assaultive, or poses a danger to self or others; ~~or~~

(b) has active tuberculosis or other chronic communicable diseases that cannot be treated in the facility or on an outpatient basis; or may be transmitted to other residents or guests through the normal course of activities; or

(c) requires inpatient hospital, ~~or~~ long-term nursing care or 24-hour continual nursing care that will last longer than 15 calendar days after the day on which the nursing care begins.

~~(6) A Type I facility may accept or retain residents who:~~

~~(a) do not require significant assistance during night sleeping hours;~~

~~(b) are able to take life saving action in an emergency without the assistance of another person; and~~

~~(c) do not require significant assistance from staff or others with more than two ADL's.~~

~~(7) A Type II facility may accept or retain residents who require significant assistance from staff or others in more than two ADL's, provided the staffing level and coordinated supportive health and social services meet the needs of the resident.~~

~~(8)~~ The prospective resident or the prospective resident's responsible person must sign a written admission agreement prior to admission. The admission agreement shall be kept on file by the facility and shall specify at least the following:

(a) room and board charges and charges for basic and optional services;

(b) provision for a 30-day notice prior to any change in established charges;

(c) admission, retention, transfer, discharge, and eviction policies;

(d) conditions under which the agreement may be terminated;

(e) the name of the responsible party;

(f) notice that the Department has the authority to examine resident records to determine compliance with licensing requirements; and

(g) refund provisions that address the following:

(i) thirty-day notices for transfer or discharge given by the facility or by the resident,

(ii) emergency transfers or discharges,

(iii) transfers or discharges without notice, and

(iv) the death of a resident.

(9)8 A type I assisted living facility may accept and retain residents who have been admitted to a hospice program, under the following conditions:

(a) the facility keeps a copy of the physician's diagnosis and orders for care;

(b) the facility makes the hospice services part of the resident's service plan which shall explain who is responsible to meet the resident's needs; and

(c) a facility may retain hospice patient residents who are not capable ~~[to]of exiting~~ the facility without assistance ~~[upon]with~~ the following conditions:

(i) the facility must assure that a worker or an individual is assigned solely to each specific hospice patient and is on-site to assist the resident in emergency evacuation 24 hours a day, seven days a week;

(ii) the facility must train the assigned worker or individual to specifically assist in the emergency evacuation of the assigned hospice patient resident;

(iii) the worker or individual must be physically capable of providing emergency evacuation assistance to the particular hospice patient resident; and

(iv) hospice residents who are not capable ~~[to]of exiting~~ the facility without assistance comprise no more than 25 percent of the facility's resident census.

(10)9 A type II assisted living facility may accept and retain hospice patient residents under the following conditions:

(a) the facility keeps a copy of the physician's diagnosis and orders for care;

(b) the facility makes the hospice services part of the resident's service plan which shall explain who is responsible to meet the resident's needs; and

(c) if ~~[a]the hospice patient~~ resident ~~[becomes dependent while on hospice care and the facility wants to retain the resident in the facility]~~cannot evacuate the facility without significant assistance, the facility must:

(i) develop an emergency plan to evacuate the hospice resident in the event of an emergency; and

(ii) integrate the emergency plan into the resident's service plan.

R432-270-19. Medication Administration.

(1) A licensed health care professional must assess each resident to determine what level and type of assistance is required for medication administration. The level and type of assistance provided shall be documented on each resident's assessment.

(2) Each resident's medication program must be administered by means of one of the methods described in (a) through (f) in this section:

(a) The resident is able to self-administer medications.

(i) Residents who have been assessed to be able to self-administer medications may keep prescription medications in their rooms.

(ii) If more than one resident resides in a unit, the facility must assess each person's ability to safely have medications in the unit. If safety is a factor, a resident shall keep his medication in a locked container in the unit.

(b) The resident is able to self-direct medication administration. Facility staff may assist residents who self-direct medication administration by:

(i) reminding the resident to take the medication;

(ii) opening medication containers; and

(iii) reminding the resident or the resident's responsible person when the prescription needs to be refilled.

(c) Family members or a designated responsible person may administer medications. If a family member or designated responsible person assists with medication administration, they shall sign a waiver indicating that they agree to assume the responsibility to fill prescriptions, administer medication, and document that the medication has been administered. Facility staff may not serve as the designated responsible person.

(d) For residents who are unable to self-administer or self-direct medications, facility staff may administer medications only after delegation by a licensed health care professional under the scope of their practice.

(i) If a licensed health care professional delegates the task of medication administration to unlicensed assistive personnel, the delegation shall be in accordance with the Nurse Practice Act and R156-31B-701.

(ii) The medications must be administered according to the prescribing order.

(iii) The delegating authority must provide and document supervision, evaluation, and training of unlicensed assistive personnel assisting with medication administration.

(iv) The delegating authority or another registered nurse shall be readily available either in person or by telecommunication.

(e) home health or hospice agency staff may provide medication administration to facility residents exclusively, or in conjunction with (a) through (d) of this section.

(3) The facility must have a licensed health care professional or licensed pharmacist review all resident medications at least every six months.

(4) Medication records shall include the following:

(a) the resident's name;

(b) the name of the prescribing practitioner;

(c) medication name including prescribed dosage;

(d) the time, dose and dates administered;

(e) the method of administration;

(f) signatures of personnel administering the medication;

and

(g) the review date.

(5) The licensed health care professional or licensed pharmacist should document any change in the dosage or schedule of medication in the medication record. When changes in the medication are documented by the facility staff the licensed health care professional must co-sign within 72 hours. The licensed health care professional must notify all unlicensed assistive personnel who administer medications of the medication change.

(6) Each resident's medication record must contain a list of possible reactions and precautions for prescribed medications.

(7) The facility must notify the licensed health care professional when medication errors occur.

(8) Medication error incident reports shall be completed when a medication error occurs or is identified.

(9) Medication errors must be incorporated into the facility quality improvement process.

(10) Medications shall be stored in a locked central storage area to prevent unauthorized access.

(a) If medication is stored in a central location, the resident shall have timely access to the medication.

(b) Medications that require refrigeration shall be stored separately from food items and at temperatures between 36 - 46 degrees Fahrenheit.

(c) The facility must develop and implement policies for the security and disposal of narcotics. Any disposal of controlled substances by a licensee or facility staff shall be consistent with the provisions of 21 CFR 1307.21.

(11) The facility shall develop and implement a policy for disposing of unused, outdated, or recalled medications.

(a) The facility shall return a resident's medication to the resident or to the resident's responsible person upon discharge.

(b) The administrator shall document the return to the resident or the resident's responsible person of medication stored in a central storage.

KEY: health care facilities

Date of Enactment or Last Substantive Amendment: [~~September 25, 2012~~2014]

Notice of Continuation: December 16, 2009

Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-1

Heritage and Arts, History **R455-14** Procedures for Electronic Meetings

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38331

FILED: 03/06/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Board of State History recognizes that there may be times when, due to the necessity of considering matters of an emergency or urgent nature, members of the Board may need to appear telephonically or electronically pursuant to Section 52-4-207.

SUMMARY OF THE RULE OR CHANGE: These provisions govern any meeting at which one or more members of the Board of State History may appear telephonically or electronically pursuant to Section 52-4-207.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 52-4-207

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. This rule simply establishes electronic meeting procedures for the Board of State History.

♦ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings for local government agencies. This rule simply

establishes electronic meeting procedures for the Board of State History.

♦ **SMALL BUSINESSES:** There is no anticipated cost or savings for small businesses. This rule simply establishes electronic meeting procedures for the Board of State History.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost savings for persons other than small businesses, or local government entities. This rule simply establishes electronic meeting procedures for the Board of State History.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs associated with compliance to this rule. This rule simply establishes electronic meeting procedures for the Board of State History.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and there is no fiscal impact on businesses.

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

HERITAGE AND ARTS

HISTORY

300 RIO GRANDE ST

SALT LAKE CITY, UT 84101-1182

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Alycia Aldrich by phone at 801-533-3556, by FAX at 801-533-3567, or by Internet E-mail at aaldrich@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2014

AUTHORIZED BY: Julie Fisher, Executive Director

R455. Heritage and Arts, History.

R455-14. Procedures for Electronic Meetings.

R455-14-1. Purpose.

The Board of State History recognizes that there may be times when, due to the necessity of considering matters of an emergency or urgent nature, members of the Board may need to appear telephonically or electronically pursuant to Utah Code 52-4-207.

R455-14-2. Authority.

This rule is enacted under the authority of Section 52-4-207.

R455-14-3. Procedure.

The following procedure shall govern any electronic meeting:

A. If one or more members of the Board of State History may participate electronically or telephonically, public notices of

the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the Board not participating electronically or telephonically 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 provided in accordance with Section 52-4-202(3). 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 members of the Board of State History that may be allowed to appear electronically at least 24 hours before the meeting. In addition, the notice shall describe how the members of the Board of State History authorized to participate electronically may participate in the meeting electronically or telephonically.

D. When notice is given of the possibility of a member of the Board of State History appearing electronically or telephonically, any member of the Board of State History 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 member of the Board initially appears electronically or telephonically, the Chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the Board of State History who are not at the physical location of the meeting shall be confirmed by the Chair.

E. The anchor location shall be designated in the notice. 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 has space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

KEY: administrative procedures

Date of Enactment or Last Substantive Amendment: 2014

Authorizing, and Implemented or Interpreted Law: 52-4-207

Heritage and Arts, History R455-15

Procedures for Emergency Meetings

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38333

FILED: 03/06/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Board of State History recognizes that there may be times when, due to the necessity of considering matters of an emergency or urgent nature, the public notice provisions of Section 52-4-202 cannot be met. Pursuant to Subsection 52-4-202(5), under such circumstances those notice requirements need not be followed but rather the "best notice practicable" shall be given.

SUMMARY OF THE RULE OR CHANGE: These provisions govern any emergency meetings of the Board of State History, pursuant to Section 52-4-202.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 52-4-202

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There is no anticipated cost or savings to the state budget. This rule simply establishes emergency meeting procedures for the Board of State History.

◆ LOCAL GOVERNMENTS: There is no anticipated cost or savings for local government agencies. This rule simply establishes emergency meeting procedures for the Board of State History.

◆ SMALL BUSINESSES: There is no anticipated cost or savings for small businesses. This rule simply establishes emergency meeting procedures for the Board of State History.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost savings for persons other than small businesses, or local government entities. This rule simply establishes emergency meeting procedures for the Board of State History.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs associated with compliance to this rule. This rule simply establishes emergency meeting procedures for the Board of State History.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and there is no fiscal impact on businesses.

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

HERITAGE AND ARTS
HISTORY
300 RIO GRANDE ST
SALT LAKE CITY, UT 84101-1182
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Alycia Aldrich by phone at 801-533-3556, by FAX at 801-533-3567, or by Internet E-mail at aaldrich@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2014

AUTHORIZED BY: Julie Fisher, Executive Director

R455. Heritage and Arts, History.**R455-15. Procedures for Emergency Meetings.****R455-15-1. Purpose.**

The Board of State History recognizes that there may be times when, due to the necessity of considering matters of an emergency or urgent nature, the public notice provisions of Utah Code Sections 52-4-202 cannot be met. Pursuant to Utah Code Section 52-4-202(5), under such circumstances those notice requirements need not be followed but rather the "best notice practicable" shall be given.

R455-15-2. Authority.

This rule is enacted under the authority of Utah Code 52-4-202(5).

R455-15-3. Procedure.

The following procedure shall govern any emergency meeting:

A. No emergency meeting shall be held unless an attempt has been made to notify all of the members of the Board of State History of the proposed meeting and a majority of the convened Board of State History votes in the affirmative to hold such an emergency meeting.

B. Public notice of the emergency meeting shall be provided as soon as practicable and shall include at a minimum the following:

(i) Written posting of the agenda and notice at the offices of the auditor;

(ii) If members of the Board of State History may appear electronically or telephonically;

C. All such notices shall specify the anchor location for the meeting at which interested persons and members of the public may attend, monitor, and participate in the open portions of the meeting;

D. Notice to the members of the Board of State History shall advise how they may participate telephonically or electronically and be counted as present for all purposes, including the determination of a quorum.

E. Written, electronic or telephonic notice shall be provided to at least one newspaper of general circulation within the state and at least one local media correspondent.

F. If one or more members of the Board of State History appear electronically or telephonically, the procedures governing electronic meetings shall be followed, except for the notice requirements which shall be governed by these provisions.

G. In convening the meeting and voting in the affirmative to hold such an emergency meeting, the Board of State History shall affirmatively state and find what unforeseen circumstances have rendered it necessary for the Board to hold an emergency meeting to consider matters of an emergency or urgent nature such that the ordinary public notice of meetings provisions of Utah Code Section 52-4-202.

KEY: administrative procedures

Date of Enactment or Last Substantive Amendment: 2014

Authorizing, and Implemented or Interpreted Law: 52-4-202

Insurance, Administration **R590-229-9** Enforcement Date

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38342

FILED: 03/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed as a result of a comment received during the last comment period of this rule.

SUMMARY OF THE RULE OR CHANGE: The enforcement date in this rule is being changed from 45 to 65 days.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-22-425 and Subsection 31A-2-201(3)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The changes to the Enforcement Date Section of the rule will have no fiscal impact on the department or state's budget. The change will simply give more time to any insurer that may need it in order to comply with the provisions of this rule, in particular the requirement to implement the new buyer's guides.

◆ **LOCAL GOVERNMENTS:** This rule will have no impact on local governments since the rule deals solely with the relationship between the department and licensees selling annuities.

◆ **SMALL BUSINESSES:** This rule will have no fiscal impact on small employers, particularly insurance agencies selling annuities. It just allows time for insurers to implement the new buyer's guides into their business practices and procedures.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule will have no fiscal impact on large employers, individuals or consumers, particularly insurance companies. Insurers will be given more time to implement the business practices and procedures necessary with the adoption of new annuity buyer's guides.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule will have no fiscal impact on large employers, individuals or consumers, particularly insurance companies. Insurers will be given more time to implement the business practices and procedures necessary with the adoption of new annuity buyer's guides.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The change in this rule will have no fiscal impact on businesses. It will provide those few insurers that need it more time to implement the new annuity buyers guides.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2014

AUTHORIZED BY: Todd Kiser, Commissioner

R590. Insurance, Administration.

R590-229. Annuity Disclosure.

R590-229-9. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule [45]65 days after the effective date.

KEY: insurance, annuity disclosure

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

Notice of Continuation: September 22, 2009

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-22-425

Insurance, Title and Escrow
Commission
R592-2

Title Insurance Administrative Hearings
and Penalty Imposition

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38350

FILED: 03/14/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to clarify the need for concurrence between the Commission and insurance commissioner before imposing a penalty, change fees in the fee table, and distinguish between formal and informal adjudicative proceedings.

SUMMARY OF THE RULE OR CHANGE: Section R592-2-1 of the rule provides additional authority citations related to the process of concurrence and the imposition of a penalty. Section R592-2-4 eliminates reference to a Stipulation and Order and distinguishes between formal and informal proceeding. Section R592-2-5 changes the fee table: failure to complete continuing education fee is eliminated; two fees added, one for failure to provide a current email and another for doing business with lapsed license for 30 days or less; and two fees have been increased, one for failure to charge or collect correct premium and the other for failure to pay the assessment. Section R592-2-3 sets the procedure for an informal adjudicative proceeding that allows the Commission to receive a draft stipulation of facts and the need for the Commission and commissioner to concur before penalty is imposed. It also specifies that a party may request a formal hearing at any time. Section R592-2-6 specifies that the Commission must be advised of a matter before a hearing is scheduled. In such matters the administrative law judge will conduct the hearing unless the party requests the Commission to do so. Section R592-2-6 specifies that the Commission sets the date, time, and place of the hearing if the Commission conduct a formal hearing. Section R592-2-7 emphasizes the requirement of concurrence between Commission and commissioner before a penalty is imposed. Throughout this rule, code and rule citations have been changed to clarify the authority of the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 31A-2-404(6) and Subsections 31A-2-404(2)(e), (g), (h)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: Those changes affecting the table of penalties in Section R592-2-5 of the rule will have a fiscal impact on the department and state revenues. One penalty was eliminated, three penalties were increased, and there were four new penalties added. If these penalties had been in effect in 2013 the department estimates revenues from penalties would have been increased by \$12,000.

♦ LOCAL GOVERNMENTS: This rule will have no impact on local government since it deals solely with the relationship between the department and their licensees and those violating the insurance code.

♦ SMALL BUSINESSES: This rule will impacts title producers and agencies violating those areas of the law where fees have been added or increased, as noted in Section R592-2-5 of the rule. Violations include charging or collecting incorrect premiums, not paying the title assessment on time, failing to provide and maintain with the department a current email, and conducting business without a license for up to 30 days. If these changes had been in effect in 2013, it is estimated that penalties assessed in eleven cases against title producers and agencies would have totaled an additional \$12,000.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule will impact title agencies, some of which are large employers, violating those areas of the law where fees have been added or increased, as noted in Section R592-2-5 of the rule. Violations include charging or collecting incorrect premiums, not paying the title assessment on time, failing to provide and maintain with the department a current email, and conducting business without a license for up to 30 days. If these changes had been in effect in 2013, penalties assessed in eleven cases against title producers and agencies would have totaled an estimated additional \$12,000. These changes will have no fiscal impact on consumers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule will impact title agencies, some of which are large employers, violating those areas of the law where fees have been added or increased, as noted in Section R592-2-5 of the rule. If these changes had been in effect in 2013, penalties assessed in eleven cases against title producers and agencies would have totaled an estimated additional \$12,000. These changes will have no fiscal impact on consumers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Changes to this rule will have a fiscal impact against those who violate the law where penalties have been added or increased as in Section R592-2-5 of this rule. The changes in this law have all been discussed and agreed upon by the Title and Escrow Commission, as well as other members of the industry attending the Commission's meetings.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
INSURANCE
TITLE AND ESCROW COMMISSION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
◆ 04/14/2014 09:00 AM, Senate Building, Copper Room, 420 N State Street, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2014

AUTHORIZED BY: Todd Kiser, Commissioner

R592. Insurance, Title and Escrow Commission.

R592-2. Title Insurance Administrative Hearings and Penalty Imposition.

R592-2-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-404(2)(e), (g), ~~(h)~~, and (6) to provide the process for conducting or delegating an administrative hearing in a title ~~administrative hearing~~ insurance matter and imposing a penalty for a violation of statute or rule.

R592-2-2. Purpose and Scope.

(1) The purposes of this rule are:
(a) to establish procedures for the [e]Commission;
(i) to delegate to the commissioner's administrative law judge the conduct of an administrative hearing to resolve a title insurance matter; or
(ii) to conduct an administrative hearing to resolve a title insurance matter; and
(b) to establish procedures for the [e]Commission,
(i) to impose penalties; and
(ii) for the commissioner to concur with the penalties imposed.

(2) This rule applies to all title licensees, applicants for a title insurance license, unlicensed persons doing the business of title insurance, and continuing education providers submitting title continuing education programs for approval.

R592-2-3. Definitions.

For purposes of this rule, the [e]Commission adopts the definitions set forth in [Utah Code Annotated (U.C.A.)] Title 31A and the following:

(1) "Commission" means the Title and Escrow Commission.
(2) "Commissioner" means the Utah[s] insurance commissioner.
(3) "Title insurance matter" means a matter related to:
(a) title insurance; and
(b) an escrow conducted by an individual title insurance producer.

R592-2-4. Title Insurance Matters Referred for Enforcement.

(1) A title insurance matter referred for enforcement will be resolved by:
(i) ~~a~~ an informal adjudicative ~~action~~ proceeding pursuant to R592-2-5; ~~or~~
[~~(ii) a stipulation and order issued by the commissioner; or~~
(ii) ~~an administrative hearing~~ a formal adjudicative proceeding conducted either by the [e]Commission or the commissioner's administrative law judge pursuant to R592-2-6.

R592-2-5. Imposition of a Penalty When an Informal Adjudicative Proceeding Is Used to Resolve a Title Insurance Matter.

(1) If the commissioner uses an informal adjudicative proceeding as set forth in 63G-4-203 and R590-160 to resolve a violation listed in Table 1 below, the commissioner shall use the penalties imposed by the [e]Commission in this Section.

(2) The [e]Commission shall impose the following penalties on title licensees for the violations listed in Table 1 below when resolved through an informal adjudicative proceeding.

TABLE 1

Violation	1st Proceeding	2nd Proceeding
[Failure to complete required continuing education hours.]	Individual: \$1,000; Agency: n/a	Individual: \$2,000; Agency: n/a
Failure to respond to an inquiry of the commissioner.	Individual: \$500; Agency: \$750	Individual: \$1,000; Agency: \$1,500
Failure to file a required rate, form, or report.	Individual: n/a Agency: \$1,000	Individual: n/a; Agency: \$2,000
Late filing of a required rate, form, or report.	Individual: n/a; Agency: \$750	Individual: n/a; Agency: \$1,500
[Failure to charge or collect a correct premium or a correct filed fee.]	Individual: \$1,000; Agency: \$2,500	Individual: \$2,000; Agency: \$5,000
Failure to charge or collect a correct premium or a correct filed fee.	Individual: \$1,250; Agency: \$2,500	Individual: \$2,500; Agency: \$5,000
<u>Failure to provide a current email.</u>	<u>Individual: \$100 Agency: \$250</u>	
Charging or collecting a non-filed required fee.	Individual: \$1,000; Agency: \$2,500	Individual: \$2,000; Agency: \$5,000
[Failure to pay assessment when due.]	Individual: \$500; Agency: \$750	Individual: \$1,000; Agency: \$1,500
Failure to pay Assessment when due.	Individual: \$1,000; Agency: \$1,500	Individual: \$2,000; Agency: \$3,000
<u>Conducting title insurance business on a license that has lapsed for 30 days or less.</u>	<u>Individual: \$250 Agency: \$1,500</u>	

(3) If an informal adjudicative proceeding in a title insurance matter is proposed to be resolved through settlement and negotiation, prior to entering into a stipulation and order, the commissioner shall present to and discuss with the Commission a proposed resolution of the title insurance matter based on the following procedures:

(a) the commissioner shall provide the parties involved with a draft stipulation of facts, which may include aggravating and mitigating factors, and conclusions of law pertaining to the title insurance matter with a recommended penalty;

(b) if the parties involved agree to the stipulation of facts and conclusions of law, the stipulation of facts and conclusions of law together with the commissioner's recommended penalty will be presented to the Commission for the imposition of the penalty, which penalty will be imposed if the Commission concurs with the recommended penalty;

(c) if the Commission does not concur with the commissioner's recommended penalty, the Commission will provide the commissioner a recommended penalty, which penalty will be imposed upon the concurrence of the commissioner;

(d) a party involved in an informal hearing may at any time request that the title insurance matter be resolved by a Formal Adjudicative Proceeding pursuant to R592-2-6.

R592-2-6. Use of ~~[an Administrative Hearing]~~ a Formal Adjudicative Proceeding to Resolve a Title Insurance Matter.

(1) ~~[When the commissioner sets a date for an administrative hearing to resolve a title insurance matter,]~~ Before the commissioner sets a date for a hearing, the commissioner shall inform

the ~~[e]Commission of the title insurance matter and the request for a hearing~~ ~~[date]~~.

(2) After being informed of ~~[a]the request for a hearing~~ ~~[date]~~, the ~~[e]Commission shall, in accordance with Section 31A-2-404(2)(e), either:~~

(a) ~~delegate the conduct of the [administrative] hearing to the commissioner's administrative law judge;~~ ~~[or]~~

(b) ~~conduct the [administrative] hearing~~ ~~[:]~~; or

(c) unless requested by a party that the Commission conduct the hearing, any title insurance matter that has been presented to the Commission per R592-2-5(3) shall be delegated to the commissioner's administrative law judge.

(3) ~~[For an administrative]~~ In hearing a formal adjudicative proceeding conducted by the ~~[e]Commission, the [e]Commission shall:~~

(a) ~~[accept] set the date, time and place [set by the commissioner or set a different date, time, and place] for the [administrative] hearing;~~

(b) cause notification to be sent to the respondent(s), the commissioner's administrative law judge, and the commissioner's enforcement attorney of the date, time, and place of the ~~[administrative] hearing;~~

(c) conduct the hearing pursuant to 63G-4-206 and R590-160;

(d) impose penalties in accordance with Sections 31A-2-308, ~~31A-2-404, 31A-23a-111, 31A-23a-112, 31A-26-213, and 31A-26-214,~~ subject to the concurrence of the commissioner; and

(e) issue an Order ~~[on Hearing]~~.

(4) The commissioner's administrative law judge shall assist the ~~[e]Commission in its conduct of [an administrative] a hearing.~~

R592-2-7. Imposition of Penalties.

The ~~[e]Commission shall impose a penalty as follows:~~

(1) ~~[f]For an informal adjudicative proceeding pursuant to R592-2-5(1), a penalty shall be imposed in accordance with Table 1 in R592-2-5(2).;~~

(2) For a stipulation and order pursuant to R592-2-5(3), the Commission shall impose a penalty subject to the concurrence of the commissioner.

(3) ~~[f]For [an administrative] a hearing on a formal adjudicative proceeding conducted by the commissioner's administrative law judge [pursuant to R592-2-6 (2)(a)], the [e]Commission shall impose the recommended penalty or a different penalty, subject to the concurrence of the commissioner; or~~

(4) ~~[f]For [an administrative] a hearing on a formal adjudicative proceeding conducted by the [e]Commission, the [e]Commission shall impose a penalty, subject to the concurrence of the commissioner.~~

R592-2-8. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

R592-2-9. Enforcement Date.

The commissioner will begin enforcing this rule upon the rule's effective date.

KEY: title insurance

Date of Enactment or Last Substantive Amendment: ~~May 1, 2013~~ 2014

Notice of Continuation: September 15, 2010

Authorizing, and Implemented or Interpreted Law: 31A-2-402

Pardons (Board of), Administration
R671-102
Americans with Disabilities Act
Complaint Procedures

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38324

FILED: 03/04/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment makes technical corrections.

SUMMARY OF THE RULE OR CHANGE: In Subsection R671-102-1(1), correct spelling of "subsection". In Subsection R671-102-3(1), correct spelling of "complaint". In Subsection R671-102-3(5), change to differentiate between a victim of alleged discrimination and a victim of a convicted crime as referred to in Rule R671-203.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-5-106 and Section 34A-5-107

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This amendment does not affect the budget. The amendment only clarifies language and does not change policy or associated procedure.

◆ **LOCAL GOVERNMENTS:** This amendment does not affect local government. The amendment only clarifies language and does not change policy or associated procedure.

◆ **SMALL BUSINESSES:** This amendment does not affect small businesses. The amendment only clarifies language and does not change policy or associated procedure.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment does not affect any other persons. The amendment only clarifies language and does not change policy or associated procedure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendment only clarifies language and does not change policy or associated procedure. There is no additional cost for compliance.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendment clarifies language only, and has no effect on

businesses, other state agencies, nor any city, town, county or other municipal entity.

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

PARDONS (BOARD OF)

ADMINISTRATION

ROOM 300

448 E 6400 S

SALT LAKE CITY, UT 84107-8530

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Greg Johnson by phone at 801-261-6454, by FAX at 801-261-6481, or by Internet E-mail at gregjohnson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2014

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.

R671-102. Americans with Disabilities Act Complaint Procedures.

R671-102-1. Authority and Purpose.

(1) This rule is made under authority of Utah Code Ann. Subsection 63G-3-201(3). The Board of Pardons and Parole (Board) adopts, defines, and publishes within this rule the grievance procedures for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act, as amended.

(2) The purpose of this rule is to implement the provisions of Title II of the Americans with Disabilities Act, which provides that no individual shall be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by the Board because of a disability.

R671-102-2. Definitions.

(1) "ADA Coordinator" means the Board's Administrative Coordinator, assigned by the Board's Chairperson to investigate and facilitate the prompt and equitable resolution of complaints filed by qualified persons with disabilities. The ADA Coordinator may also be a representative of the Department of Human Resource Management assigned to the Board.

(2) "Board" means the Board of Pardons and Parole created by Utah Const. Art. 7, Section 12(1), and Utah Code Ann. Section 77-27-2(1).

(3) "Chairperson" as provided in Utah Code Ann. Subsection 77-27-4(1), means the Board's Chairperson.

(4) "Designee" means an individual appointed by the Board's Chairperson, or the Board's Vice-Chairperson, to investigate allegations of ADA non-compliance in the event the ADA Coordinator is unable or unwilling to conduct an investigation for any reason, including a conflict of interest. A designee does not have to be an employee of the Board; however, the designee must have a working

knowledge of the responsibilities and obligations required of employers and employees by the ADA.

(5) "Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(6) "Major life activities" include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, and working. A major life activity also includes the operation of major bodily function, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(7) "Qualified Individual" means an individual who meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Board. A "qualified individual" is also one who, with or without reasonable accommodation, can perform the essential functions of the employment position that individual holds or desires.

(8) "Vice-Chairperson," as provided in Utah Code Ann. Subsection 77-27-4(2), means the Board's Vice-Chairperson.

R671-102-3. Filing of Complaints.

(1) Any qualified individual may file a ~~compliant~~ complaint alleging non-compliance with Title II of the Americans with Disabilities Act, as amended, or the federal regulations promulgated thereunder.

(2) Qualified individuals shall file their complaints with the Board's ADA Coordinator, unless the complaint alleges that the ADA Coordinator was non-compliant, in which case qualified individuals shall file their complaints with the Board's designee.

(3) Qualified individuals shall file their complaints within 90 days after the date of the alleged non-compliance to facilitate the prompt and effective consideration of pertinent facts and appropriate remedies; however, the Board's Chairperson has the discretion to direct that the grievance process be utilized to address legitimate complaints filed more than 90 days after alleged non-compliance.

(4) Each complaint shall:

(a) include the complainant's name and address;
(b) include the nature and extent of the individual's disability;

(c) describe the Board's alleged discriminatory action in sufficient detail to inform the Board of the nature and date of the alleged violation;

(d) describe the action and accommodation desired; and

(e) be signed by the complainant or by his legal representative.

(5) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the ~~alleged victims of discrimination~~ person(s) allegedly aggrieved by the reported discrimination.

(6) If the complaint is not in writing, the ADA Coordinator or designee shall transcribe or otherwise reduce the complaint to writing upon receipt of the complaint.

(7) By filing a complaint or a subsequent appeal, the complainant authorizes necessary parties to conduct a confidential review of all relevant information, including records classified as private or controlled under the Government Records Access and

Management Act, Utah Code Ann. Subsection 63G-2-302(1)(b) and Section 63G-2-304, consistent with 42 U.S.C. 12112(d)(4)(A), (B), and (C) and 42 U.S.C. 2112(d)(3)(B) and (C), and relevant information otherwise protected by statute, rule, regulation, or other law.

R671-102-4. Investigation of Complaints.

(1) The ADA Coordinator or designee shall investigate complaints to the extent necessary to assure all relevant facts are collected and documented. This may include gathering all information listed in Subsections R671-102-3(4) and (7) of this rule if it is not made available by the complainant.

(2) The ADA Coordinator or designee may seek assistance from the Attorney General's staff, and the Board's human resource and budget staff in determining what action, if any, should be taken on the complaint. The ADA Coordinator or designee may also consult with the Vice-Chairperson in making a recommendation.

(3) The ADA Coordinator or designee shall consult with representatives from other state agencies that may be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any recommendation that would:

(a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;

(b) require facility modifications; or

(c) require reassignment to a different position.

R671-102-5. Recommendation and Decision.

(1) Within 15 working days after receiving the complaint, the ADA Coordinator or designee shall recommend to the Board's Vice-Chairperson what action, if any, should be taken on the complaint. The recommendation shall be in writing or in another accessible format suitable to the complainant.

(2) If the ADA Coordinator or designee is unable to make a recommendation within the 15 working day period, the complainant shall be notified in writing or in another accessible format suitable to the complainant stating why the recommendation is delayed and what additional time is needed.

(3) The Board's Vice-Chairperson may confer with the ADA Coordinator or designee and the complainant and may accept or modify the recommendation to resolve the complaint. The Board's Vice-Chairperson shall render a decision within 15 working days after the Board's Vice-Chairperson's receipt of the recommendation from the ADA Coordinator or designee. The Board's Vice-Chairperson shall take all reasonable steps to implement the decision. The Board's Vice-Chairperson's decision shall be in writing, or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

R671-102-6. Appeals.

(1) The complainant may appeal the Board's Vice-Chairperson's decision to the Board's Chairperson within ten working days after the complainant's receipt of the Vice Chairperson's decision.

(2) The appeal shall be in writing or in another accessible format reasonably suited to the complainant's ability.

(3) The Board's Chairperson may name a designee to assist on the appeal. The ADA coordinator or his designee may not also be the Board's Chairperson's designee for the appeal.

(4) In the appeal, the complainant shall describe in sufficient detail why the decision does not effectively address the complainant's needs.

(5) The Board's Chairperson or his designee shall review the ADA Coordinator's or his designee's recommendation, the Board's Vice-Chairperson's decision, and the points raised on appeal prior to reaching a decision. The Board's Chairperson may direct additional investigation as necessary. The Board's Chairperson shall consult with representatives from other state agencies that would be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any decision that would:

(a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;

(b) require facility modifications; or

(c) require reassignment to a different position.

(6) The Board's Chairperson shall issue a final decision within 15 working days after receiving the complainant's appeal. The decision shall be in writing, or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

(7) If the Board's Chairperson is unable to reach a final decision within the 15 working day period, the complainant shall be notified in writing, or by another accessible format suitable to the complainant, why the final decision is being delayed and the additional time needed to reach a final decision.

R671-102-7. Record Classification.

(1) Records created in administering this rule are classified as "protected" under Utah Code Ann. Subsections 63G-2-305(9), (22), (24), and (25).

(2) After issuing a decision under Section R671-102-5, or a final decision upon appeal under Section R671-102-6, portions of the record pertaining to the complainant's medical condition shall be classified as "private" under Utah Code Ann. Subsection 63G-2-302(1) (b), or "controlled" under Utah Code Ann. Section 63G-2-304, consistent with 42 U.S.C. 12112(d)(4)(A), and (C) and 42 U.S.C. 12112(d)(3)(B) and (C), at the option of the ADA coordinator.

(a) The written decision of the Board's Vice-Chairperson or the Board's Chairperson shall be classified as "public," and all other records, except controlled records under Subsection R671-102-7(2), classified as "private."

R671-102-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under:

(a) the state Anti-Discrimination Complaint Procedures, Utah Code Ann. Section 34A-5-107 and Utah Code Ann. Section 67-19-32;

(b) the Federal ADA Complaint Procedures, 28 CFR 35.170 through 28 CFR 35.178; or

(c) any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: disabilities

Date of Enactment or Last Substantive Amendment: [July 26, 2011] 2014

Notice of Continuation: January 26, 2012

Authorizing, and Implemented or Interpreted Law: 67-19-32; 63G-2

Pardons (Board of), Administration **R671-201** Original Parole Grant Hearing Schedule and Notice

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38325

FILED: 03/04/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: According to Section 77-27-7, when an offender is committed to the custody of the Department of Corrections, the Board of Pardons and Parole conducts a hearing to establish a release date. The schedule of hearings is determined by Rule R671-201. The old language defined homicide and sexual offense charges for purposes of scheduling a hearing. However, the definition did not include attempt, solicitation, or conspiracy to commit a homicide or sexual offense.

SUMMARY OF THE RULE OR CHANGE: Attempt, solicitation, or conspiracy to commit a homicide or sexual offense will be scheduled the same as a homicide or sexual offense.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-27-7

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The rule change does not alter the number of hearings conducted, only the scheduling of the hearings.

◆ **LOCAL GOVERNMENTS:** The new language only changes internal Board operations and does not affect any local government entity.

◆ **SMALL BUSINESSES:** The new language changes the scheduling of parole hearings and does not affect small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The change does not fiscally impact other persons. The rule only changes the scheduling of the hearing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no cost to the offender. The rule only changes the scheduling of the hearing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The new rule only affects internal Board procedures, and has no affect on businesses, other state agencies, nor any city, town, county or other municipal entity.

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

PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Greg Johnson by phone at 801-261-6454, by FAX at 801-261-6481, or by Internet E-mail at gregjohnson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2014

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.

R671-201. Original Parole Grant Hearing Schedule and Notice.

R671-201-1. Schedule and Notice.

(1) Within six months of an offender's commitment to prison the Board ~~will~~ shall give notice of the month and year in which the inmate's original hearing will be conducted. A minimum of ~~one week~~ (7 ~~calendar~~ days) prior notice should be given regarding the specific day and approximate time of such hearing.

(2)(a) Homicide offense commitment, for purposes of this rule, means a prison commitment to serve a sentence for a conviction of aggravated murder (if the sentence includes the possibility of parole), murder, felony murder, manslaughter, child abuse homicide, negligent homicide, automobile homicide, homicide by assault, or any attempt, conspiracy or solicitation to commit any of these offenses.

(b) Sexual offense commitment, for purposes of this rule, means a prison commitment to serve a sentence for a conviction of any crime for which an offender is defined as a kidnap offender pursuant to Utah Code Ann. Subsection 77-41-102(9); or for which an offender is defined as a sex offender pursuant to Utah Code Ann. Subsection 77-41-102(16); or any attempt, conspiracy or solicitation to commit any of the offenses listed in those sections.

(3)(a) ~~All [felonies, where a life has been taken, with] homicide offense commitments eligible for parole shall be routed to the Board as soon as practicable for the determination of the month and year for [their] an original hearing [date]. In setting an original hearing for a homicide offense commitment, [the] the Board [will] shall only consider information available to the court or offender at the time of sentencing.~~

(b) Homicide offense commitments not eligible for parole (including sentences of life without parole or death) shall not be scheduled for original hearings.

(4) When an offender's prison commitment does not include a homicide offense commitment, an offender is eligible to have an original hearing before the Board as follows:

(a) After the service of fifteen years for [A] first degree felony [ies,] commitments [where death is not involved, and where] when the most severe sentence imposed and being served is a sentence [of] greater than [fifteen] (15) years to life, excluding enhancements [will be eligible for a hearing after the service of fifteen years].

(b) After the service of seven years for [A] first degree felony [ies,] commitments [where death is not involved, and where] when the most severe sentence imposed and being served is a sentence of [ten] (10) years to life, or [fifteen] (15) years to life, excluding enhancements [will be eligible for a hearing after the service of seven years].

(c) After the service of three years for [A] all other first degree felony [ies,] commitments [where death is not involved, will be eligible for a hearing after the service of three years].

(d) After the service of eighteen months if the most serious offense of incarceration is a second degree felony sexual offense commitment.

(e) After the service of six months for [A] all other second degree felony [ies, where death is not involved, will be eligible for a hearing after the service of six months unless the second degree is a sex offense and in those cases will be eligible for a hearing after the service of eighteen months] commitments.

(f) After the service of twelve months if the most serious offense of incarceration is a third degree felony sexual offense commitment.

(g) After the service of three months for [A] all other third degree felony [ies, where a death is not involved,] and [all] class A misdemeanor[s, will be eligible for a hearing after the service of three months unless the third degree felony is a sex offense and in those cases will be eligible for a hearing after the service of twelve months] commitments.

~~[Excluded from the above provisions are inmates who are sentenced to death or life without parole.~~

(5)(a) An offender [inmate] may request that their original appearance and hearing before the Board be scheduled other than as provided by this rule [petition the Board to calendar him/her at a time other than the usual times designated above or the Board may do so on its own motion]. An offender's request [A petition by the inmate] shall [set out the special] specify the extraordinary circumstances or reasons which give rise to the request. The Board may grant or deny the offender's request in its sole discretion. [will notify the petitioner of its decision in writing as soon as possible.]

(b) The Board may, in its discretion, depart from the schedule as provided by this rule based upon an offender's request due to extraordinary circumstances, when an offender has unadjudicated criminal charges pending at the time a hearing would normally be scheduled, or upon its own motion.

KEY: parole, inmates, hearings

Date of Enactment or Last Substantive Amendment: [February 25, 2009] 2014

Notice of Continuation: January 26, 2012

Authorizing, and Implemented or Interpreted Law: 77-27-7

NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **PROPOSED RULE**, a **CHANGE IN PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **CHANGE IN PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends May 1, 2014.

Following the **RULE ANALYSIS**, the text of the **CHANGE IN PROPOSED RULE** is usually printed. The text shows only those changes made since the **PROPOSED RULE** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (example). Deletions made to the rule appear struck out with brackets surrounding them (~~example~~). A row of dots in the text between paragraphs (.) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **CHANGE IN PROPOSED RULE** is too long to print, the Division of Administrative Rules may include only the **RULE ANALYSIS**. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

From the end of the 30-day waiting period through July 30, 2014, an agency may notify the Division of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses.

CHANGES IN PROPOSED RULES are governed by Section 63G-3-303, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5b, R15-4-7, R15-4-9, and R15-4-10.

The Changes in Proposed Rules Begin on the Following Page

Agriculture and Food, Conservation
Commission
R64-3
Utah Environmental Stewardship
Certification Program (UESCP), a.k.a.
Agriculture Certificate of Environmental
Stewardship (ACES)

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 38071

FILED: 03/11/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes general practices and procedures for implementing the Agriculture Certificate of Environmental Stewardship (ACES). The Department is amending the rule to incorporate comments received from the Division of Water Quality.

SUMMARY OF THE RULE OR CHANGE: The changes contain a list of terms with their definitions used in the ACES program, followed by requirements and procedures to qualify for certification. The requirements and procedures are for renewing, investigation of, revoking, or extending certification. The amendments clarify procedures and policy for implementing the ACES program. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the November 15, 2013, issue of the Utah State Bulletin, on page 15. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 4-81-107

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** Cost of signs are \$200 per sign, one sign per operation that finishes certification in all sectors. Cost of education materials and workshops is \$30,000 along with the cost of certified planners.
- ◆ **LOCAL GOVERNMENTS:** There is no cost or saving to local government since local government is not involved in the Environmental Stewardship Certification Program.
- ◆ **SMALL BUSINESSES:** There will be a cost of \$100 per sector not to exceed \$250.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Only agricultural operations will be affected that apply for certification. This rule change does not apply to other small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs for affected person will be \$100 per sector not to exceed \$250.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This is a totally volunteer program and the rule does not create any direct financial impact on the agricultural operation. If they decide to participate in the ACES program, there will be a cost of \$100 per sector not to exceed \$250 depending on the numbers of sectors certified in. Most of this fee will be used to pay for the ACES sign that will be awarded to the operation. Depending on the current practices and conditions on the operation, the owner may have costs to update their operation to meet the best management practices required by ACES, which will bring them into compliance with state and federal environmental regulations. A substantial portion of these costs can generally be offset with grants from USDA programs. In addition, best management practices will increase the profitability of the operation while improving their environmental stewardship.

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

AGRICULTURE AND FOOD
CONSERVATION COMMISSION
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Jay Olsen by phone at 801-538-7174, by FAX at 801-538-9436, or by Internet E-mail at jayolsen@utah.gov
- ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
- ◆ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov
- ◆ Thayne Mickelson by phone at 801-538-7171, by FAX at 801-538-9436, or by Internet E-mail at tmickelson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2014

AUTHORIZED BY: LuAnn Adams, Commissioner

R64. Agriculture and Food, Conservation Commission.**R64-3. Utah Environmental Stewardship Certification Program (UESCP), a.k.a. Agriculture Certificate of Environmental Stewardship (ACES).****R64-3-1. Authority and Purpose.**

Pursuant to Section 4-18-107, this rule establishes general operating practices and procedures for implementing the Agriculture Certificate of Environmental Stewardship (ACES).

R64-3-2. Definitions.

(1) "[~~ACES~~]Technical Standards": means a collection of practices adopted by the Commission that will protect the environment in a reasonable and economical manner while still protecting the sustainability of agriculture.

(2) "[~~ACES~~]workbook": means information relating to the implementation of best management practices, education requirements, and information required for ACES certification. The workbook(s) is considered property of the owner/operator and remains in their possession. [~~Only the Certification Forms are retained at the Department.~~] The workbook(s) [~~must~~]shall be retained by the owner/operator and available for review by the Department upon request.

(3) "Agriculture Sectors": means; a Farmstead, Animal Feeding Operation, Grazing or Pasture Operation, and Cropping System.

(4) "Animal Feeding Operation" (AFO): means a lot or facility where the following conditions are met: animals have been, are, or will be stabled, housed, or confined and fed or maintained for a total of forty-five (45) days or more in any 12-month period; crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility; and two or more AFOs under common ownership are considered to be a single AFO if they adjoin each other or if they use a common area or system for the storage or disposal of waste

(5) "Best Management Practices" (BMP): means common acceptable practices, including but not limited to use of technology and management policies [~~and the use of technology~~], used by sectors of agriculture in the production of food and fiber that protect and sustain natural resources.

(6) "Certification Forms": means contact information and sector(s) verification page(s) that are reviewed by the planner and verified by the Department.

(7) "[~~Certified~~]Planner(s)": means a planner(s) of a local conservation district, or other qualified planner, that has been certified by NRCS or Grazing Improvement Program Coordinator(s), and is approved by the commission to certify an agriculture operation under the ACES [~~p~~]Program.

(8) "Commission": means the (Utah) Conservation Commission (UCC).

(9) "Comprehensive Nutrient Management Plan or Nutrient Management Plan" (CNMP/NMP): means a plan to properly store, handle, and spread manure and other agriculture byproducts to protect the environment and provide nutrients for the production of crops (plants).

(10) "Cropping": is the area where crops are planted, raised, and harvested. This includes but is not limited to fruits, vegetables, grain, oil seeds and alfalfa.

(11) "Environmental Issues": means any negative or adverse effect on a natural resource caused by human impact(s)

such as nutrients, pesticides, petroleum products, pharmaceuticals, recreation, and sediment.

[~~(11)~~](12) "Department": means the (Utah) Department of Agriculture and Food (UDAF).

[~~(12)~~](13) "DEQ": means the (Utah) Department of Environmental Quality.

(14) "DWO": means (Utah) Division of Water Quality.

[~~(13)~~](15) "Education modules": means education materials which provide information on best management practices and current regulations either in workshops/training and/or online at Department of Agriculture and Food ACES site (<http://ag.utah.gov/aces/index.html>). [~~They~~]that will inform and/or educate the producer on requirements in ACES.

[~~(14)~~](16) "Farmstead": is considered to be the central area of operation which may include but not limited to home/office, yards, storage facilities, and other buildings.

[~~(15)~~](17) "Grazing and Pasture": is considered to be any vegetated land that is grazed or has the potential to be grazed by animals.

(18) "Grazing Improvement Program Coordinator(s)": are professionals who improve the productivity and sustainability of our rangeland and water sheds through properly managing grazing by time, timing, and intensity.

[~~(16)~~](19) "NRCS": means the Natural Resources Conservation Service.

(20) "Owner/Operator": means any person(s) who has legal, financial or daily decision making responsibility for the operation.

(21) "Operation": means the agricultural entity requesting certification for ACES.

(22) "Technical Service Providers (TSP)": are individuals, private businesses, nonprofit organizations, or public agencies outside of the U.S. Department of Agriculture (USDA) that help agricultural producers apply conservation practices on the land, and/or NRCS certified.

[~~(17)~~](23) "[~~Review~~]Verification": means an audit performed by the Department of Agriculture and Food.

R64-3-3. Requirements and Procedure to Qualify for the Agriculture Certificate of Environmental Stewardship (ACES).

(1) Owner/operator shall complete the requirements in the workbook(s) for each desired sector (farmstead, animal feeding operation, grazing and pasture, and cropping). Workbook(s) are available at the [~~d~~]Department's website (<http://ag.utah.gov/aces/index.html>).

(2) [~~Certified~~]Planner(s) shall be available from conservation districts to aid owner/operators in meeting the requirements of ACES which are in the workbook(s).

(3) Requirements found in the [~~W~~]workbooks shall be reviewed and site visit conducted[~~verified~~] by a [~~certified~~] planner(s), in preparation for Commission certification.

(4) Verification shall be conducted by the Department after a site visit by the planner(s) has occurred and before Commission certification.

[~~(4)~~](5) Owner/operator shall complete education requirements prior to certification either by:

(a) completing workshops/training endorsed [~~sponsored~~] by ACES; [~~or~~]

(b) ~~by~~ completing education modules found on the ~~[d]~~Department's website (<http://ag.utah.gov/aces/index.html>) under the ACES ~~[p]~~Program; or~~[-]~~

~~(c) combination of workshops/training and education modules from the Department's website.~~

~~(6) Once the operation has completed requirements and been approved by the planner(s) and verified by the Department, the operation may request certification from the Commission.~~

~~(7) The Commission may certify the operation after the operation has requested certification and after reviewing the planner(s) and Department records.~~

~~(5)(8) When an operation is certified for a given sector, the Department shall provide a certificate for that sector~~

~~(6)(9) After completion of all sectors the operation is involved in, the Department shall provide a sign.~~

~~(7)(10) Owner/operator shall be charged \$100 for each sector certified, not to exceed \$250 total per certification period.~~

~~(11) An Animal Feeding Operation may request permit by rule coverage from DWQ by completing the request form found on the back page of the workbook and submitting it to DWQ with a copy of their ACES certificate.~~

R64-3-4. Requirements and Procedures for Renewing, Investigation of, Revoking or Extending the Agriculture Certificate of Environmental Stewardship (ACES).

(1) Prior to the five (5) year ~~certificate expiration~~~~[extension]~~ date, the Department shall send a certified letter to the operation:~~[-]~~

(a) The owner/operator has ~~[+20]~~30 days to respond by written request for a certificate~~[to the]~~ extension for another five (5) years~~[notice]~~.

(b) If no response is received the operation's certification shall expire on the expiration date.

(c) The owner/operator shall continue to meet all requirements of the original certification to receive the extension.

(i) ~~review of workbook(s) requirements shall be made~~~~[Such verification shall be made]~~ by a ~~[certified]~~planner(s); ~~[and by the Department.]~~

(ii) verification by the Department as required in R64-3-3(3-7); and

(iii) Owner/operator shall pay certification fee as stated in R64-3-3(10).

~~(+)(2) If any requirement is found in non-compliance, the [certified]planner(s) shall review with the owner/operator what [changes must]action(s) shall be met for the operation to retain certification.~~

~~(b)a~~ The owner/operator shall have 120 days to ~~[respond to]~~meet the request in order to maintain ~~[p]~~Program certification in that sector.

~~(+)(b) If the request is not met, the sign shall be removed by the owner/operator and returned to the Department.~~

~~(2)(3) If the operation is certified in more than one sector only the sector in which they are in non-compliance shall the certification be revoked and the sign removed and returned to the Department.~~

Investigation and/or revocation of certification:

(4) Planner(s) and the Department shall have access to review records on site and make site visits during normal business hours:

~~(a) The Department shall make every effort to notify the operation prior to the visit.~~

~~(5) If any requirement is found in non-compliance, the planner(s) shall review with the owner/operator what action(s) shall be met for the operation to retain certification.~~

~~(a) The owner/operator shall have 120 days to meet the request to maintain Program certification in that sector~~

~~(b) If the request is not met, the sign shall be removed by the owner/operator and returned to the Department.~~

~~(6) If the operation is certified in more than one sector only the sector in which they are in non-compliance shall the certification be revoked and the sign removed and returned to the Department.~~

~~(3)(7) Owner/operator may request a variance by notifying the Commission Chair, in writing, stating the reason they could not comply within the 120 days.~~

~~(4)(8) The Commission Chair has 30 days to respond, in writing, to the request.~~

~~(5)(9) Prior to the ten (10) year termination date of a certificate, the Department [with]shall send a certified letter to the operation. Re-certification [with]shall require the completion of requirements in a current ACES workbook(s) and verification as required in R64-3-3(3-7) and fee according to R64-3-3(10).~~

~~(6)(10) Investigation: The [d]Department shall review any complaints/concerns received.[brought by either DEQ, or a citizen environmental complaint.]~~

~~(a) The Department shall contact the planner(s) who certified the operation, and they shall investigate the complaint/concern. If the planner(s) is not available the Department shall contact another planner(s).~~

~~(b) If the complaint/concern is not found to be a significant violation of the certification program then the reason for such determination shall be documented in a letter to the owner/operator and no action will be taken.~~

~~(i) Planner(s) may make recommendations to correct the concern.~~

~~(+)(c) If it is determined that a significant violation has occurred.~~

(i) Department shall report the operation to the Commission Chair.

(ii) Commission chair shall then take ~~[one of]~~the following actions:

(A) Inform the commission, and~~[-]~~

(B) Make a [E]list of corrective actions necessary and establish time frame for compliance to address the complaint and still maintain certification.

~~(7)(11) The Commission Chair shall then inform the operation by certified letter [which]of corrective action(s) and time frame for compliance[-was taken].~~

~~(8)(12) If the certified operation does not comply within the[a reasonable] time frame specified to rectify the concerns stated in the commission's letter.~~

(a) The ~~[d]~~Department shall make a report to the Commission stating reasons for non-compliance.

~~(9)(13) Commission shall review [d]Department reports and may revoke certification.~~

(a) If certification is revoked the ~~[operation]~~owner/operator shall remove the sign and return it to the Department, and certification fee shall not be refunded;

~~(i) The operation shall not be allowed to participate in the ACES [certification p] Program for two (2) years.~~

~~[(14)](14) If an operation denies the [d]Department access to a site visit and/or review of records [after 3 attempts (one of which is by certified letter),] the Commission shall revoke the certification.~~

~~[(15)](15) If the operation is sold and/or under new management, the current certification shall be revoked. [and the new owner/operator will need to go thru the certification process with a current workbook.]~~

~~(a) The Sign shall be removed and returned to the Department.~~

~~(16) The new Owner/operator shall:~~

~~(a) inform the Department of the change in writing;~~

~~(b) go through the certification process with a current workbook(s) as required in R64-3-3(3-7) to become certified; and~~

~~(c) pay the fee according to R64-3-3(10).~~

~~[(17)](17) The [d]Department shall give a yearly report on the ACES [p]Program to the Commission.~~

R64-3-5. Requirements and Procedures for the Commission to Administer the ACES Program.

(1) In approving a planner for the ACES Program the Commission shall consider the following:

(a) NRCS certification in the sector(s) and/or area(s) of the workbook(s) being reviewed, and/or a Technical Service Provider (TSP) approved by NRCS in the sector(s) and/or area(s) of the workbook(s) being reviewed, and Grazing Improvement Program Coordinator(s), and

(b) training on the ACES Program from the Department

(i) at least every five (5) years, and

(ii) when changes are made to the workbook(s).

(2) The Commission shall provide a list of approved planners on the ACES website (<http://ag.utah.gov/aces/index.html>).

Variance

(3) The Commission shall consider the following in determining a variance:

(a) the reasons for granting a variance:

(i) insufficient time to complete the necessary improvement(s);

(ii) consideration of the effect the season has on the improvement(s); and

(iii) economic factors determined by the availability of funds.

KEY: environment, stewardships, certifications

Date of Enactment or Last Substantive Amendment: 2014

Authorizing, and Implemented or Interpreted Law: 4-18-107

**Environmental Quality, Air Quality
R307-335
Degreasing and Solvent Cleaning
Operations**

**NOTICE OF CHANGE IN PROPOSED RULE
(SECOND)**

DAR FILE NO.: 37829

FILED: 03/06/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the public comment period, several industries, including the electronic cleaning industry, medical device industry, and the graphic imaging industry, submitted comments stating the difficulty they would have meeting the proposed 2.49 lb/gal general VOC content limit. After evaluation of these comments and further stakeholder work, it was decided that a more appropriate approach would be to establish industry specific solvent cleaning VOC-content limits instead of a general limit that applied across the board to all industries.

SUMMARY OF THE RULE OR CHANGE: Section R307-335-7 is changed by adding a table that includes solvent cleaning VOC limits for specific industries. Those industries not specifically listed in the table are required to meet the general miscellaneous cleaning VOC-content limit and the general surface cleaning limit listed in the table. The compliance schedule in Section R307-335-10 is also changed from 06/01/2014 to 07/01/2014. (DAR NOTE: This is the second change in proposed rule (CPR) for Rule R307-335. The original proposed amendment upon which the first CPR was based was published in the August 1, 2013, issue of the Utah State Bulletin, on page 23. The first CPR upon which this second CPR is based was published in the December 1, 2013, issue of the Utah State Bulletin, on page 54. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike out indicates text that has been deleted. You must view the first CPR, the second CPR, and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Because the changes made to the rule do not create any new requirements for the state, there are no anticipated costs or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** Because the changes made to the rule do not create any new requirements for local government, there are no anticipated costs or savings to local government.

◆ **SMALL BUSINESSES:** By increasing the VOC content limit various industries can use, small businesses from those industries may see a slight savings. However, those savings should be minimal as solvent cleaners are generally competitively priced. The increased VOC content limit is more of an issue of allowing specific industries to maintain a high level of product quality, while still reducing VOC emissions from solvent cleaning operations.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Because the revisions to not create new requirements for persons other than small businesses, businesses, or local government entities, there are no anticipated costs or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: By increasing the VOC content limit various industries can use, businesses from those industries may see a slight savings. However, those savings should be minimal as solvent cleaners are generally competitively priced. If an owner or operator chooses to use industrial solvent cleaners that don't meet the VOC content limits and instead installs an emissions control system, the cost would be approximately \$1,640 per ton of VOC removed.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: By increasing the VOC content limit various industries can use, businesses from those industries may see a slight savings. However, those savings should be minimal as solvent cleaners are generally competitively priced. If an owner or operator chooses to use industrial solvent cleaners that don't meet the VOC content limits and instead installs an emissions control system, the cost would be approximately \$1,640 per ton of VOC removed.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

THIS RULE MAY BECOME EFFECTIVE ON: 05/01/2014

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.

R307-335. Degreasing and Solvent Cleaning Operations.

R307-335-1. Purpose.

The purpose of this rule is to limit volatile organic compound (VOC) emission from degreasing and solvent cleaning operations.

R307-335-2. Applicability.

R307-335 applies to all degreasing or solvent cleaning operations that use VOCs and that are located in PM10 and PM2.5 nonattainment and maintenance plan areas as defined in 40 CFR 81.345 (July 1, 2011).

R307-335-3. Definitions.

The following additional definitions apply to R307-335:

"Batch open top vapor degreasing" means the batch process of cleaning and removing grease and soils from metal surfaces by condensing hot solvent vapor on the colder metal parts.

"Cold cleaning" means the batch process of cleaning and removing soils from metal surfaces by spraying, brushing, flushing or immersing while maintaining the solvent below its boiling point.

"Conveyorized degreasing" means the continuous process of cleaning and removing greases and soils from metal surfaces by using either cold or vaporized solvents.

"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.

"Freeboard ratio" means the freeboard height (distance between solvent line and top of container) divided by the width of the degreaser.

"Industrial solvent cleaning" means operations performed using a liquid that contains any VOC, or combination of VOCs, which is used to clean parts, tools, machinery, equipment and work areas. Cleaning operations include, but are not limited to, spraying, wiping, flushing, and purging.

"Open top vapor degreaser" means the batch process of cleaning and removing soils from metal surfaces by condensing low solvent vapor on the colder metal parts.

"Separation operation" means any process that separates a mixture of compounds and solvents into two or more components. Specific mechanisms include extraction, centrifugation, filtration, and crystallization.

"Solvent metal cleaning" means the process of cleaning soils from metal surfaces by cold cleaning, open top vapor degreasers, or conveyorized degreasing.

R307-335-4. Cold Cleaning Facilities.

No owner or operator shall operate a degreasing or solvent cleaning operation unless conditions in R307-335-4(1) through (7) are met.

(1) A cover shall be installed which shall remain closed except during actual loading, unloading or handling of parts in cleaner. The cover shall be designed so that it can be easily operated with one hand if:

- (a) The volatility of the solvent is greater than 2 kPa (15 mm Hg or 0.3 psi) measured at 38 degrees C (100 degrees F),
- (b) The solvent is agitated, or
- (c) The solvent is heated.

(2) An internal draining rack for cleaned parts shall be installed on which parts shall be drained until all dripping ceases. If the volatility of the solvent is greater than 4.3 kPa (32 mm Hg at 38 degrees C (100 degrees F)), the drainage facility must be internal, so that parts are enclosed under the cover while draining. The drainage facility may be external for applications where an internal type cannot fit into the cleaning system.

(3) Waste or used solvent shall be stored in covered containers.

(4) Tanks, containers and all associated equipment shall be maintained in good operating condition, and leaks shall be repaired immediately or the degreaser shall be shutdown.

(5) Written procedures for the operation and maintenance of the degreasing or solvent cleaning equipment shall be permanently posted in an accessible and conspicuous location near the equipment.

(6) If the solvent volatility is greater than 4.3 kPa (33 mm Hg or 0.6 psi) measured at 38 degrees C (100 degrees F), or if solvent is heated above 50 degrees C (120 degrees F), then one of the following control devices shall be used:

- (a) Freeboard that gives a freeboard ratio greater than 0.7;
- (b) Water cover if the solvent is insoluble in and heavier than water); or
- (c) Other systems of equivalent control, such as a refrigerated chiller or carbon adsorption.

(7) If used, the solvent spray shall be a solid fluid stream at a pressure that does not cause excessive splashing and may not be a fine, atomized or shower type spray.

R307-335-5. Open Top Vapor Degreasers.

Owners or operators of open top vapor degreasers shall, in addition to meeting the requirements of R307-335-4(3), (4) and (5),

(1) Equip the vapor degreaser with a cover that can be opened and closed without disturbing the vapor zone. The cover shall be closed except when processing work loads through the degreaser;

(2) Install one of the following control devices:

(a) Equipment necessary to sustain:

(i) A freeboard ratio greater than or equal to 0.75, and

(ii) A powered cover if the degreaser opening is greater than 1 square meter (10.8 square feet),

(b) Refrigerated chiller,

(c) Enclosed design (cover or door opens only when the dry part is actually entering or exiting the degreaser),

(d) Carbon adsorption system, with ventilation greater than or equal to 15 cubic meters per minute per square meter (50 cubic feet per minute per square foot) of air/vapor area when cover is open and exhausting less than 25 parts per million of solvent averaged over one complete adsorption cycle;

(3) Minimize solvent carryout by:

(a) Racking parts to allow complete drainage,

(b) Moving parts in and out of the degreaser at less than 3.3 meters per minute (11 feet per minute),

(c) Holding the parts in the vapor zone at least 30 seconds or until condensation ceases,

(d) Tipping out any pool of solvent on the cleaned parts before removal, and

(e) Allowing the parts to dry within the degreaser for at least 15 seconds or until visibly dry.

(4) Spray parts only in or below the vapor level;

(5) Not use ventilation fans near the degreaser opening, nor provide exhaust ventilation exceeding 20 cubic meters per minute per square meter (65 cubic feet per minute per square foot) in degreaser open area, unless necessary to meet state and federal occupational, health, and safety requirements.

(6) Not degrease porous or absorbent materials, such as cloth, leather, wood or rope;

(7) Not allow work loads to occupy more than half of the degreaser's open top area;

(8) Ensure that solvent is not visually detectable in water exiting the water separator;

(9) Install safety switches on the following:

(a) Condenser flow switch and thermostat (shuts off sump heat if condenser coolant is either not circulating or too warm); and

(b) Spray switch (shuts off spray pump if the vapor level drops excessively, i.e., greater than 10 cm (4 inches).

(10) Open top vapor degreasers with an open area smaller than one square meter (10.8 square feet) are exempt from R307-335-5(2)(b) and (d).

R307-335-6. Conveyorized Degreasers.

Owners and operators of conveyorized degreasers shall, in addition to meeting the requirements of R307-335-4(3), (4) and (5) and R307-335-5(5):

(1) Install one of the following control devices for conveyorized degreasers with an air/vapor interface equal to or greater than two square meters (21.5 square feet):

(a) Refrigerated chiller; or

(b) Carbon adsorption system, with ventilation greater than or equal to 15 cubic meters per minute per square meter (50 cubic feet per minute per square foot) of air/vapor area when downtime covers are open, and exhausting less than 25 parts per million of solvent, by volume, averaged over a complete adsorption cycle.

(2) Equip the cleaner with equipment, such as a drying tunnel or rotating (tumbling) basket, sufficient to prevent cleaned parts from carrying out solvent liquid or vapor.

(3) Provide downtime covers for closing off the entrance and exit during shutdown hours. Ensure that down-time cover is placed over entrances and exits of conveyorized degreasers immediately after the conveyor and exhaust are shut down and is removed just before they are started up.

(4) Minimize carryout emissions by racking parts for best drainage and maintaining the vertical conveyor speed at less than 3.3 meters per minute (11 feet per minute).

(5) Minimize openings: Entrances and exits should silhouette work loads so that the average clearance (between parts and the edge of the degreaser opening) is either less than 10 cm (4 inches) or less than 10% of the width of the opening.

(6) Install safety switches on the following:

(a) Condenser flow switch and thermostat - shuts off sump heat if coolant is either not circulating or too warm;

(b) Spray switch - shuts off spray pump or conveyor if the vapor level drops excessively, i.e., greater than 10 cm (4 inches); and

(c) Vapor level control thermostat - shuts off sump level if vapor level rises too high.

(7) Ensure that solvent is not visibly detectable in the water exiting the water separator.

R307-335-7. Industrial Solvent Cleaning.

(1) Exemptions. The requirements of R307-335-7 do not apply to aerospace, wood furniture, shipbuilding and repair, flat wood paneling, large appliance, metal furniture, paper film and foil, plastic parts, miscellaneous metal parts coatings and light autobody and truck assembly coatings, flexible packaging, lithographic and letterpress printing materials, fiberglass boat manufacturing materials, and 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.

(2) Operators of industrial solvent cleaning that emit 15 pounds of VOCs or more per day from industrial solvent cleaning operations, shall reduce VOC emissions from the use, handling, storage, and disposal of cleaning solvents and shop towels by implementing the following work practices:

(a) Covering open containers; and
 (b) Storing used applicators and shop towels in closed fire proof containers~~[-], and~~

~~[(3)c] [Owners or operators of industrial solvent cleaning operations shall]~~ Limiting VOC emissions by either:

~~[(a)i] [Using cleaning solutions with vapor pressure less than or equal to eight millimeters of mercury (mm Hg) at 20 degrees C;~~

~~[(b)]~~ Using solvents with a VOC ~~[content of 2.49 pounds per gallon or less]~~ limit in Table 1; or

~~[(e)ii]~~ Installing an emission control system designed to have an overall control efficiency of at least 85%.

TABLE 1
 Solvent Cleaning VOC Limits

Solvent Cleaning Category	VOC Limit (lb/gal)
Coatings, adhesives and ink manufacturing	4.2
Electronic parts and components	4.2
General miscellaneous cleaning	2.5
Medical devices and pharmaceutical	
Tools, equipment and machinery	6.7
General surface cleaning	5.0
Screening printing operations	4.2

R307-335-8. Emission Control Systems.

(1) The owner or operator of a control device shall maintain certification from the manufacturer that the emission control system will attain at least 85% overall efficiency performance and make the certification available to the director upon request.

(2) Emission control systems shall be operated and maintained in accordance with the manufacturer recommendations to maintain at least 85% overall efficiency performance. 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.

R307-335-9. Recordkeeping.

The owner or operator shall maintain, for a minimum of two years, records of the solvent VOC content applied and the physical characteristics that demonstrate compliance with R307-335.

R307-335-10. Compliance Schedule.

(1) All sources shall be in compliance with R307-335-7 by ~~[June]~~ July 1, 2014.

KEY: air pollution, degreasing, solvent cleaning

Date of Enactment or Last Substantive Amendment: 2014

Notice of Continuation: February 1, 2012

Authorizing, and Implemented or Interpreted Law: 19-2-104(1)

(a)

End of the Notices of Changes in Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <http://www.rules.utah.gov/publicat/code.htm>. The rule text may also be inspected at the agency or the Division of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

Education, Administration **R277-438** Dual Enrollment

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38347
FILED: 03/14/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-402(1)(b) directs the Utah State Board of Education (Board) to establish rules and minimum standards for access to programs and Section 53A-11-102.5 directs the Board to make rules to permit home school and private school students to participate in public school activities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides procedures and criteria for home school and private school students to participate in public school activities and for charter school and online school students to participate in traditional public school activities consistent with Rule R277-494. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 03/14/2014

Education, Administration **R277-486** Professional Staff Cost Program

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38348
FILED: 03/14/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-17a-107(2) requires the Utah State Board of Education (Board) to adopt a rule requiring a certain percentage of a local education agency's (LEA) professional staff be licensed in the area in

which the teacher teaches in order for the LEA to receive full funding under the state statutory formula, and Subsection 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides criteria and standards for LEAs to satisfy statutory or federal regulatory percentages of licensed staff. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 03/14/2014

Education, Administration
R277-524
Paraprofessional/Paraeducator
Programs, Assignments, and
Qualifications

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 38349
FILED: 03/14/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-401(3) permits the Utah State Board of Education (Board) to adopt rules in accordance with its responsibilities, and Subsection 53A-1-

402(1)(a)(i) requires the Board to establish rules and minimum standards for the public schools regarding the qualification and certification of educators and ancillary personnel who provide direct student services.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides criteria to designate appropriate assignments of paraprofessionals and qualifications for paraprofessionals. The rule also establishes the formula for distribution of paraeducator funding to eligible schools and minimum standards for use of funds and reporting requirements. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 03/14/2014

Education, Administration
R277-724
Criteria for Sponsors Recruiting Day
Care Facilities in the Child and Adult
Care Food Program

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 38351
FILED: 03/14/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE

OR REQUIRE THE RULE: Subsection 53A-1-402(3) authorizes the Utah State Board of Education (Board) to administer and distribute funds made available through programs of the federal government, and Subsection 53A-1-401(3) allows the Board to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides eligibility criteria for new sponsors to recruit participants for child care centers and day care homes in unserved areas. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY, UT 84111-3272
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 03/14/2014

Education, Administration
R277-735
 Corrections Education Programs

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 38352
 FILED: 03/14/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-401(3) allows the Utah State Board of Education (Board) to adopt rules in accordance with its responsibilities, and Section 53A-1-403.5

makes the Board directly responsible for the education of inmates in custody.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides standards and procedures for the provision of education programs to inmates in Utah correctional facilities. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY, UT 84111-3272
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 03/14/2014

Education, Rehabilitation
R280-202
 USOR Procedures for Individuals with the Most Severe Disabilities

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 38353
 FILED: 03/14/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Pub. L. No. 102-569, Title VI-C, directs state agencies to establish eligibility criteria for individuals with the most significant disabilities and Section 53A-24-103 directs that the Utah State Office of Rehabilitation shall be under the policy direction of the Utah State Board of Education.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides definitions and procedures for providing services and determining order of selection for services consistent with federal and state law. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 03/14/2014

**Environmental Quality, Air Quality
R307-840**

**Lead-Based Paint Program Purpose,
Applicability, and Definitions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 38330
FILED: 03/06/2014

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Rule R307-840 is one of three Air Quality rules that implements Subsection 19-2-104(1)(i) which authorizes the Air Quality Board to make rules to "implement the lead-based paint requirements for training, certification, and performance of 15 U.S.C. 2601 et seq., Toxic Substances Control Act, Subchapter IV--Lead Exposure Reduction, Sections 402 and 404."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R307-840 was amended twice since the last five-year review (DAR No. 33308 and DAR No. 35857). No comments were received for either rulemaking, and no other comments have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Without Rule R307-840, Utah would not have authority to implement the federal requirements; implementation would be carried out by the Environmental Protection Agency. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 03/06/2014

**Health, Family Health and
Preparedness, Children with Special
Health Care Needs**

R398-10
**Autism Spectrum Disorders and Mental
Retardation Reporting**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 38339
FILED: 03/12/2014

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule establishes reporting requirements for autism spectrum disorders (ASD) and

mental retardation and related test results in individuals. Family Health and Preparedness, under Subsections 26-1-30(2)(c), (d), (e), (f), and (g), Section 26-5-3, and Section 26-5-4 is authorized to collect and analyze data on reportable health conditions to monitor prevalence of diseases to improve the health of the public. Rule R398-10 identifies Autism Spectrum Disorders and Mental Retardation (ASD/DD) as reportable conditions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments since the last five-year review of the rule supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Bureau of Children with Special Health Care Needs continues surveillance of ASD/DD cases in Utah through the Utah Registry of Autism Spectrum Disorders and Developmental Disabilities Program (URADD). The Bureau needs to continue to collect information on these diagnoses to monitor prevalence to understand and respond to significant increases in the population. Therefore, this rule should be continued.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
CHILDREN WITH SPECIAL HEALTH CARE NEEDS
44 N MARIO CAPECCHI DR
SALT LAKE CITY, UT 84113
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Rebecca Giles by phone at 801-538-6259, or by Internet E-mail at rgiles@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 03/12/2014

Human Services, Recovery Services
R527-275
Passport Release

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 38336
FILED: 03/06/2014

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 62A-11-107 gives the Office of Recovery Services (ORS) the authority to adopt, amend, and enforce rules necessary to carry out its responsibilities. 22 CFR 51.60 states that the department may not issue a passport if the applicant has been certified by the Secretary of Health and Human Services as owing arrears of child support in an amount determined by statute. 22 CFR 51.70 details the time frames and restrictions as to when a person whose passport has been denied or revoked is entitled to a hearing and when the provisions are not applicable to an individual. Specific information concerning who conducts the hearings, who may appear and witnesses information are detailed in 22 CFR 51.71. 22 CFR 51.72 states that a complete verbatim transcript will be taken by a qualified reporter and that will be considered the record of the hearing. Information detailing the privacy of the hearing is listed in 22CFR 51.73. All of these federal regulations are incorporated in the rule by reference. Also, the rule defines the criteria ORS/CSS uses to determine if an individual's passport will be released.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received since the rule became effective.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because the federal regulations that are incorporated by reference are still in effect and the rule is reflected in current policy, practices, and procedures of the ORS/Child Support Services (CSS). In addition, the rule informs the public of the criteria used by ORS/CSS to release a passport that has been previously denied.

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

HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY, UT 84102-4211
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Shancie Nance by phone at 801-536-8191, by FAX at 801-536-8509, or by Internet E-mail at snance@utah.gov

AUTHORIZED BY: Liesa Stockdale, Director

EFFECTIVE: 03/06/2014

Labor Commission, Adjudication
R602-7

Adjudication of Discrimination Claims

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 38327
 FILED: 03/05/2014

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 34A-5-107 authorizes the Labor Commission to conduct adjudicative proceedings to resolve claims of discrimination. Section 34A-5-107 also authorizes the Labor Commission to adopt rules to carry out those adjudicative functions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received during or since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: As part of the Labor Commission's continuing responsibility to administer a system for adjudication of discrimination claims, it is necessary for the Labor Commission to establish procedures for handling these claims. Therefore, this rule should be continued.

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

LABOR COMMISSION
 ADJUDICATION
 HEBER M WELLS BLDG
 160 E 300 S
 SALT LAKE CITY, UT 84111-2316
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Heather Gunnarson by phone at 801-536-7928, by FAX at 801-530-6333, or by Internet E-mail at hgunnarson@utah.gov

AUTHORIZED BY: Sherrie Hayashi, Commissioner

EFFECTIVE: 03/05/2014

Labor Commission, Adjudication
R602-8

Adjudication of Utah Occupational
 Safety and Health Citation Claims

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 38328
 FILED: 03/05/2014

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 34A-6-105, 34A-6-303, and 34A-6-304 authorize the Labor Commission to conduct adjudicative proceedings to resolve contests of Utah OSHA citations. These sections also authorize the Labor Commission to adopt rules to carry out those adjudicative functions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received during or since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: As part of the Labor Commission's continuing responsibility to administer a system for adjudication of contests of Utah OSHA citations, it is necessary for the Labor Commission to establish procedures for handling these claims. Therefore, this rule should be continued.

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

LABOR COMMISSION
 ADJUDICATION
 HEBER M WELLS BLDG
 160 E 300 S
 SALT LAKE CITY, UT 84111-2316
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Heather Gunnarson by phone at 801-536-7928, by FAX at 801-530-6333, or by Internet E-mail at hgunnarson@utah.gov

AUTHORIZED BY: Sherrie Hayashi, Commissioner

EFFECTIVE: 03/05/2014

Regents (Board of), University of Utah,
Administration
R805-3

Overnight Camping and Campfires on
University of Utah Property

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 38355
FILED: 03/14/2014

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsections 53B-1-104(8) and 53B-2-106(2)(d) authorize the Board of Regents and the University President to enact rules for the appropriate administration and operation of the institution. Section 63G-4-102 of the Utah Administrative Procedures Act defines the requirements for the administrative rule. Section 65A-8-211 defines the fires season. Section 76-8-701 et seq. allows for the criminal enforcement of institutional rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received related to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it sets forth the regulations that govern camping and campfires on University property. This rule prohibits overnight camping and campfires on University of Utah Property absent the express permission of the University. The rule defines overnight camping and campfires. It also lists the sanctions that may be imposed for violation of the rule which may include discipline for members of the University community through a University process, citation for having an improper fire, citation for criminal trespass, temporary eviction and denial of access, and eviction and denial of access after an informal adjudicative proceeding.

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

REGENTS (BOARD OF)
UNIVERSITY OF UTAH, ADMINISTRATION
ROOM 309 PARK BLDG
201 S PRESIDENTS CIR
SALT LAKE CITY, UT 84112-9009
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Robert Payne by phone at 801-585-7002, by FAX at 801-585-7007, or by Internet E-mail at robert.payne@legal.utah.edu

AUTHORIZED BY: Robert Payne, Associate General Counsel

EFFECTIVE: 03/14/2014

Regents (Board of), University of Utah,
Museum of Natural History (Utah)
R807-1

Curation of Collections from State
Lands

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 38354
FILED: 03/14/2014

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 9-8-305(1)(c) authorizes Rule R807-1 by allowing and requiring the Division of State History to make rules for the issuance of permits related to surveying or excavating state lands, including rules that require proof of consultation with the Utah Museum of Natural History regarding curation of collections. Rule R807-1 is also required by Subsections 53B-17-603(2) and (4)(a), which require the Utah Museum of Natural History to make rules to ensure the adequate curation of all collections from lands owned or controlled by the state or its subdivisions and which require all collections recovered from state lands to be deposited at the Utah Museum of Natural History or a curation facility or repository.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R807-1 is necessary to the Utah Museum of Natural History and as part of the statewide process for protecting archaeological resources recovered from state lands. Among other things, Rule R807-1 establishes standards for curation and the obligations of

repositories and curation facilities and therefore should be continued.

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

REGENTS (BOARD OF)
UNIVERSITY OF UTAH, MUSEUM OF NATURAL
HISTORY (UTAH)
301 WAKARA WAY
SALT LAKE CITY, UT 84108
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Robert Payne by phone at 801-585-7002, by FAX at 801-585-7007, or by Internet E-mail at robert.payne@legal.utah.edu

AUTHORIZED BY: Ann Hanniball, Assistant Director

EFFECTIVE: 03/14/2014

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Division of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal & Reenact
REP = Repeal

Administrative Services

Facilities Construction and Management
No. 38247 (NEW): R23-33. Rules for the Prioritization and Scoring of Capital Improvements by the Utah State Building Board
Published: 02/01/2014
Effective: 03/10/2014

Fleet Operations

No. 38073 (AMD): R27-7-3. Driver Eligibility to Operate a State Vehicle
Published: 11/15/2013
Effective: 03/11/2014

Education

Administration

No. 38240 (AMD): R277-503. Licensing Routes
Published: 02/01/2014
Effective: 03/10/2014

No. 38241 (AMD): R277-518. Career and Technical Education Licenses
Published: 02/01/2014
Effective: 03/10/2014

No. 38242 (NEW): R277-528. Use of Public Education Job Enhancement Program (PEJEP) Funds
Published: 02/01/2014
Effective: 03/10/2014

Environmental Quality

Air Quality

No. 38104 (AMD): R307-210-2. Oil and Gas Sector: New Source Performance Standards
Published: 12/01/2013
Effective: 03/06/2014

No. 38105 (AMD): R307-214-3. Oil and Gas Sector: National Emission Standards for Hazardous Air Pollutants
Published: 12/01/2013
Effective: 03/06/2014

No. 38166 (AMD): R307-302. Solid Fuel Burning Devices in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber Counties
Published: 01/01/2014
Effective: 03/06/2014

Human Services

Child and Family Services

No. 38217 (AMD): R512-43. Adoption Assistance
Published: 02/01/2014
Effective: 03/10/2014

Insurance

Administration

No. 38090 (AMD): R590-229. Annuity Disclosure
Published: 11/15/2013
Effective: 03/11/2014

No. 38090 (CPR): R590-229. Annuity Disclosure
Published: 02/01/2014
Effective: 03/11/2014

No. 38087 (NEW): R590-268. Small Employer Stop-Loss Insurance
Published: 11/15/2013
Effective: 03/13/2014

NOTICES OF RULE EFFECTIVE DATES

No. 38087 (CPR): R590-268. Small Employer Stop-Loss Insurance
Published: 02/01/2014
Effective: 03/13/2014

Title and Escrow Commission

No. 38246 (AMD): R592-8-5. Request for Exemption Process
Published: 02/01/2014
Effective: 03/10/2014

No. 38156 (AMD): R592-11. Title Insurance Producer Annual and Controlled Business Reports
Published: 12/15/2013
Effective: 03/10/2014

No. 38156 (CPR): R592-11. Title Insurance Producer Annual and Controlled Business Reports
Published: 02/15/2014
Effective: 03/10/2014

Labor Commission

Boiler and Elevator Safety
No. 38226 (AMD): R616-2-3. Safety Codes and Rules for Boilers and Pressure Vessels
Published: 02/01/2014
Effective: 03/10/2014

Natural Resources

Wildlife Resources
No. 38231 (AMD): R657-10. Taking Cougar
Published: 02/01/2014
Effective: 03/11/2014

No. 38230 (AMD): R657-27. License Agent Procedures
Published: 02/01/2014
Effective: 03/11/2014

No. 38232 (AMD): R657-43. Landowner Permits
Published: 02/01/2014
Effective: 03/11/2014

No. 38236 (AMD): R657-60. Aquatic Invasive Species Interdiction
Published: 02/01/2014
Effective: 03/11/2014

Public Education Job Enhancement Program

Job Enhancement Committee
No. 38243 (REP): R690-100. Public Education Job Enhancement Program Participant Eligibility and Requirements
Published: 02/01/2014
Effective: 03/10/2014

End of the Notices of Rule Effective Dates Section

**RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2014 through March 14, 2014. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to the Division of Administrative Rules (801-538-3764).

A copy of the **RULES INDEX** is available for public inspection at the Division of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Facilities Construction and Management</u>					
R23-33	Rules for the Prioritization and Scoring of Capital Improvements by the Utah State Building Board	38247	NEW	03/10/2014	2014-3/2
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	38175	AMD	02/07/2014	2014-1/4
<u>Fleet Operations</u>					
R27-7-3	Driver Eligibility to Operate a State Vehicle	38073	AMD	03/11/2014	2013-22/14
<u>Purchasing and General Services</u>					
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ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

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<u>administrative law judges</u> Human Resource Management, Administration	38091	R477-101	NEW	01/14/2014	2013-22/129
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