State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

Alan Matheson
Executive Director

DIVISION OF WASTE MANAGEMENT
AND RADIATION CONTROL
Scott T. Anderson
Director

A regular meeting of the Waste Management and Radiation Control Board has been scheduled for July 12, 2018 at 1:30 p.m. at the Utah Department of Environmental Quality, Multi-Agency State Office Building, (Conference Room #1015), located at 195 North 1950 West, SLC.
(One or more Board members may participate telephonically.)

AGENDA

I. Call to Order.

II. Approval of the Meeting Minutes for the May 10, 2018 Board meeting (**Board Action Item**).... Tab 1

III. Underground Storage Tanks Update ..... Tab 2

IV. Administrative Rules. ..... Tab 3

A. Approval of final adoption of rule changes to Radiation Control Rules R313-37, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Materials, to incorporate federal regulatory changes promulgated by the Nuclear Regulatory Commission (**Board Action Item**).

B. Approval to proceed with formal rulemaking and public comment on proposed changes to the Used Oil Rules R315-15-16, Grants, to provide additional clarity and more detailed direction to the grant application, issuance, implementation and reimbursement processes (**Board Action Item**).

C. Approval to proceed with formal rulemaking and public comment on proposed changes to the Hazardous Waste Rules R315-260, Hazardous Waste Management System, and R315-261, General Requirements – Identification and Listing of Hazardous Waste, to incorporate federal regulatory changes promulgated by the Environmental Protection Agency (EPA) and published in the Federal Register on May 30, 2018 (83 FR 24664) (**Board Action Item**).

V. Radioactive Materials ..... Tab 4

A. Approval of the University of Utah (Radioactive Materials License Number UT 1800001) exemption from the requirements in 10 CFR 71.5(b) which are equivalent to the requirements found in R313-19-100(5)(b) (**Board Action Item**).

(Over)

195 North 1950 West • Salt Lake City, UT
Mailing Address: P.O. Box 144880 • Salt Lake City, UT 84114-4880
Telephone (801) 536-0200 • Fax (801) 536-0222 • T.D.D. (801) 536-4284
www.deq.utah.gov

VI. Low Level Radioactive Waste ..... Tab 5

A. Energy*Solutions*, LLC request for a site-specific treatment variance from the Hazardous Waste Management Rules. Energy*Solutions* seeks authorization to treat waste contaminated with dioxins and furans by macroencapsulation rather than by chemical means (Information Item Only).

VII. Director's Report.

VIII. Other Business.

A. Misc. Information Items.
B. Scheduling of next Board meeting.

IX. Adjourn.

In compliance with the Americans with Disabilities Act, individuals with special needs (including auxiliary communicative aids and services) should contact Kimberly Diamond-Smith, Office of Human Resources at (801) 536-4285, Telecommunications Relay Service 711, or by email at "kdiamondsmith@utah.gov".

Waste Management and Radiation Control Board
Telephonic Meeting
Anchor Location: Utah Department of Environmental Quality
195 North 1950 West (Red Rocks Conference Room #3132), SLC
May 10, 2018
1:30 p.m.

Board Members Participating By Phone: Richard Codell, Danielle Endres, Shawn Milne, Dennis Riding (Vice-Chair) and Vern Rogers

Board Members Present at Anchor Location: Brett Mickelson (Chair), Mark Franc, Jeremy Hawk, Alan Matheson, and Shane Whitney

Board Members Excused/Absent: Steve McIff and Nathan Rich

Staff Members Present: Scott Anderson, Brent Everett, Tom Ball, Arlene Lovato, Lisa Mechem, Bret Randall and Elisa Smith

Other Phone Call Participants: None

Others Present at Anchor Location: None

I. Call to Order.

Brett Mickelson (Chair) called the meeting to order at 1:35 p.m.; roll call was conducted (see above). Steve McIff was excused from the meeting.

II. Approval of the Meeting Minutes for the April 12, 2018 Board Meeting (Board Action Item).

It was moved by Shane Whitney and seconded by Jeremy Hawk and UNANIMOUSLY CARRIED to approve the April 12, 2018 Board Meeting minutes.

III. Underground Storage Tanks Update.

Brent Everett, Director of the Division of Environmental Response and Remediation, informed the Board that the asset balance of the Petroleum Storage Tank (PST) Trust Fund at the end of March 2018 was $13,788,641.00. The preliminary estimate for the cash balance of the PST Trust Fund for the end of April 2018 is $14,368,460.00. The PST Trust Fund is managed on a cash balance basis and is watched closely to ensure sufficient coverage for covered releases.

IV. X-Ray Program.

A. Approval of Mammography Imagining Medical Physicists (MIMPs) in accordance with UCA (19-6-104(2)(b) (Board Action Item).

Tom Ball, Planning and Technical Support Section Manager, and Lisa Mechem, Environmental Scientist, X-Ray Program, reviewed the request for the Board's approval of the qualified Mammography Imaging Medical Physicists. Mr. Ball stated that individuals referred to as Mammography Imaging Medical

Physicists (MIMPs) must submit an application for review of qualifications to be certified by the Board annually. These physicists perform radiation surveys and evaluate the quality control programs of the facilities in Utah providing mammography examinations.

In April 2018, thirteen individuals filed applications to be re-certified as a MIMP and one new application was received from Adam Davis, M.S. Division staff has reviewed the applicants' qualifications and all applicants meet the requirements detailed in R313-28-140.

In accordance with Subsection 19-6-104(2)(b) of the Utah Code Annotated, the Board shall review the qualifications of, and issue certificates of approval to, individuals who: (i) survey mammography equipment; or (ii) oversee quality assurance practices at mammography facilities. This statutory requirement was effective May 8, 2012.

The Director of the Division of Waste Management and Radiation Control recommends the Board issue a certificate of approval for the applicants reviewed and presented to the Board.

The May 10, 2018 Board packet included the names of the individuals requesting to be certified as Mammography Imaging Medical Physicists by the Waste Management and Radiation Control Board. (The list provided in the Board packet was incorrect; the list has been corrected.)

It was moved by Mark Franc and seconded by Dennis Riding and UNANIMOUSLY CARRIED to approve the Mammography Imagining Medical Physicists (MIMPs) in accordance with UCA (19-6-104(2)(b).

V. Other Business.

A. Misc. Information Items. – None to report.
B. Scheduling of next Board meeting.

The next Board meeting was tentatively scheduled for June 14, 2018 at the Utah Department of Environmental Quality, pending agenda items. Subsequent to the May 10, 2018 Board meeting, the June 14, 2018 Board meeting was cancelled.

VI. Adjourn**.**

The meeting adjourned at 1:45 p.m.

UST STATISTICAL SUMMARY
June 1, 2017 -- May 31, 2018

PROGRAM

	June	July	August	September	October	November	December	January	February	March	April	May	(+/-) OR Total
Regulated Tanks	4,046	4,054	4,059	4,063	4,062	4,050	4,054	4,047	4,055	4,061	4,064	4,066	**20**
Tanks with Certificate of Compliance	3,965	3,964	3,959	3,953	3,954	3,957	3,969	3,968	3,969	3,968	3,976	3,976	**11**
Tanks without COC	81	90	100	110	108	93	85	79	86	93	88	90	**9**
Cumulative Facilitlies with Registered A Operators	1,307	1,305	1,301	1,300	1,307	1,305	1,306	1,304	1,307	1,307	1,305	1,264	**94.61%**
Cumulative Facilitlies with Registered B Operators	1,310	1,308	1,316	1,302	1,307	1,305	1,306	1,305	1,308	1,308	1,306	1,306	**97.75%**
New LUST Sites	11	7	7	3	6	13	8	10	6	8	1	7	**87**
Closed LUST Sites	13	8	10	4	3	18	13	11	15	8	5	13	**121**
Cumulative Closed LUST Sites	5016	5025	5031	5036	5045	5060	5072	5087	5100	5106	5110	5125	**109**

FINANCIAL

	June	July	August	September	October	November	December	January	February	March	April	May	(+/-)
Tanks on PST Fund	2,735	2,733	2,728	2,722	2,718	2,708	2,707	2,708	2,708	2,706	2,705	2,698	**(37)**
PST Claims (Cumulative)	672	670	670	671	674	674	676	677	680	686	687	686	**14**
Equity Balance	-$8,573,569	-$8,364,249	-$8,817,188	-$9,466,602	-$12,442,135	-$13,385,166	-$13,951,499	-$14,290,860	-$14,288,779	-$13,656,255	-$14,076,436	-$14,562,872	**($5,989,303)**
Cash Balance	$16,235,085	$16,444,405	$15,991,466	$15,342,052	$16,002,761	$15,059,729	$14,493,396	$14,154,036	$14,156,117	$14,788,641	$14,368,460	$13,882,024	**($2,353,061)**
Loans	0	1	0	0	0	0	0	0	0	0	0	1	**1**
Cumulative Loans	111	112	112	112	112	112	112	112	112	112	112	113	**2**
Cumulative Amount	$4,069,774	$4,079,887	$4,079,887	$4,079,887	$4,079,887	$4,079,887	$4,079,887	$4,079,887	$4,079,887	$4,079,887	$4,079,887	$4,229,887	**$160,113**
Defaults/Amount	0	0	0	0	0	0	0	1	1	1	1	1	**1**

	June	July	August	September	October	November	December	January	February	March	April	May	TOTAL
Speed Memos	45	42	20	34	54	33	18	12	22	17	28	51	**376**
Compliance Letters	3	6	2	2	1	8	6	4	4	6	1	1	**44**
Notice of Intent to Revoke	0	0	0	0	0	0	0	0	0	0	0	0	**0**
Orders	0	0	0	0	1	2	0	0	0	0	1	0	**4**

Waste Management and Radiation Control Board
Executive Summary
Final Adoption
Amendments to Radiation Control Rules
R313-37, Physical Protection of Category 1 and Category 2
Quantities of Radioactive Material
July 12, 2018

What is the issue before the Board?	Final Board approval to adopt changes to R313-37, *Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material*, of the radiation control rules to incorporate federal regulatory changes promulgated by the Nuclear Regulatory Commission (NRC) and published in the *Federal Register* on September 30, 2014 (79 FR 58664) and August 3, 2015 (80 FR 45841).
What is the historical background or context for this issue?	At the Board meeting on April 12, 2018, the Board approved the proposed changes to R313-37 to be filed with the Office of Administrative Rules for publication in the *Utah State Bulletin*. The proposed changes were published in the May 1, 2018 issue of the *Bulletin* (Vol. 2018, No. 9). The pertinent pages of this issue of the *Bulletin* follow this Executive Summary. A public comment period began on May 1, 2018 and concluded on June 1, 2018. No comments were received by the Division. On September 30, 2014, the NRC amended the federal radioactive materials regulations to address security-related information requirements for large irradiators and manufacturers, distributors, transporters of category 1 and category 2 quantities of radioactive materials. On August 3, 2015, the NRC made various technical corrections to the federal radioactive materials regulations, including a correction to a reference in the federal regulations for the physical protection of category 1 and category 2 quantities of radioactive materials. However, based on the compatibility designations, the majority of NRC's revisions are not required for Utah, as an Agreement State, to adopt. Because R313-37 incorporates by reference 10 CFR Part 37, updating the date of the incorporation by reference from 2014 to 2017 results in incorporating the changes published by the NRC on September 30, 2014 and August 3, 2015. Consequently, only the change to the date of the incorporation by reference in R313-37-3 is necessary in order to maintain regulatory compatibility with NRC rules as an Agreement State with the NRC.

DSHW-2018-005801
Attachment: DSHW-2018-005802

What is the governing statutory or regulatory citation?	The Board is authorized under Subsection 19-3-104(4)(b) to make rules to meet the requirements of federal law and maintain primacy of the radioactive materials program from the federal government and under Subsection 19-6-104(1) to make rules necessary to implement the Radiation Control Act. The proposed rule changes also meet existing DEQ and state rulemaking procedures.
Is Board action required?	Yes. Board approval is needed for final adoption of the rule changes to R313-37, as published in the May 1, 2018 issue of the *Utah State Bulletin* and to set an effective date of July 13, 2018.
What is the Division Director's recommendation?	The Director recommends that the Board approve final adoption of the rule change to R313-37, as published in the May 1, 2018 issue of the *Utah State Bulletin* and set an effective date of July 13, 2018.
Where can more information be obtained?	For questions or additional information, please contact Rusty Lundberg (801) 536-4257, rlundberg@utah.gov or Tom Ball (801) 536-0251, tball@utah.gov.

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed April 03, 2018, 12:00 a.m. through April 16, 2018, 11:59 p.m.

Number 2018-9
May 01, 2018

Nancy L. Lancaster, Managing Editor

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

The Portable Document Format (PDF) version of the *Bulletin* is the official version. The PDF version of this issue is available at https://www.rules.utah.gov/. Any discrepancy between the PDF version and other versions will be resolved in favor of the PDF version.

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3003. Additional rulemaking information and electronic versions of all administrative rule publications are available at https://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 https://www.rules.utah.gov/ for additional information.

Office of Administrative Rules, Salt Lake City 84114

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Environmental Quality, Waste Management and Radiation Control, Radiation
R313-37-3
Clarifications or Exceptions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 42798
FILED: 04/13/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed change to Section R313-37-3 is made in order to meet Utah's agreement with the U.S. Nuclear Regulatory Commission (NRC), as an Agreement State, to maintain regulatory compatibility with the corresponding federal radioactive materials regulations. This proposed change to Section R313-37-3 updates the date of the incorporation of selected sections of 10 CFR Part 37 in order to adopt federal regulatory changes made by the U.S. NRC to the requirements related to the physical protection of certain (Category 1 and Category 2) radioactive material. This proposed change incorporates corresponding revisions made by the U.S. NRC in a direct final rule published in the Federal Register on 09/30/2014 (79 FR 58664) under the title of Distribution of Safeguards Information - Modified Handling Categorization; Change for Materials Facilities and a final rule published on 08/03/2015 (79 FR 45841) under the title of Miscellaneous Corrections.

SUMMARY OF THE RULE OR CHANGE: On 09/30/2014, the NRC amended the federal radioactive materials regulations in 10 CFR Part 37 to address security-related information requirements for large irradiators and manufacturers, distributors, and transporters of Category 1 and Category 2 quantities of radioactive materials. Additionally, on 08/03/2015 the NRC made various technical corrections to the federal radioactive materials regulations, including a correction to a reference in 10 CFR Part 37 (specifically paragraph 37.23(b)(2)). However, based on the compatibility designations, the majority of NRC's revisions published in the noted Federal Registers are not required for an Agreement State, such as Utah, to adopt into the state radioactive materials rules. This proposed rule change incorporates those revisions associated with maintaining regulatory compatibility with the federal radioactive materials regulations. Because Rule R313-37 incorporates by reference 10 CFR Part 37, updating the date of the incorporation by reference from 2014 to 2017 results in incorporating the changes published by the NRC on 09/30/2014 and 08/03/2015. Consequently, only the change to the date of the incorporation by reference in Section R313-37-3 is necessary in order to maintain regulatory compatibility with NRC rules as an Agreement State with the NRC.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-3-104 and Section 19-6-104

MATERIALS INCORPORATED BY REFERENCE:

- ♦ Updates 10 CFR Part 37, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material, published by U.S. Printing Office, 01/01/2017

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: An entity of state government that may have a radioactive material license and be subject to the security-related information requirements under Rule R313-37 (which incorporates by reference selected sections of 10 CFR Part 37) may realize an approximate annual savings of $302, as determined by the NRC. (Regulatory Analysis for Direct Final Rule: Safeguards Information – Modified Handling Categorization Change for Materials Facilities, December 2012. Note: As a technical correction, a regulatory analysis was not necessary for the federal regulatory changes to 10 CFR Part 37 that were published by the NRC on 08/03/2015.)

♦ LOCAL GOVERNMENTS: No local governments have a radioactive materials license subject to the security and protection requirements of Rule R313-37.

♦ SMALL BUSINESSES: A small business that may have a radioactive material license and be subject to the security-related information requirements under Rule R313-37 (which incorporates by reference selected sections of 10 CFR Part 37) may realize an approximate annual savings of $302, as determined by the NRC. (Regulatory Analysis for Direct Final Rule: Safeguards Information – Modified Handling Categorization Change for Materials Facilities, December 2012. Note: As a technical correction, a regulatory analysis was not necessary for the federal regulatory changes to 10 CFR Part 37 that were published by the NRC on 08/03/2015.)

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: A person who may have a radioactive material license and be

subject to the security-related information requirements under Rule R313-37 (which incorporates by reference selected sections of 10 CFR Part 37) may realize an approximate annual savings of $302, as determined by the NRC. (Regulatory Analysis for Direct Final Rule: Safeguards Information – Modified Handling Categorization Change for Materials Facilities, December 2012. Note: As a technical correction, a regulatory analysis was not necessary for the federal regulatory changes to 10 CFR Part 37 that were published by the NRC on 08/03/2015.)

COMPLIANCE COSTS FOR AFFECTED PERSONS: A radioactive material licensee who is subject to the security-related information requirements under Rule R313-37 (which incorporates by reference selected sections of 10 CFR Part 37) may realize an approximate annual savings of $302, as determined by the NRC. (Regulatory Analysis for Direct Final Rule: Safeguards Information – Modified Handling Categorization Change for Materials Facilities, December 2012. Note: As a technical correction, a regulatory analysis was not necessary for the federal regulatory changes to 10 CFR Part 37 that were published by the NRC on 08/03/2015.)

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: A radioactive material licensee who is subject to the security-related information requirements under Rule R313-37 (which incorporates by reference selected sections of 10 CFR Part 37) may realize an approximate annual savings of $302, as determined by the NRC. (Regulatory Analysis for Direct Final Rule: Safeguards Information – Modified Handling Categorization Change for Materials Facilities, December 2012. Note: As a technical correction, a regulatory analysis was not necessary for the federal regulatory changes to 10 CFR Part 37 that were published by the NRC on 08/03/2015.)

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

ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION CONTROL, RADIATION
SECOND FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-4880
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-536-0222, or by Internet E-mail at rlundberg@utah.gov
♦ Thomas Ball by phone at 801-536-0251, or by Internet E-mail at tball@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/01/2018

THIS RULE MAY BECOME EFFECTIVE ON: 07/13/2018

AUTHORIZED BY: Scott Anderson, Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	**FY 2018**	**FY 2019**	**FY 2020**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	**$0**	**$0**	**$0**

***This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described above. Inestimable impacts for Non-Small Businesses are described below.**

Appendix 2: Regulatory Impact to Non-Small Businesses

A radioactive material licensee who is subject to the security-related information requirements under Rule R313-37 (which incorporates by reference selected sections of 10 CFR Part 37) may realize an approximate annual savings of $302, as determined by the U.S. Nuclear Regulatory Commission (NRC). (Regulatory Analysis for Direct Final Rule: Safeguards Information - Modified Handling Categorization Change for Materials Facilities, December 2012. Note: As a technical correction, a regulatory analysis was not necessary for the federal regulatory changes to 10 CFR Part 37 that were published by the NRC on 08/03/2015.) There are 17 licensees in the state of Utah who could be affected by this regulatory change resulting in an annual benefit to those licensees of $5,134. For security reasons the categories (state

government, local governments, small businesses, etc.) of these licensees cannot be provided in this analysis.

The Executive Director of the Department of Environmental Quality, Alan Matheson, has reviewed and approved this fiscal analysis.

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.
R313-37. Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material.
R313-37-3. Clarifications or Exceptions.

For purposes of R313-37, 10 CFR 37.5, 37.11(c), 37.21 through 37.43(d)(8), 37.45 through 37.103, and Appendix A to 10 CFR 37 ([~~2014~~]2017), are incorporated by reference with the following clarifications or exceptions:

(1) The exclusion of the following:

(a) In 10 CFR 37.5, exclude definitions for "Act", "Agreement State", "Becquerel", "Byproduct Material", "Commission", "Curie", "Government Agency", "License", "License issuing authority", "Lost or missing licensed material", "Person", "State", and "United States";

(b) In 10 CFR 37.77(a)(1), exclude the wording "Notifications to the NRC must be to the NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The notification to the NRC may be made by email to RAMQC_SHIPMENTS@nrc.gov or by fax to 301-816-5151."; and

(c) In 10 CFR 37.81(g), exclude the wording "In addition, the licensee shall provide one copy of the written report addressed to the Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.".

(2) The substitution of the following wording:

(a) "Utah Radiation Control Rule" for references to:

(i) "Commission regulation" in 10 CFR 37.101; and

(ii) "regulation" in 10 CFR 37.103;

(b) "Utah Radiation Control Rules" for reference to:

(i) "regulations and laws" in 10 CFR 37.31(d);

(ii) "Commission requirements" in 10 CFR 37.43(a)(3) and 37.43(c)(1)(ii); and

(iii) "regulations in this part" in 10 CFR 37.103;

(c) "Director" for references to:

(i) "appropriate NRC regional office listed in Section 30.6(a)(2) of this Chapter" in 10 CFR 37.45(b);

(ii) "Commission" in 10 CFR 37.103;

(iii) "NRC" in 10 CFR 37.31(d), 37.43(c)(3)(iii), 37.57(a) (second instance of NRC) and (c), 37.77, and 37.77(a)(1) (first instance) and (3), and 37.81(g);

(iv) "NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 29555-0001" in 10 CFR 37.77(c)(2) and 37.77(d);

(v) "NRC's Director of Nuclear Security, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 29555-0001" in 10 CFR 37.77(c)(1) (second instance);

(vi) "NRC's Operations Center" in 10 CFR 37.81(a) and (b);

(vii) "NRC's Operations Center (301-816-5100)" in 10 CFR 37.57(a) and (b) and 37.81(a) through (f);

(viii) "NRC regional office listed in section 30.6(a)(2) of this chapter" in 10 CFR 37.41.(a)(3); and

(ix) "NRC regional office specified in section 30.6 of this chapter" in 10 CFR 37.41(a)(3);

(d) "Director, the U.S. Nuclear Regulatory Commission, or an Agreement State" for references to "Commission or an Agreement State" in 10 CFR 37.71 and 37.71(a) and (b);

(e) "U.S. Nuclear Regulatory Commission's Security Orders or the legally binding requirement issued by Agreement States" for references to "Security Orders" in 10 CFR 37.21(a)(3), 37.25(b)(2), and 37.41(a)(3);

(f) "mail, hand delivery, or electronic submission" for references to "an appropriate method listed in section 37.7" in 10 CFR 37.57(c) and 37.81(g); and

(g) "shall, by mail, hand delivery, or electronic submission," for reference to "shall use an appropriate method listed in section 37.7 to" in 10 CFR 37.27(c).

(3) The substitution of the following rule references:

(a) "R313-19-41(4)" for reference to "section 30.41(d) of this chapter." In 10 CFR 37.71;

(b) "R313-19-100 (incorporating 10 CFR 71.97 by reference)" for reference to "section 71.97 of this chapter" in 10 CFR 37.73(b);

(c) "R313-19-100 (incorporating 10 CFR 71.97(b) by reference)" for reference to "section 71.97(b) of this chapter" in 10 CFR 37.73(b); and

(d) "10 CFR 73" for references to "part 73 of this chapter" in 10 CFR 37.21(c)(4), 37.25(b)2), and 37.27(a)(4).

KEY: radioactive materials, security, fingerprinting, transportation
Date of Enactment or Last Substantive Amendment: [~~June 29, 2015~~]2018
Notice of Continuation: January 17, 2017
Authorizing, and Implemented or Interpreted Law: 19-3-104; [~~19-6-107~~]19-6-104

Waste Management and Radiation Control Board
Executive Summary
Proposed Amendments to Used Oil Rules
R315-15-16, Grants
July 12, 2018

What is the issue before the Board?	Board approval to initiate formal rulemaking and receive public comment on proposed changes to R315-15-16, *Grants*, of the used oil rules.
What is the historical background or context for this issue?	Section R315-15-16 implements the provisions of Section 19-6-720 of the Used Oil Management Act regarding used oil grants that are used for establishing and supporting do-it-yourselfer (DIYer) used oil collection centers. The proposed changes to the used oil grant section of the used oil rules provide additional clarity and more detailed direction to the grant application, issuance, implementation and reimbursement processes. The proposed changes result in greater alignment between the rules and the actual grant application package and implementation procedures and process. Additionally, in January, 2018, the Division provided the Legislature's Administrative Rules Review Committee with a draft of the proposed changes in response to the Committee's action that rulemaking be undertaken to fully address the used oil grant application and reimbursement processes for DIYer used oil collection centers. In Subsection 16.1, the list of authorized uses of the grant funds is expanded to match the list in 19-6-720 of the Used Oil Management Act. The following ten, new subsections are proposed to be added: 16.4 Used Oil Transportation Costs from Used Oil Collection Centers – specifies the requirements to qualify for reimbursement of transportation costs from certain DIYer used oil collection centers from rural locations; 16.5 Funding – matching funds from grant applicants are not required, stipulates certain grant funding actions by the Director, requires submittal of bids to be paid by grant; 16.6 Application Contents – describes the content of the grant application form; 16.7 Application Submission – requires submittal of an original grant application to the Director; 16.8 Audit Requirements – grant recipients may be subject to a desk or field audit, requires grant recipient to maintain records and documents associated with grant expenditures; 16.9 Administrative Procedures – requires submittal of a final report and identifies the report contents; 16.10 Failure to Comply – describes actions the Director may take if the grantee fails to with grant agreement; 16.11 Grant Payments – specifies grant payment submittals and procedures; 16.12 Release of Funds – specifies Director actions to approve grant payments and forward to the Division of Finance; and 16.13 Grant Closeout – specifies requirements for grant closeout by the Director and for grantee record retention and availability.

DSHW-2018-006139
Attachments: DSHW-2018-006140
DSHW-2018-006141

	Following this summary, the following documents are provided: • Draft rule analysis form • Proposed rule changes to R315-15-16
What is the governing statutory or regulatory citation?	The Board is authorized under Subsection 19-6-704 to make rules to rules necessary to implement the Used Oil Management Act. The proposed rule changes also meet existing DEQ and state rulemaking procedures.
Is Board action required?	Yes. Board action is required to publish the proposed rule changes in the *Utah State Bulletin* and start a 30-day public comment period.
What is the Division Director's recommendation?	The Director recommends that the Board authorize the publication of the proposed used oil rule changes in the *Utah State Bulletin* and commence a 30-day public comment period. With the Board's approval, it is anticipated that the proposed rule changes will be published in the August 1, 2018 issue of the *Utah State Bulletin* with the public comment period beginning on August 1, 2018 and ending on August 31, 2018.
Where can more information be obtained?	For questions or additional information, please contact Rusty Lundberg (801) 536-4257, rlundberg@utah.gov or Tom Ball (801) 536-0251, tball@utah.gov.

DSHW-2018-006139
Attachments: DSHW-2018-006140
DSHW-2018-006141

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	$500 to $3,000 per grant	$500 to $3,000 per grant	$500 to $3,000 per grant
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$**500 to $3,000 per grant	**$**500 to $3,000 per grant	**$**500 to $3,000 per grant
Fiscal Benefits			
State Government	$500 to $3,000 per grant	$500 to $3,000 per grant	$500 to $3,000 per grant
Local Government	$500 to $3,000 per grant	$500 to $3,000 per grant	$500 to $3,000 per grant
Small Businesses	$500 to $3,000 per grant	$500 to $3,000 per grant	$500 to $3,000 per grant
Non-Small Businesses	$500 to $3,000 per grant	$500 to $3,000 per grant	$500 to $3,000 per grant
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$1,500 to $9,000 per grant**	**$1,500 to $9,000 per grant**	**$1,500 to $9,000 per grant**
Net Fiscal Benefits:	$1,000 to $6,000 per grant	$1,000 to $6,000 per grant	$1,000 to $6,000 per grant

***This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described above. Inestimable impacts for Non-Small Businesses are described below.**

Appendix 2: Regulatory Impact to Non-Small Businesses

There is currently a single large company with an NAIC code of 452311 with multiple locations throughout the state that participates in the DIYer used oil collection center program. This non-small business has not ever requested or applied for a used oil grant. Although they have not applied for a grant in the past, it is assumed they may choose to apply for and receive a grant within the same range as other previous grant recipients (i.e., from $500 to $3,000). Because of the variability of a

given grant request, total costs are inestimable and therefore cannot be quantified.

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-15. Standards for the Management of Used Oil.
R315-15-16. Grants.

16.1 STATUTORY AUTHORITY.

Utah Code Annotated 19-6-720 authorizes the Division of Waste Management and Radiation Control to award grants, as funds are available, for the following:

(a) Used oil collection centers; [~~and~~]

(b) Used oil collection events;

(c) Curbside used oil collection programs, including costs of retrofitting trucks, curbside containers, and other costs of collection programs[~~.~~]; and

(d) Public education programs and outreach.

16.2 ELIGIBILITY AND APPLICATION.

(a) The establishment of new or the enhancement of existing used oil collection centers or curbside collection programs that address the proper management of used lubricating oil may be eligible for grant assistance.

(b) A Used Oil Recycling Block Grant Application Package, made available by the Director, shall be completed and submitted to the Director for consideration.

16.3 LIMITATIONS.

(a) The grantee [~~must~~]shall commit to perform the permitted used oil handling activity for a minimum of two years.

(b) If the two-year commitment is not fulfilled, the grantee may be required to repay all or a portion of the grant amount.

16.4 USED OIL TRANSPORTATION COSTS FROM USED OIL COLLECTION CENTERS

(a) Grant funds may be used for costs for a permitted used oil transporter to collect and transport used oil from a used oil collection center (UOCC) located within a rural area that meets the following criteria:

(1) accepts only:

(i) DIYER used oil, Type A UOCC; or

(ii) both DIYER and farmer used oil, Type B UOCC

(2) is located in a Class 4 municipality, as described in Section 10-2-301, or in an area with a population less than that of a Class 4 municipality;

(3) stays active with the Used Oil Program for at least two years after receiving the grant or the grant funds shall be reimbursed;

(4) completes a grant application that is signed by the owner of the collection center; and

(5) obtains a minimum of one transportation bid from a permitted used oil transporter in accordance with Section R33-5-104.

(b) Grant funds may be used for costs for a permitted used oil transporter to collect and transport used oil from a Type C Used Oil Collection Center if the UOCC meets the following

criteria:
(1) Is a Utah municipal landfill that is registered as a Type C used oil collection center with the Division of Waste Management and Radiation Control;
(2) Only allows small businesses that qualify as a Very Small Quantity Generator (VSQGs) of hazardous waste, to deliver used oil in a volume of less than 55 gallons per visit per day; and
(3) One transportation bid from a permitted used oil transporter is submitted for requests less than $1,000.00, or three bids if over $1,000.00.
(c) Grant funds may be considered for costs for a permitted used oil transporter to collect and transport used oil from a Used Oil Collection Center that does not meet the criteria outlined in Subsections R315-15-16.4(a) or (b)on a case-by-case basis.
16.5 FUNDING
(a) An applicant is not required to provide matching funds.
(b) The Director may withhold 10 percent of the funds from a grant recipient until the grant is completed and the final documentation submitted.
(c) The Director may approve a request for advance payment based upon justification offered by the applicant.
(d) A grant application shall include all bids for expenses to be paid by the grant in accordance with Rule R33-5.
16.6 APPLICATION CONTENTS
(a) A grant application form is part of the grant application package available from the Director and consists of the following sections:
(1) Applicant Information. The applicant shall include basic information regarding the applicant and the individual or entity responsible for the project implementation.
(2) Used Oil Project Request for Funding. The project funding request shall include the following:
(i) Background. The background information shall include a description of:
(A) The absence or existence of used oil collection opportunities in the area to be served by the used oil project; and
(B) The population of the proposed project area.
(ii) Project Description and Goals; and
(iii) Funding Sources.
(3) Project Budget. The project budget may include a cost breakdown of the following categories:
(i) Used oil transportation and disposal expenses.
(ii) Contractor or consultant expenses.
(iii) Construction expenses.
(iv) Equipment.
(v) Materials and supplies.
(vi) Public education and outreach.
(4) Eligibility summary. The applicant shall include, as applicable, the following information for each:
(i) Used oil collection center:
(A) Name of the facility;

(B) Physical address; and
(C) Phone number; and
(ii) Curbside collection program:
(A) Name, address, and phone number of the program operator;
(B) Number of residents served by the program; and
(C) Collection schedule
(5) Certification Statement and Signature.
16.7 APPLICATION SUBMISSION
Applicants shall submit an original application using the application package of Subsection R315-15-16.2(b) to the Director.
16.8 AUDIT REQUIREMENTS
(a) A grant may be subject to a desk or field audit.
(b) The grantee is responsible for maintaining source documents substantiating the expenditures claimed and shall make them available at the time of an audit.
(c) Records relating to the implemented program may include:
(1) Expenditure ledger;
(2) Paid warrants;
(3) Contracts;
(4) Change orders;
(5) Invoices; and
(6) Cancelled checks.
(c) Records shall be maintained for a period of three years from the date of final payment by the State.
16.9 ADMINISTRATIVE PROCEDURES
(a) A grantee shall submit a final report within one month of completion of the project or by a later date specified by the Director. The report shall include the following information:
(1) A description of the completed used oil collection program, including any amendments;
(2) The estimated number of participants in the program;
(3) A description of the program's public education efforts;
(4) A description of measures taken to continue the program; and
(5) A complete and final itemization of how grant funds were expended.
16.10 FAILURE TO COMPLY
Failure to comply with the agreement requirements may result in the Director terminating, suspending, or requiring the grantee to repay some or all of the grant.
16.11 GRANT PAYMENTS
(a) General Requirements.
(1) The Director shall reimburse the grantee for performing only those services as specified in the grant application. Any deviations from the use of funds specified in the application shall be approved by the Director before an expenditure for that item is made.
(2) Payment shall be made to the grantee only. It shall be the responsibility of the grantee to pay all contractors and subcontractors for purchased goods and services.

(3) The Director may withhold and retain ten percent of the grant award until the grant is completed and the final documentation submitted.

(4) Requests for advance payment shall be submitted in writing to the Director and demonstrate that the grantee will incur a specific expenditure(s) prior to or shortly after payment for the State. Suggested documentation includes:

(i) Purchase orders; and

(ii) Invoices.

(5) The Director may partially or fully deny advance payment requests.

(b) Submittal of payment requests.

(1) All payment requests shall be submitted using the completed Payment Request Form of the grant application package of Subsection R315-15-16.2(b) and signed by the individual authorized in the grant application.

(2) Payment requests shall include an itemization of all expenses by budget expense type.

(3) Payment requests shall include copies of documents supporting the claimed expenses, such as bids, receipts, canceled checks, and sole source justifications. Supporting documents shall contain sufficient information to establish purchases made or costs incurred. At a minimum, the documentation should include the name, amount, and date of purchase for the expense.

(4) All payment requests shall be submitted to the Director.

16.12 RELEASE OF FUNDS

(a) The Director shall review and approve all payment requests before payment is made. The grantee shall meet the following conditions before the Director shall process a payment request during the project term:

(1) The grantee has submitted any required project reports and the Director has deemed them to be satisfactory;

(2) The Director has received copies of applicable contracts and/or subcontracts; and

(3) The grantee has received applicable permits or permit waivers from governmental agencies and the Director has received copies of such documentation.

(b) After Director approval, payment requests shall be forwarded to the Division of Finance for issuance of pay warrants.

(c) If ten percent of the total grant was previously withheld, the Director shall release the remaining ten percent upon receipt and acceptance of the final report and final payment request.

16.13 GRANT CLOSEOUT

(a) The Director shall close out the grant when it is determined that all applicable administrative actions and all required work of the grant have been completed.

(b) Upon receipt of the final report, the Director shall ensure all work has been completed and all unexpended funds are refunded to the State.

(c) The grantee's obligations under the Terms and Conditions of the grant application package of Subsection R315-

15-16.2(b) shall be deemed discharged only upon acceptance of the final report by the Director.

(d) The grantee shall retain all financial and project records, supporting documents, statistical records and other records of projects funded by this program. The Director, or his authorized representative, shall have access to all related records during progress of the project and for at least three years after completion.

KEY: hazardous waste, used oil
Date of Enactment or Last Substantive Amendment: [~~February 13, 2017~~]2018
Notice of Continuation: March 10, 2016
Authorizing, and Implemented or Interpreted Law: 19-6-704, 19-6-720

State of Utah
Administrative Rule Analysis

NOTICE OF PROPOSED RULE

* The agency identified below in box 1 provides notice of proposed rule change pursuant to Utah Code Section 63G-3-301.
* Please address questions regarding information on this notice to the agency.
* The full text of all rule filings is published in the Utah State Bulletin unless excluded because of space constraints.
* The full text of all rule filings may also be inspected at the Office of Administrative Rules.

DAR file no:		Date filed:	
State Admin Rule Filing Id:		Time filed:	

		Agency No.		Rule No.		Section No.
Utah Admin. Code Ref (R no.):	**R**	315	-	15		16
Changed to Admin. Code Ref. (R no.):	**R**		-		-	

1.

Agency:	Waste Management and Radiation Control
Room no.:	Second Floor
Building:	Multi-Agency State Office Building (MASOB)
Street address 1:	195 North 1950 West
Street address 2:	
City, state, zip:	Salt Lake City, UT, 84116
Mailing address 1:	PO Box 144880
Mailing address 2:	
City, state, zip:	Salt Lake City, UT, 84114-4880

Contact person(s):

Name:	**Phone:**	**Fax:**	**E-mail:**
Rusty Lundberg	801-536-4257	801-536-0222	rlundberg@utah.gov
Tom Ball	801-536-0251	801-536-0222	tball@utah.gov

(Interested persons may inspect this filing at the above address or at the Division of Administrative Rules during business hours)

2. **Title of rule or section** (catchline)**:**

Grants

3. **Type of notice:**

New ___; Amendment _X_; Repeal ___; Repeal and Reenact ___

4. **Purpose of the rule or reason for the change:**

Section R315-15-16 implements the provisions of Section 19-6-720 of the Used Oil Management Act regarding used oil grants that are used for establishing and supporting do-it-yourselfer (DIYer) used oil collection centers. The proposed changes to the used oil grant section of the used oil rules provide additional clarity and more detailed direction to the grant application, issuance, implementation, and reimbursement processes. The proposed changes result in greater alignment between the rules and the actual grant application package and implementation procedures and process. Additionally, in January, 2018, the Division provided the Administrative Rules Review Committee with a draft of the proposed changes in response to the Committee's action that rulemaking be undertaken to fully address the used oil grant application and reimbursement processes for DIYer used oil collection centers.

5. **This change is a response to comments from the Administrative Rules Review Committee.**

No ___; Yes _X_

6.	**Summary of the rule or change:**
	In Subsection 16.1, the list of authorized uses of the grant funds is expanded to match the list in 19-6-720 of the Used Oil Management Act. The following ten, new subsections are proposed to be added: 16.4 Used Oil Transportation Costs from Used Oil Collection Centers – specifies the requirements to qualify for reimbursement of transportation costs from certain DIYer used oil collection centers from rural locations; 16.5 Funding – matching funds from grant applicants are not required, stipulates certain grant funding actions by the Director, requires submittal of bids to be paid by grant; 16.6 Application Contents – describes the content of the grant application form; 16.7 Application Submission – requires submittal of an original grant application to the Director; 16.8 Audit Requirements – grant recipients may be subject to a desk or field audit, requires grant recipient to maintain records and documents associated with grant expenditures; 16.9 Administrative Procedures – requires submittal of a final report and identifies the report contents; 16.10 Failure to Comply – describes actions the Director may take if the grantee fails to with grant agreement; 16.11 Grant Payments – specifies grant payment submittals and procedures; 16.12 Release of Funds – specifies Director actions to approve grant payments and forward to the Division of Finance; and 16.13 Grant Closeout – specifies requirements for grant closeout by the Director and for grantee record retention and availability.
7.	**Aggregate anticipated cost or savings to:**
	A) State budget:
	Affected: No ___; Yes _X_
	Grants are paid from the Used Oil Collection Administration Account established in Section 19-6-719 of the Used Oil Management Act. A used oil collection center grant can vary since the amount of the grant is based on an individual grantee's application and the nature and scope of the specific project(s). Because of the variability in a given grant request, total costs cannot be quantified, but past grants to entities funded from the state budget, such as higher education institutions and school districts, have ranged from $500 to $3,000.
	B) Local government:
	Affected: No ___; Yes _X_
	Local health departments and some local school districts have received several grants in the past that have ranged from $500 to $3,000. Because of the variability in a given grant request, total costs cannot be quantified.
	C) Small businesses ("small business" means a business employing fewer than 50 persons)**:**
	Affected: No ___; Yes _X_
	Small businesses that serve as a used oil collection can apply for a grant and in the past have received grants that have ranged from $500 to $3,000. Because of the variability in a given grant request, total costs cannot be quantified.
	D) Persons other than small businesses, businesses, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency)**:**
	Affected: No _X_; Yes ___
	Big box retailers that typically provide auto maintenance services to the public and serve as a used oil collection center can apply for a grant. Although none have applied for a grant in the past, it is assumed they could receive a grant within the same range as other previous grant recipients (i.e., from $500 to $3,000). Because of the variability in a given grant request, total costs cannot be quantified.
8.	**Compliance costs for affected persons:**
	Because grants are voluntary there are no actual compliance costs nor does a grant require matching funds. However, other funds may be used in combination with the grant in order to expand the proposed grant-related project. Any costs incurred by a grantee are typically associated with the application preparation, grant expenditure verification, and completion report and vary based on the specific grant activity.
9.	**A) Comments by the department head on the fiscal impact the rule may have on businesses:**
	A critical component of a successful used oil recycling program is establishing collection centers convenient to the public, particularly for a do-it-yourselfer (DIYer) who changes their oil from personal vehicles or home equipment. This is especially true for rural areas of Utah. In support of establishing DIYer used oil collection centers, businesses and governmental entities can apply for a grant. In the past, grants have ranged from $500 to $3,000. Because grants are voluntary there are no compliance costs. Additionally, grants do not require matching funds, any costs incurred by a grantee are typically associated with the application preparation, grant expenditure verification, and completion report and vary based on the specific grant activity.
	B) Name and title of department head commenting on the fiscal impacts:
	Alan Matheson, Executive Director

10. **This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.**
State code or constitution citations (required) (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) **:**

19-6-704	19-6-720

11. **This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Division of Administrative Rules; *if none, leave blank*)**:**

	First Incorporation	**Second Incorporation**
Official Title of Materials Incorporated (from title page)		
Publisher		
Date Issued		
Issue, or version		
ISBN Number (optional)		
ISSN Number (optional)		
Cost of Incorporated Reference		
Action: Adds, updates, or removes		

(If this rule incorporates more than two items by reference, please attach additional pages)

12. **The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy)**:**	08/31/2018

B) A public hearing (optional) will be held:

On (mm/dd/yyyy)**:**	**At** (hh:mm AM/PM)**:**	**At** (place)**:**

13. **This rule change may become effective on** (mm/dd/yyyy)**:** 09/14/2018

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 12(A) above, the agency must submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

14. **Indexing information -- keywords** (maximum of four, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid"); may not include the name of the agency**:**

hazardous waste	used oil

15. **Attach an RTF document containing the text of this rule change** (filename)**:**

To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin*, and delaying the first possible effective date.

AGENCY AUTHORIZATION			
Agency head or designee, and title:	Scott Anderson, Director	**Date** (mm/dd/yyyy)**:**	07/05/2018

DSHW-2018-006141

Waste Management and Radiation Control Board
Executive Summary
Public Comment - Proposed Rule Changes
UAC R315-260, Hazardous Waste Management System
UAC R315-261, General Requirements –
Identification and Listing of Hazardous Waste
July 12, 2018

What is the issue before the Board?	Approval from the Board to proceed with formal rulemaking and public comment by filing with the Office of Administrative Rules and publishing in the *Utah State Bulletin* proposed changes to UAC R315-260 and R315-261 to incorporate federal regulatory changes promulgated by the Environmental Protection Agency (EPA) and published in the Federal Register on May 30, 2018 (83 FR 24664).
What is the historical background or context for this issue?	In 2015, the EPA published final revisions to rules regulating the definition of solid waste that exclude certain hazardous secondary materials from regulation. The Board adopted these rules in January of 2016. The federal rules were challenged in court and the United States Court of Appeals for the District of Columbia Circuit on July 7, 2017, and on March 6, 2018, issued orders vacating certain provisions of the 2015 rule and reinstated corresponding provisions from a rule proposed in 2008. The proposed changes to UAC R315-260 and R315-261 follow this Executive Summary.
What is the governing statutory or regulatory citation?	The Board is authorized under Subsection 19-6-105(1)(c) to make rules governing generators and transporters of hazardous wastes and owners and operators of hazardous waste treatment, storage and disposal facilities. The Board is authorized under Subsection 19-6-104(3)(d) to meet the requirements of federal law related to solid and hazardous wastes to insure that the solid and hazardous wastes program provided for in this part is qualified to assume primacy from the federal government in control over solid and hazardous waste. The rule changes also meet existing DEQ and state rulemaking procedures.
Is Board action required?	Yes. Board approval is necessary to begin the formal rulemaking process by filing the appropriate documents with the Office of Administrative Rules for publishing the proposed rule changes in the *Utah State Bulletin* and conducting a public comment period.

DSHW-2018-005978
Attachment: DSHW-2018-005977

What is the Division Director's recommendation?	The Director recommends the Board approve formal rulemaking and public comment by publishing in the *Utah State Bulletin* the proposed changes to UAC R315-260 and R315-261.
Where can more information be obtained?	If you have any questions, please contact Tom Ball at (801) 536-0251, email at tball@utah.gov or Rusty Lundberg at (801) 536-4257, email at rlundberg@utah.gov.

NOTE: The Word version of this form is made available as a working document for the convenience of rule filing agencies. To file a rule, an agency must use the division's online rule filing application, eRules.

State of Utah
Administrative Rule Analysis

NOTICE OF PROPOSED RULE

* The agency identified below in box 1 provides notice of proposed rule change pursuant to Utah Code Section 63G-3-301.
* Please address questions regarding information on this notice to the agency.
* The full text of all rule filings is published in the Utah State Bulletin unless excluded because of space constraints.
* The full text of all rule filings may also be inspected at the Division of Administrative Rules.

DAR file no:		Date filed:	
State Admin Rule Filing Id:		Time filed:	

		Agency No.		Rule No.		Section No.
Utah Admin. Code Ref (R no.):	**R**	315	-	260	-	
Changed to Admin. Code Ref. (R no.):	**R**		-		-	

1.	**Agency:**	Waste Management and Radiation Control
	Room no.:	Second Floor
	Building:	MASOB
	Street address 1:	195 North 1950 West
	Street address 2:	
	City, state, zip:	Salt Lake City, Utah 84116
	Mailing address 1:	PO Box 144880
	Mailing address 2:	
	City, state, zip:	Salt Lake City, Utah 84114-4880
	Contact person(s):	

Name:	Phone:	Fax:	E-mail:
Tom Ball	801-536-0251	801-536-0222	tball@utah.gov
Rusty Lundberg	801-536-4257	801-536-0222	rlundberg@utah.gov

(Interested persons may inspect this filing at the above address or at the Division of Administrative Rules during business hours)

2. **Title of rule or section** (catchline)**:**

Hazardous Waste Management System

3. **Type of notice:**

New ___; Amendment _X__; Repeal ___; Repeal and Reenact ___

4. **Purpose of the rule or reason for the change:**

In 2015, the EPA published final revisions to rules regulating the definition of solid waste that exclude certain hazardous secondary materials from regulation. The State of Utah adopted these rules in January of 2016. The federal rules were challenged in court and the United States Court of Appeals for the District of Columbia Circuit on July 7, 2017, and amended on March 6, 2018, issued orders vacating certain provisions of the 2015 rule and reinstated corresponding provisions from a rule proposed in 2008. The proposed changes incorporate the revisions required by the court's orders.

5. **This change is a response to comments from the Administrative Rules Review Committee.**

No _X__; Yes ___

6. **Summary of the rule or change:**

	R315-260-30 is amended by removing R315-260-30(f) which allowed the Director to exclude from the definition of solid waste hazardous secondary materials that were transferred for reclamation at a verified reclamation facility. R315-260-31 is amended by removing R315-260-31(d) which contained the criteria for becoming a verified reclamation facility. R315-260-42 is amended by adding R315-260-42(a)(5) which requires reclaimers and intermediate facilities managing hazardous secondary materials to submit, along with other information, whether the reclaimer or intermediate facility has financial assurance. R315-260-43 is amended by removing R315-260-43(a)(4) which was one of the four mandatory factors used to determine if a facility's recycling is legitimate. R315-260-43(a) is amended to require facilities to meet three mandatory criteria in determining if their recycling is legitimate and to consider a fourth set of criteria which is added at R315-260-43(b).
7.	**Aggregate anticipated cost or savings to:**
	A) State budget:
	Affected: No _X__; Yes ___
	This rule change will not affect the state budget because no state governmental entity is a verified recycler of hazardous secondary materials and does not generate or recycle hazardous secondary materials.
	B) Local government:
	Affected: No _X__; Yes ___
	This rule change will not affect any local government budgets because no local governments are verified recyclers of hazardous secondary materials and do not generate or recycle hazardous secondary materials.
	C) Small businesses ("small business" means a business employing fewer than 50 persons)**:**
	Affected: No _X__; Yes ___
	It is anticipated that there will be no change in costs or savings to small businesses because there are no small businesses in the State of Utah that are registered as verified recyclers of hazardous secondary materials. Additionally, the change to the factors for determining the legitimacy of recycling operations for hazardous secondary materials simply replaces a mandatory factor with a factor to be considered but not required for the process to be considered legitimate.
	D) Persons other than small businesses, businesses, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency)**:**
	Affected: No _X__; Yes ___
	It is anticipated that there will be no change in costs or savings to persons other than small businesses, businesses or local governments because there are no such persons in the State of Utah that are registered as verified recyclers of hazardous secondary materials. Additionally, the change to the factors for determining the legitimacy of recycling operations for hazardous secondary materials simply replaces a mandatory factor with a factor to be considered but not required for the process to be considered legitimate.
8.	**Compliance costs for affected persons:**
	It is anticipated that there will be no additional compliance costs for affected persons associated with these rule amendments since they replace mandatory requirements with more discretionary considerations.
9.	**A) Comments by the department head on the fiscal impact the rule may have on businesses:**
	Since the rule was adopted in January of 2016 there have been no businesses in the State of Utah that have registered as verified recyclers. Only two businesses have notified that they are engaged in the recycling, either on-site or off-site, of hazardous secondary materials. It is not anticipated that these rule changes will have any fiscal impact on the operation of these facilities.
	B) Name and title of department head commenting on the fiscal impacts:
	Alan Matheson, Executive Director

10. **This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.**
State code or constitution citations (required) (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) **:**

19-6-104	
19-6-105	
19-6-106	

11. **This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Division of Administrative Rules; *if none, leave blank*)**:**

	First Incorporation	**Second Incorporation**
Official Title of Materials Incorporated (from title page)		
Publisher		
Date Issued		
Issue, or version		
ISBN Number (optional)		
ISSN Number (optional)		
Cost of Incorporated Reference		
Action: Adds, updates, or removes		

(If this rule incorporates more than two items by reference, please attach additional pages)

12. **The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy)**:**	

B) A public hearing (optional) will be held:

On (mm/dd/yyyy)**:**	**At** (hh:mm AM/PM)**:**	**At** (place)**:**

13. **This rule change may become effective on** (mm/dd/yyyy)**:**

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 12(A) above, the agency must submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

14. **Indexing information -- keywords** (maximum of four, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid"); may not include the name of the agency**:**

Hazardous waste	

15. **Attach an RTF document containing the text of this rule change** (filename)**:**

To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin*, and delaying the first possible effective date.

AGENCY AUTHORIZATION

Agency head or designee, and title:		**Date** (mm/dd/yyyy)**:**	

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	$0	$0	$0

***This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.**

Appendix 2: Regulatory Impact to Non-Small Businesses

This rule change is not expected to have any fiscal impacts on large businesses revenues or expenditures, because there are no businesses in the State of Utah that are registered as verified recyclers or intermediate facilities reclaiming hazardous secondary materials. Additionally there are only two facilities in the State of Utah that have notified the Division that they are engaged in the recycling, either on-site or off-site, of hazardous secondary materials and the rule changes is not expected to have any fiscal impact on them since they replace mandatory requirements with more discretionary considerations.

The head of Department of Environmental Quality, Alan Matheson, has reviewed and approved this fiscal analysis.

****"Non-small business" means a business employing 50 or more persons; "small business" means a business employing fewer than 50 persons.**

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-260. Hazardous Waste Management System.

R315-260-30. Non-Waste Determinations and Exclusion from Classification as a Solid Waste.

In accordance with the standards and criteria in Sections R315-260-31 and 34 and the procedures in Section R315-260-33, the Director may determine on a case-by-case basis that the following

recycled materials are not solid wastes:

(a) Materials that are accumulated speculatively without sufficient amounts being recycled, as defined in Subsection R315-261-1(c)(8);

(b) Materials that are reclaimed and then reused within the original production process in which they were generated;

(c) Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered;

(d) Hazardous secondary materials that are reclaimed in a continuous industrial process; and

(e) Hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate[~~; and~~

~~(f) Hazardous secondary materials that are transferred for reclamation under Subsection R315-261-4(a)(24) and are managed at a verified reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a Part B permit or interim status standards~~].

R315-260-31. Standards and Criteria for Exclusion from Classification as a Solid Waste.

(a) The Director may grant requests for exclusion from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If exclusion is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The Director's decision will be based on the following criteria:

(1) The manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur, for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling;

(2) The reason that the applicant has accumulated the material for one or more years without recycling 75 percent of the volume accumulated at the beginning of the year;

(3) The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

(4) The extent to which the material is handled to minimize loss; and

(5) Other relevant factors.

(b) The Director may grant requests for exclusion from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

(1) How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

(2) The extent to which the material is handled before reclamation to minimize loss;

(3) The time periods between generating the material and its reclamation, and between reclamation and return to the original

primary production process;

(4) The location of the reclamation operation in relation to the production process;

(5) Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

(6) Whether the person who generates the material also reclaims it; and

(7) Other relevant factors.

(c) The Director may grant requests for exclusion from classifying as a solid waste those hazardous secondary materials that have been partially reclaimed, but must be reclaimed further before recovery is completed, if the partial reclamation has produced a commodity-like material. A determination that a partially-reclaimed material for which the change in classification is sought is commodity-like will be based on whether the hazardous secondary material is legitimately recycled as specified in Section R315-260-43 and on whether all of the following decision criteria are satisfied:

(1) Whether the degree of partial reclamation the material has undergone is substantial as demonstrated by using a partial reclamation process other than the process that generated the hazardous waste;

(2) Whether the partially reclaimed material has sufficient economic value that it will be purchased for further reclamation;

(3) Whether the partially-reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials which is used in subsequent production steps;

(4) Whether there is a market for the partially-reclaimed material as demonstrated by known customer(s) who are further reclaiming the material, e.g., records of sales and/or contracts and evidence of subsequent use, such as bills of lading; and

(5) Whether the partially-reclaimed material is handled to minimize loss.

~~[(d) The Director may grant requests for an exclusion from classification as a solid waste those hazardous secondary materials that are transferred for reclamation under Subsection R315-261-4(a)(24) and are managed at a verified reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a Part B permit or interim status standards. The Director's decision will be based on the following criteria:~~

~~(1) The reclamation facility or intermediate facility shall demonstrate that the reclamation process for the hazardous secondary materials is legitimate pursuant to Section R315-260-43;~~

~~(2) The reclamation facility or intermediate facility shall satisfy the financial assurance condition in Subsection R315-261-4(a)(24)(vi)(F);~~

~~(3) The reclamation facility or intermediate facility shall not be subject to a formal enforcement action in the previous three years and not be classified as a significant non-complier, or shall provide credible evidence that the facility will manage the hazardous secondary materials properly. Credible evidence may include a demonstration that the facility has taken remedial steps to address~~

~~the violations and prevent future violations, or that the violations are not relevant to the proper management of the hazardous secondary materials;~~

~~(4) The intermediate or reclamation facility shall have the equipment and trained personnel needed to safely manage the hazardous secondary material and shall meet emergency preparedness and response requirements under Sections R315-261-400 through 420;~~

~~(5) If residuals are generated from the reclamation of the excluded hazardous secondary materials, the reclamation facility shall have the permits required, if any, to manage the residuals, have a contract with an appropriately permitted facility to dispose of the residuals or present credible evidence that the residuals will be managed in a manner that is protective of human health and the environment, and~~

~~(6) The intermediate or reclamation facility shall address the potential for risk to proximate populations from unpermitted releases of the hazardous secondary material to the environment; i.e., releases that are not covered by a permit, such as a permit to discharge to water or air; which may include, but are not limited to, potential releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures, and shall include consideration of potential cumulative risks from other nearby potential stressors.~~]

R315-260-42. Notification Requirement for Hazardous Secondary Materials.

(a) Facilities managing hazardous secondary materials under [~~Subsections~~]Section R315-260-30, or Subsections R315-261-4(a)(23), (24), (25), or (27) shall send a notification prior to operating under the [~~exclusion(s)~~] regulatory provision and by March 1 of each even numbered year thereafter to the Director using EPA Form 8700-12 that includes the following information:

(1) The name, address, and EPA ID number, if applicable, of the facility;

(2) The name and telephone number of a contact person;

(3) The NAICS code of the facility;

(4) The regulation under which the hazardous secondary materials shall be managed;

(5) For reclaimers and intermediate facilities managing hazardous secondary materials in accordance with Subsections R315-261-4(a)(24) or (25), whether the reclaimer or intermediate facility has financial assurance (not applicable for persons managing hazardous secondary materials generated and reclaimed under the control of the generator);

([~~5~~]6) When the facility began or expects to begin managing the hazardous secondary materials in accordance with the regulation;

([~~6~~]7) A list of hazardous secondary materials that shall be managed according to the regulation, reported as the EPA hazardous waste numbers that would apply if the hazardous secondary materials were managed as hazardous wastes;

([~~7~~]8) For each hazardous secondary material, whether the hazardous secondary material, or any portion thereof, will be managed in a land-based unit;

([~~8~~]9) The quantity of each hazardous secondary material to be managed annually; and

([~~9~~]10) The certification, included in EPA Form 8700-12, signed and dated by an authorized representative of the facility.

(b) If a facility managing hazardous secondary materials has submitted a notification, but then subsequently stops managing hazardous secondary materials in accordance with the regulation(s) listed above, the facility shall notify the Director within thirty days using EPA Form 8700-12. For purposes of Section R315-260-42, a facility has stopped managing hazardous secondary materials if the facility no longer generates, manages and/or reclaims hazardous secondary materials under the regulation(s) above and does not expect to manage any amount of hazardous secondary materials for at least 1 year.

R315-260-43. Legitimate Recycling of Hazardous Secondary Materials.

(a) Recycling of hazardous secondary materials for the purpose of the exclusions or exemptions from the hazardous waste regulations shall be legitimate. Hazardous secondary material that is not legitimately recycled is discarded material and is a solid waste. In determining if their recycling is legitimate, persons shall address all the requirements of Subsections R315-260-43(a)(1) through ([4]3) and shall consider the requirements of Subsection R315-260-43(b).

(1) Legitimate recycling shall involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process. The hazardous secondary material provides a useful contribution if it:

(i) Contributes valuable ingredients to a product or intermediate; or

(ii) Replaces a catalyst or carrier in the recycling process; or

(iii) Is the source of a valuable constituent recovered in the recycling process; or

(iv) Is recovered or regenerated by the recycling process; or

(v) Is used as an effective substitute for a commercial product.

(2) The recycling process shall produce a valuable product or intermediate. The product or intermediate is valuable if it is:

(i) Sold to a third party; or

(ii) Used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.

(3) The generator and the recycler shall manage the hazardous secondary material as a valuable commodity when it is under their control. Where there is an analogous raw material, the hazardous secondary material shall be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material, the hazardous secondary material shall be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.

(b) The following factor shall be considered in making a determination as to the overall legitimacy of a specific recycling activity.

(1) The product of the recycling process does not:

(i) Contain significant concentrations of any hazardous constituents found in Section R315-261-1092 that are not found in analogous products; or

(ii) Contain concentrations of hazardous constituents found in Section R315-261-1092 at levels that are significantly elevated from those found in analogous products, or

(iii) Exhibit a hazardous characteristic, as defined in Subsections R315-261-20 through 24, that analogous products do not exhibit.

(2) In making a determination that a hazardous secondary material is legitimately recycled, persons shall evaluate all factors and consider legitimacy as a whole. If, after careful evaluation of these considerations, the factor in this paragraph is not met, then this fact may be an indication that the material is not legitimately recycled. However, the factor in this paragraph does not have to be met for the recycling to be considered legitimate. In evaluating the extent to which this factor is met and in determining whether a process that does not meet this factor is still legitimate, persons can consider exposure from toxics in the product, the bioavailability of the toxics in the product and other relevant considerations.

~~[(4) The product of the recycling process shall be comparable to a legitimate product or intermediate:~~

~~(i) Where there is an analogous product or intermediate, the product of the recycling process is comparable to a legitimate product or intermediate if:~~

~~(A) The product of the recycling process does not exhibit a hazardous characteristic, as defined in Sections R315-261-20 through 24, that analogous products do not exhibit, and~~

~~(B) The concentrations of any hazardous constituents found in appendix VIII of Rule R315-261 that are in the product or intermediate are at levels that are comparable to or lower than those found in analogous products or at levels that meet widely-recognized commodity standards and specifications, in the case where the commodity standards and specifications include levels that specifically address those hazardous constituents.~~

~~(ii) Where there is no analogous product, the product of the recycling process is comparable to a legitimate product or intermediate if:~~

~~(A) The product of the recycling process is a commodity that meets widely recognized commodity standards and specifications, e.g., commodity specification grades for common metals, or~~

~~(B) The hazardous secondary materials being recycled are returned to the original process or processes from which they were generated to be reused, e.g., closed loop recycling.~~

~~(iii) If the product of the recycling process has levels of hazardous constituents that are not comparable to or unable to be compared to a legitimate product or intermediate per Subsection R315-260-43(a)(4)(i) or (ii), the recycling still may be shown to be legitimate, if it meets the following specified requirements. The person performing the recycling shall conduct the necessary assessment and prepare documentation showing why the recycling is, in fact, still legitimate. The recycling can be shown to be legitimate based on lack of exposure from toxics in the product, lack of the bioavailability of the toxics in the product, or other relevant considerations which~~

~~show that the recycled product does not contain levels of hazardous constituents that pose a significant human health or environmental risk. The documentation shall include a certification statement that the recycling is legitimate and shall be maintained on-site for three years after the recycling operation has ceased. The person performing the recycling shall notify the Director of this activity using EPA Form 8700-12.~~]

KEY: hazardous waste
Date of Enactment or Last Substantive Amendment: August 31, 2017
Authorizing, and Implemented or Interpreted Law: 19-1-301; 19-6-105; 19-6-106

NOTE: The Word version of this form is made available as a working document for the convenience of rule filing agencies. To file a rule, an agency must use the division's online rule filing application, eRules.

State of Utah
Administrative Rule Analysis

NOTICE OF PROPOSED RULE

* The agency identified below in box 1 provides notice of proposed rule change pursuant to Utah Code Section 63G-3-301.
* Please address questions regarding information on this notice to the agency.
* The full text of all rule filings is published in the Utah State Bulletin unless excluded because of space constraints.
* The full text of all rule filings may also be inspected at the Division of Administrative Rules.

DAR file no:		Date filed:	
State Admin Rule Filing Id:		Time filed:	

		Agency No.		Rule No.		Section No.
Utah Admin. Code Ref (R no.):	**R**	315	-	261	-	
Changed to Admin. Code Ref. (R no.):	**R**		-		-	

1.	**Agency:**	Waste Management and Radiation Control
	Room no.:	Second Floor
	Building:	MASOB
	Street address 1:	195 North 1950 West
	Street address 2:	
	City, state, zip:	Salt Lake City, Utah 84116
	Mailing address 1:	PO Box 144880
	Mailing address 2:	
	City, state, zip:	Salt Lake City, Utah 84114-4880
	Contact person(s):	

Name:	**Phone:**	**Fax:**	**E-mail:**
Tom Ball	801-536-0251	801-536-0222	tball@utah.gov
Rusty Lundberg	801-536-4257	801-536-0222	rlundberg@utah.gov

(Interested persons may inspect this filing at the above address or at the Division of Administrative Rules during business hours)

2. **Title of rule or section** (catchline)**:**

General Requirements – Identification and Listing of Hazardous Waste

3. **Type of notice:**

New ___; Amendment _X__; Repeal ___; Repeal and Reenact ___

4. **Purpose of the rule or reason for the change:**

In 2015, the EPA published final revisions to rules regulating the definition of solid waste that exclude certain hazardous secondary materials from regulation. The State of Utah adopted these rules in January of 2016. The federal rules were challenged in court and the United States Court of Appeals for the District of Columbia Circuit on July 7, 2017, and amended on March 6, 2018, issued orders vacating certain provisions of the 2015 rule and reinstated corresponding provisions from a rule proposed in 2008. The proposed changes incorporate the revisions required by the court's orders.

5. **This change is a response to comments from the Administrative Rules Review Committee.**

No _X__; Yes ___

6. **Summary of the rule or change:**

	R315-261-4 is amended by changing the number of factors at R315-261-4(23)(ii)(E) to be considered when determining if the recycling is legitimate from four to three and by adding the requirement to consider the factor found at R315-260-43(b). R315-261-4 is amended by removing the term “verified reclamation facility” from R315-261-4(24) and replacing it with the term “another person”. R315-261-4 is amended by replacing the requirements at R315-261-4(24)(v)(B) that required a hazardous secondary material generator to send hazardous secondary materials to a verified reclamation facility with requirements for generators who send their hazardous secondary materials to be recycled to make a reasonable effort to ensure that each reclaimer intends to properly and legitimately reclaim the hazardous secondary materials. R315-261-4 is amended by adding a new R315-261-4(24)(v)(C) that requires a hazardous secondary material generator to maintain documentation that reasonable efforts were made to ensure that each reclaimer intends to properly and legitimately reclaim the hazardous secondary materials. R315-261-4 is amended by removing R315-261-4(24)(vi)(G) which required reclaimers and intermediate facilities to have been granted an exclusion under R315-260-31(d), which has been deleted by this rulemaking, or have a Part B permit. R315-261-4 is amended by adding R315-261-4(25), which was previously reserved. The language added contains the requirements for the exporting of hazardous secondary materials for reclamation in a foreign country. R315-261-4 is amended by deleting the phrase, “operating under a verified recycler exclusion under Subsection R315-260-31(d)” from R315-261-400(a) and (b), 410(e), (f)(1) and (f)(2), 411, 411(b), 411(c) and 411(d)(3), 420, 420(a)(1) and 420(b)(2).
7.	**Aggregate anticipated cost or savings to:**
	A) State budget:
	Affected: No _X__; Yes ___
	This rule change will not affect the state budget because no state governmental entity is a verified recycler of hazardous secondary materials and does not generate or recycle hazardous secondary materials.
	B) Local government:
	Affected: No _X__; Yes ___
	This rule change will not affect any local government budgets because no local governments are verified recyclers of hazardous secondary materials and do not generate or recycle hazardous secondary materials.
	C) Small businesses ("small business" means a business employing fewer than 50 persons)**:**
	Affected: No _X__; Yes ___
	It is anticipated that there will be no change in costs or savings to small businesses because there are no small businesses in the State of Utah that are registered as verified recyclers of hazardous secondary materials. Additionally, the change to the factors for determining the legitimacy of recycling operations for hazardous secondary materials simply replaces a mandatory factor with a factor to be considered but not required for the process to be considered legitimate.
	D) Persons other than small businesses, businesses, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency)**:**
	Affected: No _X__; Yes ___
	It is anticipated that there will be no change in costs or savings to persons other than small businesses, businesses or local governments because there are no such persons in the State of Utah that are registered as verified recyclers of hazardous secondary materials. Additionally, the change to the factors for determining the legitimacy of recycling operations for hazardous secondary materials simply replaces a mandatory factor with a factor to be considered but not required for the process to be considered legitimate.
8.	**Compliance costs for affected persons:**

	It is anticipated that there will be no additional compliance costs for affected persons associated with these rule amendments since they replace mandatory requirements with more discretionary considerations.
9.	**A) Comments by the department head on the fiscal impact the rule may have on businesses:**
	Since the rule was adopted in January of 2016 there have been no businesses in the State of Utah that have registered as verified recyclers. Only two businesses have notified the Division that they are engaged in the recycling, either on-site or off-site, of hazardous secondary materials. It is not anticipated that these rule changes will have any fiscal impact on the operation of these facilities.
	B) Name and title of department head commenting on the fiscal impacts:
	Alan Matheson, Executive Director
10.	**This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.** **State code or constitution citations (required)** (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) **:**

19-6-104	
19-6-105	
19-6-106	

11. **This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Division of Administrative Rules; *if none, leave blank*)**:**

	First Incorporation	**Second Incorporation**
Official Title of Materials Incorporated (from title page)		
Publisher		
Date Issued		
Issue, or version		
ISBN Number (optional)		
ISSN Number (optional)		
Cost of Incorporated Reference		
Action: Adds, updates, or removes		

(If this rule incorporates more than two items by reference, please attach additional pages)

12. **The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy)**:**	

B) A public hearing (optional) will be held:

On (mm/dd/yyyy)**:**	**At** (hh:mm AM/PM)**:**	**At** (place)**:**

13. **This rule change may become effective on** (mm/dd/yyyy)**:**

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 12(A) above, the agency must submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

14.	**Indexing information -- keywords** (maximum of four, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid"); may not include the name of the agency**:**		
	Hazardous waste		
15.	**Attach an RTF document containing the text of this rule change** (filename)**:**		

To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin*, and delaying the first possible effective date.

AGENCY AUTHORIZATION

Agency head or designee, and title:		**Date** (mm/dd/yyyy)**:**	

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	$0	$0	$0

***This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.**

Appendix 2: Regulatory Impact to Non-Small Businesses

This rule change is not expected to have any fiscal impacts on large businesses revenues or expenditures, because there are no businesses in the State of Utah that are registered as verified recyclers or intermediate facilities reclaiming hazardous secondary materials. Additionally there are only two facilities in the State of Utah that have notified the Division that they are engaged in the recycling, either on-site or off-site, of hazardous secondary materials and the rule changes is not expected to have any fiscal impact on them since they replace mandatory requirements with more discretionary considerations.

The head of Department of Environmental Quality, Alan Matheson, has reviewed and approved this fiscal analysis.

****"Non-small business" means a business employing 50 or more persons; "small business" means a business employing fewer than 50 persons.**

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-261. General Requirements -- Identification and Listing of Hazardous Waste.

R315-261-4. Exclusions.

(a) Materials which are not solid wastes. The following materials are not solid wastes for the purpose of Rule R315-261:

(1)(i) Domestic sewage; and

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

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

(3) Irrigation return flows.

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

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

(6) Pulping liquors, i.e., black liquor, that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in Subsection R315-261-1(c).

(7) Spent sulfuric acid used to produce virgin sulfuric acid provided it is not accumulated speculatively as defined in Subsection R315-261-1(c).

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

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

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

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

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

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

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

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in Subsections R315-261-4(a)(9)(i) and (ii), so long as they meet all of the following conditions:

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

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

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

(D) Any drip pad used to manage the wastewaters and/or spent

wood preserving solutions prior to reuse complies with the standards in 40 CFR 265.440 through 265.445, which are adopted and incorporated by reference, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator prepares a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant shall maintain a copy of that document in its on-site records until closure of the facility. The exclusion applies so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the Director for reinstatement. The Director may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that the violations are not likely to recur.

(10) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are hazardous only because they exhibit the Toxicity Characteristic specified in Section R315-261-24, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or tar recovery or refining processes, or mixed with coal tar.

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

(12)(i) Oil-bearing hazardous secondary materials, i.e., sludges, byproducts, or spent materials, that are generated at a petroleum refinery, SIC code 2911, and are inserted into the petroleum refining process, SIC code 2911-including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units, i.e., cokers, unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under Subsection R315-261-4(12)(i), provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery and still be excluded under this provision. Except as provided in Subsection R315-261-4(a)(12)(ii), oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry, i.e., from sources other than petroleum refineries, are not excluded under Section R315-261-4. Residuals generated from processing or recycling materials excluded under Subsection R315-261-4(a)(12)(i), where such materials as generated would have otherwise met a listing under Sections R315-261-30 through R315-261-35, are designated as F037 listed wastes when disposed of or intended for disposal.

(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in Subsection R315-261-4(a)(12)(i). Recovered oil is oil that has been reclaimed from secondary materials, including wastewater, generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto, SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5172. Recovered oil does not include oil-bearing hazardous wastes listed in Sections R315-261-30 through 35; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in Subsection 19-6-703(19).

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

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

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

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

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

(16) Reserved.

(17) Spent materials, as defined in Section R315-261-1, other than hazardous wastes listed in Sections R315-261-30 through 35, generated within the primary mineral processing industry from which minerals, acids, cyanide, water, or other values are recovered by mineral processing or by beneficiation, provided that:

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

(ii) The spent material is not accumulated speculatively;

(iii) Except as provided in Subsection R315-261-4(a)(17)(iv), the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building shall be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support, except smelter buildings may have partially earthen floors provided the secondary material is stored on the non-earthen portion, and have a roof suitable for diverting rainwater away from the foundation; a tank shall be free standing, not be a surface impoundment, as defined in Section R315-260-10, and be manufactured of a material suitable for containment of its contents; a container shall be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator shall operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings shall be designed, constructed and operated to prevent significant releases to the environment of these materials.

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

constructed and operated to prevent significant releases of the secondary material into the environment. Pads shall provide the same degree of containment afforded by the non-RCRA tanks, containers and buildings eligible for exclusion.

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

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

(C) Before making a determination under Subsection R315-261-4(a)(17)(iv), the Director shall provide notice and the opportunity for comment to all persons potentially interested in the determination. This can be accomplished by placing notice of this action in major local newspapers, or broadcasting notice over local radio stations.

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

(vi) For purposes of Subsection R315-261-4(b)(7), mineral processing spent materials shall be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

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

(i) The oil is hazardous only because it exhibits the characteristic of ignitability, as defined in Section R315-261-21, and/or toxicity for benzene, Section R315-261-24, waste code D018; and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An "associated organic chemical manufacturing facility" is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the

oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials, i.e., sludges, byproducts, or spent materials, including wastewater, from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

(19) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in Subsection R315-261-1(c).

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

(i) Hazardous secondary materials used to make zinc micronutrient fertilizers shall not be accumulated speculatively, as defined in Subsection R315-261-1(c)(8).

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

(A) Submit a one-time notice to the Director, which contains the name, address and EPA ID number of the generator or intermediate handler facility, provides a brief description of the secondary material that will be subject to the exclusion, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in Subsection R315-261-4(a)(20).

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

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

(II) Provide for effective drainage and removal of leaks, spills and accumulated precipitation; and

(III) Prevent run-on into the containment system.

(C) With each off-site shipment of excluded hazardous secondary materials, provide written notice to the receiving facility that the material is subject to the conditions of Subsection R315-261-4(a)(20).

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

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

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

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

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

(A) Store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in Subsection R315-261-4(a)(20)(ii)(B).

(B) Submit a one-time notification to the Director that, at a minimum, specifies the name, address and EPA ID number of the manufacturing facility, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in Subsection R315-261-4(a)(20).

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

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

(iv) Nothing in Section R315-261-4 preempts, overrides or otherwise negates the provision in Section R315-262-11, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) Interim status and permitted storage units that have been used to store only zinc-bearing hazardous wastes prior to the submission of the one-time notice described in Subsection R315-261-4(a)(20)(ii)(A), and that afterward will be used only to store hazardous secondary materials excluded under Subsection R315-261-4(a)(20), are not subject to the closure requirements of Rules R315-264 and R315-265.

(21) Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under Subsection R315-261-4(a)(20), provided that:

(i) The fertilizers meet the following contaminant limits:

(A) For metal contaminants:

TABLE

Constituent	Maximum Allowable Total Concentration in Fertilizer, per Unit (1%) of Zinc ppm)
Arsenic	0.3
Cadmium	1.4
Chromium	0.6
Lead	2.8
Mercury	0.3

(B) For dioxin contaminants the fertilizer shall contain no

more than eight (8) parts per trillion of dioxin, measured as toxic equivalent.

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

(iii) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of Subsection R315-261-4(a)(21)(ii). Such records shall at a minimum include:

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

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

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

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

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

(F) All laboratory analytical results used to determine compliance with the contaminant limits specified in this Subsection R315-261-4(a)(21).

(22) Used cathode ray tubes (CRTs)

(i) Used, intact CRTs as defined in Section R315-260-10 are not solid wastes within the United States unless they are disposed, or unless they are speculatively accumulated as defined in Subsection R315-261-1(c)(8) by CRT collectors or glass processors.

(ii) Used, intact CRTs as defined in Section R315-260-10 are not solid wastes when exported for recycling provided that they meet the requirements of Section R315-261-40.

(iii) Used, broken CRTs as defined in Section R315-260-10 are not solid wastes provided that they meet the requirements of Section R315-261-39.

(iv) Glass removed from CRTs is not a solid waste provided that it meets the requirements of Section R315-261-39(c).

(23) Hazardous secondary material generated and legitimately reclaimed within the United States or its territories and under the control of the generator, provided that the material complies with Subsections R315-261-4(a)(23)(i) and (ii):

(i)(A) The hazardous secondary material is generated and reclaimed at the generating facility, for purposes of this definition, generating facility means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator; or

(B) The hazardous secondary material is generated and reclaimed

at different facilities, if the reclaiming facility is controlled by the generator or if both the generating facility and the reclaiming facility are controlled by a person as defined in Section R315-260-10, and if the generator provides one of the following certifications: "on behalf of (insert generator facility name), I certify that this facility will send the indicated hazardous secondary material to (insert reclaimer facility name), which is controlled by (insert generator facility name) and that (insert name of either facility) has acknowledged full responsibility for the safe management of the hazardous secondary material," or "on behalf of (insert generator facility name), I certify that this facility will send the indicated hazardous secondary material to (insert reclaimer facility name), that both facilities are under common control, and that (insert name of either facility) has acknowledged full responsibility for the safe management of the hazardous secondary material." For purposes of this paragraph, "control" means the power to direct the policies of the facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate facilities on behalf of a different person as defined in Section R315-260-10 shall not be deemed to "control" such facilities. The generating and receiving facilities shall both maintain at their facilities for no less than three years records of hazardous secondary materials sent or received under this exclusion. In both cases, the records shall contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received under the exclusion. These requirements may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations; or

(C) The hazardous secondary material is generated pursuant to a written contract between a tolling contractor and a toll manufacturer and is reclaimed by the tolling contractor, if the tolling contractor certifies the following: "On behalf of (insert tolling contractor name), I certify that (insert tolling contractor name) has a written contract with (insert toll manufacturer name) to manufacture (insert name of product or intermediate) which is made from specified unused materials, and that (insert tolling contractor name) will reclaim the hazardous secondary materials generated during this manufacture. On behalf of (insert tolling contractor name), I also certify that (insert tolling contractor name) retains ownership of, and responsibility for, the hazardous secondary materials that are generated during the course of the manufacture, including any releases of hazardous secondary materials that occur during the manufacturing process". The tolling contractor shall maintain at its facility for no less than three years records of hazardous secondary materials received pursuant to its written contract with the tolling manufacturer, and the tolling manufacturer shall maintain at its facility for no less than three years records of hazardous secondary materials shipped pursuant to its written contract with the tolling contractor. In both cases, the records shall contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received pursuant to the written contract. These requirements may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations. For purposes

of Subsection R315-261-4(a)(23)(i)(C), tolling contractor means a person who arranges for the production of a product or intermediate made from specified unused materials through a written contract with a toll manufacturer. Toll manufacturer means a person who produces a product or intermediate made from specified unused materials pursuant to a written contract with a tolling contractor.

(ii)(A) The hazardous secondary material is contained as defined in Section R315-260-10. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of reclamation. Hazardous secondary material managed in a unit with leaks or other continuing or intermittent unpermitted releases is discarded and a solid waste.

(B) The hazardous secondary material is not speculatively accumulated, as defined in Subsection R315-261-1(c)(8).

(C) Notice is provided as required by Section R315-260-42.

(D) The material is not otherwise subject to material-specific management conditions under Subsection R315-261-4(a) when reclaimed, and it is not a spent lead-acid battery, see Sections R315-266-80 and R315-273-2.

(E) Persons performing the recycling of hazardous secondary materials under this exclusion shall maintain documentation of their legitimacy determination on-site. Documentation shall be a written description of how the recycling meets all [~~four~~]three factors in Subsection R315-260-43(a) and how the factor in Subsection R315-260-43(b) was considered. Documentation shall be maintained for three years after the recycling operation has ceased.

(F) The emergency preparedness and response requirements found in Sections R315-261-400, 410, 411 and 420 are met.

(24) Hazardous secondary material that is generated and then transferred to [~~a verified reclamation facility~~]another person for the purpose of reclamation is not a solid waste, provided that:

(i) The material is not speculatively accumulated, as defined in Subsection R315-261-1(c)(8);

(ii) The material is not handled by any person or facility other than the hazardous secondary material generator, the transporter, an intermediate facility or a reclaimer, and, while in transport, is not stored for more than 10 days at a transfer facility, as defined in Section R315-260-10, and is packaged according to applicable Department of Transportation regulations at 49 CFR parts 173, 178, and 179 while in transport;

(iii) The material is not otherwise subject to material-specific management conditions under Subsection R315-261-4(a) when reclaimed, and it is not a spent lead-acid battery, see Sections R315-266-80 and R315-273-2;

(iv) The reclamation of the material is legitimate, as specified under Section R315-260-43;

(v) The hazardous secondary material generator satisfies all of the following conditions:

(A) The material shall be contained as defined in Section R315-260-10. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of recycling. Hazardous secondary material managed in a unit with leaks or other continuing releases is discarded and a solid waste.

(B) Prior to arranging for transport of hazardous secondary materials to a reclamation facility (or facilities) where the management of the hazardous secondary materials is not addressed under a hazardous waste part B permit or interim status standards, the hazardous secondary material generator shall make reasonable efforts to ensure that each reclaimer intends to properly and legitimately reclaim the hazardous secondary material and not discard it, and that each reclaimer will manage the hazardous secondary material in a manner that is protective of human health and the environment. If the hazardous secondary material will be passing through an intermediate facility where the management of the hazardous secondary materials is not addressed under a hazardous waste part B permit or interim status standards, the hazardous secondary material generator shall make contractual arrangements with the intermediate facility to ensure that the hazardous secondary material is sent to the reclamation facility identified by the hazardous secondary material generator, and the hazardous secondary material generator shall perform reasonable efforts to ensure that the intermediate facility will manage the hazardous secondary material in a manner that is protective of human health and the environment. Reasonable efforts shall be repeated at a minimum of every three years for the hazardous secondary material generator to claim the exclusion and to send the hazardous secondary materials to each reclaimer and any intermediate facility. In making these reasonable efforts, the generator may use any credible evidence available, including information gathered by the hazardous secondary material generator, provided by the reclaimer or intermediate facility, and/or provided by a third party. The hazardous secondary material generator shall affirmatively answer all of the following questions for each reclamation facility and any intermediate facility:

(I) Does the available information indicate that the reclamation process is legitimate pursuant to Section R315-260-43? In answering this question, the hazardous secondary material generator can rely on their existing knowledge of the physical and chemical properties of the hazardous secondary material, as well as information from other sources including the reclamation facility and audit reports about the reclamation process.

(II) Does the publicly available information indicate that the reclamation facility and any intermediate facility that is used by the hazardous secondary material generator notified the appropriate authorities of hazardous secondary materials reclamation activities pursuant to Section R315-260-42 and have they notified the appropriate authorities that the financial assurance condition is satisfied per Subsection R315-261-4(a)(24)(vi)(F)? In answering these questions, the hazardous secondary material generator can rely on the available information documenting the reclamation facility's and any intermediate facility's compliance with the notification requirements per Section R315-260-42, including the requirement in Subsection R315-260-42(a)(5) to notify the Director whether the reclaimer or intermediate facility has financial assurance.

(III) Does publicly available information indicate that the reclamation facility or any intermediate facility that is used by the hazardous secondary material generator has not had any formal enforcement actions taken against the facility in the previous three

years for violations of Sections R315-260 through 268, 270, and 273 and has not been classified as a significant non-complier with Sections R315-260 through 268, 270, and 273? In answering this question, the hazardous secondary material generator can rely on the publicly available information from EPA or the state. If the reclamation facility or any intermediate facility that is used by the hazardous secondary material generator has had a formal enforcement action taken against the facility in the previous three years for violations of Sections R315-260 through 268, 270, and 273 and has been classified as a significant non-complier with Sections R315-260 through 268, 270, and 273, does the hazardous secondary material generator have credible evidence that the facilities will manage the hazardous secondary materials properly? In answering this question, the hazardous secondary material generator can obtain additional information from EPA, the state, or the facility itself that the facility has addressed the violations, taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to the proper management of the hazardous secondary materials.

(IV) Does the available information indicate that the reclamation facility and any intermediate facility that is used by the hazardous secondary material generator have the equipment and trained personnel to safely recycle the hazardous secondary material? In answering this question, the generator may rely on a description by the reclamation facility or by an independent third party of the equipment and trained personnel to be used to recycle the generator's hazardous secondary material.

(V) If residuals are generated from the reclamation of the excluded hazardous secondary materials, does the reclamation facility have the permits required (if any) to manage the residuals? If not, does the reclamation facility have a contract with an appropriately permitted facility to dispose of the residuals? If not, does the hazardous secondary material generator have credible evidence that the residuals will be managed in a manner that is protective of human health and the environment? In answering these questions, the hazardous secondary material generator can rely on publicly available information from EPA or the state, or information provided by the facility itself.

(C) The hazardous secondary material generator shall maintain for a minimum of three years documentation and certification that reasonable efforts were made for each reclamation facility and, if applicable, intermediate facility where the management of the hazardous secondary materials is not addressed under a hazardous waste part B permit or interim status standards prior to transferring hazardous secondary material. Documentation and certification shall be made available upon request by the Director within 72 hours, or within a longer period of time as specified by the Director. The certification statement shall:

(I) Include the printed name and official title of an authorized representative of the hazardous secondary material generator company, the authorized representative's signature, and the date signed;

(II) Incorporate the following language: "I hereby certify in good faith and to the best of my knowledge that, prior to arranging for transport of excluded hazardous secondary materials to [insert

name(s) of reclamation facility and any intermediate facility], reasonable efforts were made in accordance with Subsection R315-261-4(a)(24)(v)(B) to ensure that the hazardous secondary materials would be recycled legitimately, and otherwise managed in a manner that is protective of human health and the environment, and that such efforts were based on current and accurate information." [~~(B) The hazardous secondary material generator shall arrange for transport of hazardous secondary materials to a verified reclamation facility, or facilities, in the United States. A verified reclamation facility is a facility that has been granted an exclusion under Subsection R315-260-31(d), or a reclamation facility where the management of the hazardous secondary materials is addressed under a hazardous waste Part B permit or interim status standards. If the hazardous secondary material will be passing through an intermediate facility, the intermediate facility shall have been granted an exclusion under Subsection R315-260-31(d) or the management of the hazardous secondary materials at that facility shall be addressed under a hazardous waste Part B permit or interim status standards, and the hazardous secondary material generator shall make contractual arrangements with the intermediate facility to ensure that the hazardous secondary material is sent to the reclamation facility identified by the hazardous secondary material generator.~~]

([~~C~~]D) The hazardous secondary material generator shall maintain at the generating facility for no less than three years records of all off-site shipments of hazardous secondary materials. For each shipment, these records shall, at a minimum, contain the following information:

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

(II) Name and address of each reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent;

(III) The type and quantity of hazardous secondary material in the shipment.

([~~D~~]E) The hazardous secondary material generator shall maintain at the generating facility for no less than three years confirmations of receipt from each reclaimer and, if applicable, each intermediate facility for all off-site shipments of hazardous secondary materials. Confirmations of receipt shall include the name and address of the reclaimer, or intermediate facility, the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt;

([~~E~~]F) The hazardous secondary material generator shall comply with the emergency preparedness and response conditions in Sections R315-261-400, 410, 411, and 420.

(vi) Reclaimers of hazardous secondary material excluded from regulation under this exclusion and intermediate facilities as defined in Section R315-260-10 satisfy all of the following conditions:

(A) The reclaimer and intermediate facility shall maintain at its facility for no less than three years records of all shipments of hazardous secondary material that were received at the facility and, if applicable, for all shipments of hazardous secondary materials

that were received and subsequently sent off-site from the facility for further reclamation. For each shipment, these records shall at a minimum contain the following information:

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

(II) Name and address of the hazardous secondary material generator and, if applicable, the name and address of the reclaimer or intermediate facility which the hazardous secondary materials were received from;

(III) The type and quantity of hazardous secondary material in the shipment; and

(IV) For hazardous secondary materials that, after being received by the reclaimer or intermediate facility, were subsequently transferred off-site for further reclamation, the name and address of the, subsequent, reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent.

(B) The intermediate facility shall send the hazardous secondary material to the reclaimer(s) designated by the hazardous secondary materials generator.

(C) The reclaimer and intermediate facility shall send to the hazardous secondary material generator confirmations of receipt for all off-site shipments of hazardous secondary materials. Confirmations of receipt shall include the name and address of the reclaimer, or intermediate facility, the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt.

(D) The reclaimer and intermediate facility shall manage the hazardous secondary material in a manner that is at least as protective as that employed for analogous raw material and shall be contained. An "analogous raw material" is a raw material for which a hazardous secondary material is a substitute and serves the same function and has similar physical and chemical properties as the hazardous secondary material.

(E) Any residuals that are generated from reclamation processes shall be managed in a manner that is protective of human health and the environment. If any residuals exhibit a hazardous characteristic according to Sections R315-261-20 through 24, or if they themselves are specifically listed in Sections R315-261-30 through 35, such residuals are hazardous wastes and shall be managed in accordance with the applicable requirements of Rules R315-260 through 266, 268, and 270.

(F) The reclaimer and intermediate facility have financial assurance as required under Sections R315-261-140 through 151,

[~~(G) The reclaimer and intermediate facility have been granted an exclusion under Subsection R315-260-31(d) or have a hazardous waste Part B permit or interim status standards that address the management of the hazardous secondary materials; and~~]

(vii) In addition, [A]all persons claiming the exclusion under Subsection R315-261-4(a)(24) provide notification as required under Section R315-260-42.

(25) [~~Reserved~~] Hazardous secondary material that is exported

from the United States and reclaimed at a reclamation facility located in a foreign country is not a solid waste, provided that the hazardous secondary material generator complies with the applicable requirements of Subsection R315-261-4(a)(24)(i)-(v), excepting Subsection R315-261-4(a)(24)(v)(B)(2) for foreign reclaimers and foreign intermediate facilities, and that the hazardous secondary material generator also complies with the following requirements:

(i) Notify EPA of an intended export before the hazardous secondary material is scheduled to leave the United States. A complete notification shall be submitted at least sixty days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a twelve month or lesser period. The notification shall be in writing, signed by the hazardous secondary material generator, and include the following information:

(A) Name, mailing address, telephone number and EPA ID number, if applicable, of the hazardous secondary material generator;

(B) A description of the hazardous secondary material and the EPA hazardous waste number that would apply if the hazardous secondary material was managed as hazardous waste and the U.S. DOT proper shipping name, hazard class and ID number, UN/NA, for each hazardous secondary material as identified in 49 CFR parts 171 through 177;

(C) The estimated frequency or rate at which the hazardous secondary material is to be exported and the period of time over which the hazardous secondary material is to be exported;

(D) The estimated total quantity of hazardous secondary material;

(E) All points of entry to and departure from each foreign country through which the hazardous secondary material will pass;

(F) A description of the means by which each shipment of the hazardous secondary material will be transported, for example mode of transportation vehicle including air, highway, rail and water, and types of containers including drums, boxes and tanks;

(G) A description of the manner in which the hazardous secondary material will be reclaimed in the country of import;

(H) The name and address of the reclaimer, any intermediate facility and any alternate reclaimer and intermediate facilities; and

(I) The name of any countries of transit through which the hazardous secondary material will be sent and a description of the approximate length of time it will remain in such countries and the nature of its handling while there, for purposes of this section, the terms "EPA Acknowledgement of Consent", "country of import" and "country of transit" are used as defined in 40 CFR 262.81 with the exception that the terms in Section R315-261-4 refer to hazardous secondary materials, rather than hazardous waste:

(ii) Notifications shall be submitted electronically using EPA's Waste Import Export Tracking System, WIETS, or its successor system.

(iii) Except for changes to the telephone number in Subsection R315-261-4(a)(25)(i)(A) and decreases in the quantity of hazardous secondary material indicated pursuant to Subsection R315-261-4(a)(25)(i)(D), when the conditions specified on the original notification change, including any exceedance of the estimate of the quantity of hazardous secondary material specified in the original notification, the hazardous secondary material generator shall provide EPA with a written renotification of the change. The

shipment cannot take place until consent of the country of import to the changes, except for changes to Subsection R315-261-4(a)(25)(i)(I) and in the ports of entry to and departure from countries of transit pursuant to Subsection R315-261-4(a)(25)(i)(E), has been obtained and the hazardous secondary material generator receives from EPA an EPA Acknowledgment of Consent reflecting the country of import's consent to the changes.

(iv) Upon request by EPA, the hazardous secondary material generator shall furnish to EPA any additional information which a country of import requests in order to respond to a notification.

(v) EPA will provide a complete notification to the country of import and any countries of transit. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of Subsection R315-261-4(a)(25)(i). Where a claim of confidentiality is asserted with respect to any notification information required by Subsection R315-261-4(a)(25)(i), EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(vi) The export of hazardous secondary material under Subsection R315-261-4(a)(25) is prohibited unless the country of import consents to the intended export. When the country of import consents in writing to the receipt of the hazardous secondary material, EPA will send an EPA Acknowledgment of Consent to the hazardous secondary material generator. Where the country of import objects to receipt of the hazardous secondary material or withdraws a prior consent, EPA will notify the hazardous secondary material generator in writing. EPA will also notify the hazardous secondary material generator of any responses from countries of transit.

(vii) For exports to OECD Member countries, the receiving country may respond to the notification using tacit consent. If no objection has been lodged by any country of import or countries of transit to a notification provided pursuant to Subsection R315-261-4(a)(25)(i) within thirty days after the date of issuance of the acknowledgement of receipt of notification by the competent authority of the country of import, the transboundary movement may commence. In such cases, EPA will send an EPA Acknowledgment of Consent to inform the hazardous secondary material generator that the country of import and any relevant countries of transit have not objected to the shipment, and are thus presumed to have consented tacitly. Tacit consent expires one calendar year after the close of the thirty day period; renotification and renewal of all consents is required for exports after that date.

(viii) A copy of the EPA Acknowledgment of Consent shall accompany the shipment. The shipment shall conform to the terms of the EPA Acknowledgment of Consent.

(ix) If a shipment cannot be delivered for any reason to the reclaimer, intermediate facility or the alternate reclaimer or alternate intermediate facility, the hazardous secondary material generator shall re-notify EPA of a change in the conditions of the original notification to allow shipment to a new reclaimer in accordance with Subsection R315-261-4(a)(25)(iii) and obtain another EPA Acknowledgment of Consent.

(x) Hazardous secondary material generators shall keep a copy of each notification of intent to export and each EPA Acknowledgment

of Consent for a period of three years following receipt of the EPA Acknowledgment of Consent. They may satisfy this recordkeeping requirement by retaining electronically submitted notifications or electronically generated Acknowledgements in their account on EPA's Waste Import Export Tracking System, WIETS, or its successor system, provided that such copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No hazardous secondary material generator may be held liable for the inability to produce a notification or Acknowledgement for inspection under Subsection R315-261-4(a)(25) if they can demonstrate that the inability to produce such copies are due exclusively to technical difficulty with EPA's Waste Import Export Tracking System, WIETS, or its successor system for which the hazardous secondary material generator bears no responsibility.

(xi) Hazardous secondary material generators shall file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency and ultimate destination of all hazardous secondary materials exported during the previous calendar year. Annual reports shall be submitted electronically using EPA's Waste Import Export Tracking System, WIETS, or its successor system. Such reports shall include the following information:

(A) Name, mailing and site address, and EPA ID number, if applicable, of the hazardous secondary material generator;

(B) The calendar year covered by the report;

(C) The name and site address of each reclaimer and intermediate facility;

(D) By reclaimer and intermediate facility, for each hazardous secondary material exported, a description of the hazardous secondary material and the EPA hazardous waste number that would apply if the hazardous secondary material was managed as hazardous waste, the DOT hazard class, the name and U.S. EPA ID number, where applicable, for each transporter used, the total amount of hazardous secondary material shipped and the number of shipments pursuant to each notification;

(E) A certification signed by the hazardous secondary material generator which states: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."

(xii) All persons claiming an exclusion under Subsection R315-261-4(a)(25) shall provide notification as required by Section R315-260-42.

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

(i) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers shall be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is

complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container shall be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;

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

(iii) At the point of being sent for cleaning on-site or at the point of being transported off-site for cleaning, the solvent-contaminated wipes shall contain no free liquids as defined in Section R315-260-10.

(iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes shall be managed according to the applicable regulations found in Rules R315-260 through 266, 268, 270 and 273;

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

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

(B) Documentation that the 180-day accumulation time limit in Subsection R315-261-4(a)(26)(ii) is being met;

(C) Description of the process the generator is using to ensure the solvent-contaminated wipes contain no free liquids at the point of being laundered or dry cleaned on-site or at the point of being transported off-site for laundering or dry cleaning;

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

(27) Hazardous secondary material that is generated and then transferred to another person for the purpose of remanufacturing is not a solid waste, provided that:

(i) The hazardous secondary material consists of one or more of the following spent solvents: Toluene, xylenes, ethylbenzene, 1,2,4-trimethylbenzene, chlorobenzene, n-hexane, cyclohexane, methyl tert-butyl ether, acetonitrile, chloroform, chloromethane, dichloromethane, methyl isobutyl ketone, NN-dimethylformamide, tetrahydrofuran, n-butyl alcohol, ethanol, and/or methanol;

(ii) The hazardous secondary material originated from using one or more of the solvents listed in Subsection R315-261-4(a)(27)(i) in a commercial grade for reacting, extracting, purifying, or blending chemicals, or for rinsing out the process lines associated with these functions; in the pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and/or the paints and coatings manufacturing sectors, NAICS 325510.

(iii) The hazardous secondary material generator sends the hazardous secondary material spent solvents listed in Subsection R315-261-4(a)(27)(i) to a remanufacturer in the pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and/or the paints and coatings manufacturing sectors, NAICS 325510.

(iv) After remanufacturing one or more of the solvents listed in Subsection R315-261-4(a)(27)(i), the use of the remanufactured solvent shall be limited to reacting, extracting, purifying, or blending chemicals, or for rinsing out the process lines associated with these functions, in the pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and the paints and coatings manufacturing sectors, NAICS 325510; or to using them as ingredients in a product. These allowed uses correspond to chemical functional uses enumerated under the Chemical Data Reporting Rule of the Toxic Substances Control Act, 40 CFR parts 704, 710-711, including Industrial Function Codes U015, solvents consumed in a reaction to produce other chemicals, and U030, solvents become part of the mixture;

(v) After remanufacturing one or more of the solvents listed in Subsection R315-261-4(a)(27)(i), the use of the remanufactured solvent does not involve cleaning or degreasing oil, grease, or similar material from textiles, glassware, metal surfaces, or other articles. (These disallowed continuing uses correspond to chemical functional uses in Industrial Function Code U029 under the Chemical Data Reporting Rule of the Toxics Substances Control Act.); and

(vi) Both the hazardous secondary material generator and the remanufacturer shall:

(A) Notify the Director and update the notification every two years per Section R315-260-42;

(B) Develop and maintain an up-to-date remanufacturing plan which identifies:

(I) The name, address and EPA ID number of the generator(s) and the remanufacturer(s),

(II) The types and estimated annual volumes of spent solvents to be remanufactured,

(III) The processes and industry sectors that generate the spent solvents,

(IV) The specific uses and industry sectors for the remanufactured solvents, and

(V) A certification from the remanufacturer stating "on behalf of (insert remanufacturer facility name), I certify that this facility is a remanufacturer under pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and/or the paints and coatings manufacturing sectors, NAICS 325510; and will accept the spent solvent(s) for the sole purpose of remanufacturing into commercial-grade solvent(s) that will be used for reacting, extracting, purifying, or blending chemicals, or for rinsing out the process lines associated with these functions, or for use as product ingredient(s). I also certify that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Clean Air Act regulations under 40 CFR part 60, part 61 or part 63, or, absent such Clean Air Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in Sections R315-261-1030 through 1035, 1050 through 1064 and 1080 through 1089";

(C) Maintain records of shipments and confirmations of receipts for a period of three years from the dates of the shipments;

(D) Prior to remanufacturing, store the hazardous spent solvents in tanks or containers that meet technical standards found in Sections R315-261-17- through 179 and 190 through 200, with the tanks and containers being labeled or otherwise having an immediately available record of the material being stored;

(E) During remanufacturing, and during storage of the hazardous secondary materials prior to remanufacturing, the remanufacturer certifies that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Clean Air Act regulations under 40 CFR part 60, part 61 or part 63; or, absent such Clean Air Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in Sections R315-261-1030 through 1035, 1050 through 1064 and 1080 through 1089; and

(F) Meet the requirements prohibiting speculative accumulation per Subsection R315-261-1(c)(8).

(b) Solid wastes which are not hazardous wastes. The following solid wastes are not hazardous wastes:

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

(i) Receives and burns only

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

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

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

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

(i) The growing and harvesting of agricultural crops.

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

(3) Mining overburden returned to the mine site.

(4)(i) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided by Section R315-266-112 for facilities that burn or process hazardous waste.

(ii) The following wastes generated primarily from processes that support the combustion of coal or other fossil fuels that are co-disposed with the wastes in Subsection R315-261-4(b)(4)(i), except as provided by Section R315-266-112 for facilities that burn or process hazardous waste:

(A) Coal pile run-off. For purposes of Subsection R315-261-4(b)(4), coal pile run-off means any precipitation that drains off coal piles.

(B) Boiler cleaning solutions. For purposes of Subsection R315-261-4(b)(4), boiler cleaning solutions means water solutions and chemical solutions used to clean the fire-side and water-side of the boiler.

(C) Boiler blowdown. For purposes of Subsection R315-261-4(b)(4), boiler blowdown means water purged from boilers used to generate steam.

(D) Process water treatment and demineralizer regeneration wastes. For purposes of Subsection R315-261-4(b)(4), process water treatment and demineralizer regeneration wastes means sludges, rinses, and spent resins generated from processes to remove dissolved gases, suspended solids, and dissolved chemical salts from combustion system process water.

(E) Cooling tower blowdown. For purposes of Subsection R315-261-4(b)(4), cooling tower blowdown means water purged from a closed cycle cooling system. Closed cycle cooling systems include cooling towers, cooling ponds, or spray canals.

(F) Air heater and precipitator washes. For purposes of Subsection R315-261-4(b)(4), air heater and precipitator washes means wastes from cleaning air preheaters and electrostatic precipitators.

(G) Effluents from floor and yard drains and sumps. For purposes of Subsection R315-261-4(b)(4), effluents from floor and yard drains and sumps means wastewaters, such as wash water, collected by or from floor drains, equipment drains, and sumps located inside the power plant building; and wastewaters, such as rain runoff, collected by yard drains and sumps located outside the power plant building.

(H) Wastewater treatment sludges. For purposes of Subsection R315-261-4(b)(4), wastewater treatment sludges refers to sludges generated from the treatment of wastewaters specified in Subsections R315-261-4(b)(4)(ii)(A) through (F).

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

(6)(i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in Sections R315-261-30 through R316-261-35 due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

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

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

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

(ii) Specific wastes which meet the standard in Subsections R315-261-4(b)(6)(i)(A), (B), and (C), so long as they do not fail

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

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

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

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

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

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

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

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

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

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals, including coal, phosphate rock, and overburden from the mining of uranium ore, except as provided by Section R315-266-112 for facilities that burn or process hazardous waste.

(i) For purposes of Subsection R315-261-4(b)(7) beneficiation of ores and minerals is restricted to the following activities; crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching.

(ii) For the purposes of Subsection R315-261-4(b)(7), solid waste from the processing of ores and minerals includes only the

following wastes as generated:

(A) Slag from primary copper processing;

(B) Slag from primary lead processing;

(C) Red and brown muds from bauxite refining;

(D) Phosphogypsum from phosphoric acid production;

(E) Slag from elemental phosphorus production;

(F) Gasifier ash from coal gasification;

(G) Process wastewater from coal gasification;

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

(I) Slag tailings from primary copper processing;

(J) Fluorogypsum from hydrofluoric acid production;

(K) Process wastewater from hydrofluoric acid production;

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

(M) Iron blast furnace slag;

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

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

(P) Process wastewater from phosphoric acid production;

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

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

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

(T) Slag from primary zinc processing.

(iii) A residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under Subsection R315-261-4(b) if the owner or operator:

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

(B) Legitimately reclaims the secondary mineral processing materials.

(8) Cement kiln dust waste, except as provided by Section R315-266-112 for facilities that burn or process hazardous waste.

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

(10) Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic of Section R315-261-24, Hazardous Waste Codes D018 through D043 only, and are subject to the corrective action regulations under Section R315-311-202-1 which adopts 40 CFR 280 by reference.

(11) Injected groundwater that is hazardous only because it exhibits the Toxicity Characteristic, Hazardous Waste Codes D018 through D043 only, in Section R315-261-24 that is reinjected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines, and petroleum transportation spill sites until January 25, 1993. This

extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For groundwater returned through infiltration galleries from such operations at petroleum refineries, marketing terminals, and bulk plants, until October 2, 1991. New operations involving injection wells, beginning after March 25, 1991, will qualify for this compliance date extension, until January 25, 1993, only if:

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

(ii) A copy of the written agreement has been submitted to: Waste Identification Branch (5304), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460 and the Division of Waste Management and Radiation Control, PO Box 144880, Salt Lake City, UT 84114-4880.

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

(13) Non-terne plated used oil filters that are not mixed with wastes listed in Sections R315-261-30 through R315-261-35 if these oil filters have been gravity hot-drained using one of the following methods:

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

(ii) Hot-draining and crushing;

(iii) Dismantling and hot-draining; or

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

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

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

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

(ii) The solid wastes described in Subsection R315-261-4(b)(15)(i) were disposed prior to the effective date of the listing;

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

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act.

(v) As of February 13, 2001, leachate or gas condensate derived from K169-K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. As of November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 is no

longer exempt if it is stored or managed in a surface impoundment prior to discharge. After February 26, 2007, leachate or gas condensate derived from K181 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation, e.g., shutdown of wastewater treatment system, provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of Subsection R315-261-4(b)(15)(v) after the emergency ends.

(16) Reserved

(17) Reserved

(18) Solvent-contaminated wipes, except for wipes that are hazardous waste due to the presence of trichloroethylene, that are sent for disposal are not hazardous wastes from the point of generation provided that

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

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

(iii) At the point of being transported for disposal, the solvent-contaminated wipes shall contain no free liquids as defined in Section R315-260-10.

(iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes shall be managed according to the applicable regulations found in Rules R315-260 through 266, 268, 270 and 273;

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

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

(B) Documentation that the 180 day accumulation time limit in Subsection R315-261-4(b)(18)(ii) is being met;

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

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

(A) To a solid waste landfill that:

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

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

(3) has a composite liner; or

(B) To a hazardous waste landfill regulated under Rules R315-260

through 266, 268, and 270; or

(C) To a municipal waste combustor or other combustion facility regulated under section 129 of the Clean Air Act or to a hazardous waste combustor, boiler, or industrial furnace regulated under Rule R315-264, Rule R315-265, or Sections R315-266-100 through R315-266-112.

(c) Hazardous wastes which are exempted from certain regulations. A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit, is not subject to regulation under Rules R315-262 through 265, 268, 270, and 124 or to the notification requirements of section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

(d)(1) Samples. Except as provided in Subsection R315-261-4(d)(2), a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of Rules R315-261 through 266, 268 or 270 or 124 or to the notification requirements of Section 3010 of RCRA, when:

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

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

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

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

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

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

(2) In order to qualify for the exemption in Subsections R315-261-4(d)(1) (i) and (ii), a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector shall:

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

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

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

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

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

(III) The quantity of the sample;
(IV) The date of shipment; and
(V) A description of the sample.
(B) Package the sample so that it does not leak, spill, or vaporize from its packaging.
(3) This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in Subsection R315-261-4(d)(1).
(e)(1) Treatability Study Samples. Except as provided in Subsection R315-261-4(e)(2), persons who generate or collect samples for the purpose of conducting treatability studies as defined in Section R315-260-10, are not subject to any requirement of Rules R315-261 through 263 or to the notification requirements of Section 3010 of RCRA, nor are such samples included in the quantity determinations of Section R315-261-5 and Subsection R315-262-34(d) when:
(i) The sample is being collected and prepared for transportation by the generator or sample collector; or
(ii) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or
(iii) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.
(2) The exemption in Subsection R315-261-4(e)(1) is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:
(i) The generator or sample collector uses (in "treatability studies") no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream; and
(ii) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with non-acute hazardous waste, or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of hazardous waste, and 1 kg of acute hazardous waste; and
(iii) The sample shall be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of Subsections R315-261-4(e)(2)(iii)(A) or (B) are met.
(A) The transportation of each sample shipment complies with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or
(B) If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information shall accompany the sample:
(I) The name, mailing address, and telephone number of the originator of the sample;
(II) The name, address, and telephone number of the facility that will perform the treatability study;
(III) The quantity of the sample;
(IV) The date of shipment; and
(V) A description of the sample, including its EPA Hazardous Waste Number.

(iv) The sample is shipped to a laboratory or testing facility which is exempt under Subsection R315-261-4(f) or has an appropriate RCRA permit or interim status.

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

(A) Copies of the shipping documents;

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

(C) Documentation showing:

(I) The amount of waste shipped under this exemption;

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

(III) The date the shipment was made; and

(IV) Whether or not unused samples and residues were returned to the generator.

(vi) The generator reports the information required under Subsection R315-261-4(e)(2)(v)(C) in its biennial report.

(3) The Director may grant requests on a case-by-case basis for up to an additional two years for treatability studies involving bioremediation. The Director may grant requests on a case-by-case basis for quantity limits in excess of those specified in Subsections R315-261-4(e)(2)(i) and (ii) and Subsection R315-261-4(f)(4), for up to an additional 5000 kg of media contaminated with non-acute hazardous waste, 500 kg of non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste and 1 kg of acute hazardous waste:

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

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

(iii) The additional quantities and timeframes allowed in Subsections R315-261-4(e)(3)(i) and (ii) are subject to all the provisions in Subsections R315-261-4(e)(1) and (e)(2)(iii) through (vi). The generator or sample collector shall apply to the Director and provide in writing the following information:

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

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

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

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

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

(f) Samples Undergoing Treatability Studies at Laboratories and Testing Facilities. Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies, to the extent such facilities are not otherwise subject to RCRA requirements, are not subject to any requirement of Rules R315-261 through 266, 268 and 270, or to the notification requirements of Section 3010 of RCRA provided that the conditions of Subsection R315-261-4(f)(1) through (11) are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to Subsections R315-261-4(f)(1) through (11). Where a group of MTUs are located at the same site, the limitations specified in Subsections R315-261-4(f)(1) through (11) apply to the entire group of MTUs collectively as if the group were one MTU.

(1) No less than 45 days before conducting treatability studies, the facility notifies the Director, in writing that it intends to conduct treatability studies under Subsection R315-261-4(f).

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

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

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

(5) No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year, two years for treatability studies involving bioremediation, have elapsed since the generator or sample collector shipped the sample to the

laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

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

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

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

(ii) The date the shipment was received;

(iii) The quantity of waste accepted;

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

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

(vi) The date the treatability study was concluded;

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

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

(9) The facility prepares and submits a report to the Director, by March 15 of each year, that includes the following information for the previous calendar year:

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

(ii) The types (by process) of treatability studies conducted;

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

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

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

(vi) When each treatability study was conducted;

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

(10) The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under Section R315-261-3 and, if so, are subject to Rules R315-261 through 268 and 270, unless the residues and unused samples are returned to the sample originator under the Subsection R3315-261-4(e) exemption.

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

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

Sanctuaries Act of 1972 (33 U.S.C. 1413) is not a hazardous waste. For Subsection R315-261-4(g), the following definitions apply:

(1) The term dredged material has the same meaning as defined in 40 CFR 232.2;

(2) The term permit means:

(i) A permit issued by the U.S. Army Corps of Engineers (Corps) or an approved State under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(ii) A permit issued by the Corps under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or

(iii) In the case of Corps civil works projects, the administrative equivalent of the permits referred to in Subsections R315-261-4(g)(2)(i) and (ii), as provided for in Corps regulations.

(h) Carbon dioxide stream injected for geologic sequestration. Carbon dioxide streams that are captured and transported for purposes of injection into an underground injection well subject to the requirements for Class VI Underground Injection Control wells, including the requirements in Rule R317-7, are not a hazardous waste, provided the following conditions are met:

(1) Transportation of the carbon dioxide stream shall be in compliance with U.S. Department of Transportation requirements, including the pipeline safety laws, 49 U.S.C. 60101 et seq. and regulations, 49 CFR Parts 190-199, of the U.S. Department of Transportation, and pipeline safety regulations adopted and administered by a state authority pursuant to a certification under 49 U.S.C. 60105, as applicable.

(2) Injection of the carbon dioxide stream shall be in compliance with the applicable requirements for Class VI Underground Injection Control wells, including the applicable requirements in Rule R317-7;

(3) No hazardous wastes shall be mixed with, or otherwise co-injected with, the carbon dioxide stream; and

(4)(i) Any generator of a carbon dioxide stream, who claims that a carbon dioxide stream is excluded under Subsection R315-261-4(h), shall have an authorized representative, as defined in Section R315-260-10, sign a certification statement worded as follows: I certify under penalty of law that the carbon dioxide stream that I am claiming to be excluded under Subsection R315-261.4(h) has not been mixed with hazardous wastes, and I have transported the carbon dioxide stream in compliance with, or have contracted with a pipeline operator or transporter to transport the carbon dioxide stream in compliance with, Department of Transportation requirements, including the pipeline safety laws, 49 U.S.C. 60101 et seq., and regulations, 49 CFR Parts 190-199, of the U.S. Department of Transportation, and the pipeline safety regulations adopted and administered by a state authority pursuant to a certification under 49 U.S.C. 60105, as applicable, for injection into a well subject to the requirements for the Class VI Underground Injection Control Program of Rule R317-7.

(ii) Any Class VI Underground Injection Control well owner or operator, who claims that a carbon dioxide stream is excluded under Subsection R315-261-4(h), shall have an authorized representative, as defined in Section R315-260-10, sign a certification statement worded as follows: I certify under penalty of law that the carbon

dioxide stream that I am claiming to be excluded under Subsection R315-261-4(h) has not been mixed with, or otherwise co-injected with, hazardous waste at the Underground Injection Control (UIC) Class VI permitted facility, and that injection of the carbon dioxide stream is in compliance with the applicable requirements for UIC Class VI wells, including the applicable requirements in Rule R317-7.

(iii) The signed certification statement shall be kept on-site for no less than three years, and shall be made available within 72 hours of a written request from the Director. The signed certification statement shall be renewed every year that the exclusion is claimed, by having an authorized representative, as defined in Section R315-260-10, annually prepare and sign a new copy of the certification statement within one year of the date of the previous statement. The signed certification statement shall also be readily accessible on the facility's publicly-available Web site, if such Web site exists, as a public notification with the title of "Carbon Dioxide Stream Certification" at the time the exclusion is claimed.

R315-261-400. Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials - Applicability.

The requirements of Sections R315-261-400, 410, 411, and 420 apply to those areas of an entity managing hazardous secondary materials excluded under Subsection R315-261-4(a)(23) and/or (24) where hazardous secondary materials are generated or accumulated on site.

(a) A generator of hazardous secondary material, or an intermediate or reclamation facility [~~operating under a verified recycler exclusion under Subsection R315-260-31(d)~~], that accumulates 6000 kg or less of hazardous secondary material at any time shall comply with Sections R315-261-410 and 411.

(b) A generator of hazardous secondary material, or an intermediate or reclamation facility [~~operating under a verified recycler exclusion under Subsection R315-260-31(d)~~] that accumulates more than 6000 kg of hazardous secondary material at any time shall comply with Sections R315-261-410 and 420.

R315-261-410. Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials - Preparedness and Prevention.

(a) Maintenance and operation of facility. Facilities generating or accumulating hazardous secondary material shall be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous secondary materials or hazardous secondary material constituents to air, soil, or surface water which could threaten human health or the environment.

(b) Required equipment. All facilities generating or accumulating hazardous secondary material shall be equipped with the following, unless none of the hazards posed by hazardous secondary material handled at the facility could require a particular kind of equipment specified below:

(1) An internal communications or alarm system capable of providing immediate emergency instruction, voice or signal, to facility personnel;

(2) A device, such as a telephone, immediately available at the scene of operations, or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;

(3) Portable fire extinguishers, fire control equipment, including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals, spill control equipment, and decontamination equipment; and

(4) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(c) Testing and maintenance of equipment. All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of emergency.

(d) Access to communications or alarm system.

(1) Whenever hazardous secondary material is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation shall have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required under Subsection R315-261-410(b).

(2) If there is ever just one employee on the premises while the facility is operating, he shall have immediate access to a device, such as a telephone, immediately available at the scene of operation, or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required under Subsection R315-261-410(b).

(e) Required aisle space. The hazardous secondary material generator or intermediate or reclamation facility [~~operating under a verified recycler exclusion under Subsection R315-260-31(d)~~] shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

(f) Arrangements with local authorities.

(1) The hazardous secondary material generator or an intermediate or reclamation facility [~~operating under a verified recycler exclusion under Subsection R315-260-31(d)~~] shall attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations:

(i) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous secondary material handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;

(ii) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(iii) Agreements with state emergency response teams, emergency response contractors, and equipment suppliers; and

(iv) Arrangements to familiarize local hospitals with the properties of hazardous secondary material handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(2) Where state or local authorities decline to enter into such arrangements, the hazardous secondary material generator or an intermediate or reclamation facility [~~operating under a verified recycler exclusion under Subsection R315-260-31(d)~~] shall document the refusal in the operating record.

R315-261-411. Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials - Emergency Procedures for Facilities Generating or Accumulating 6000 Kg or Less of Hazardous Secondary Material.

A generator or an intermediate or reclamation facility [~~operating under a verified recycler exclusion under Subsection R315-260-31(d)~~] that generates or accumulates 6000 kg or less of hazardous secondary material shall comply with the following requirements:

(a) At all times there shall be at least one employee either on the premises or on call, i.e., available to respond to an emergency by reaching the facility within a short period of time, with the responsibility for coordinating all emergency response measures specified in Subsection R315-261-411(d). This employee is the emergency coordinator.

(b) The generator or intermediate or reclamation facility [~~operating under a verified recycler exclusion under Subsection R315-260-31(d)~~] shall post the following information next to the telephone:

(1) The name and telephone number of the emergency coordinator;

(2) Location of fire extinguishers and spill control material, and, if present, fire alarm; and

(3) The telephone number of the fire department, unless the facility has a direct alarm.

(c) The generator or an intermediate or reclamation facility [~~operating under a verified recycler exclusion under Subsection R315-260-31(d)~~] shall ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

(d) The emergency coordinator or his designee shall respond to any emergencies that arise. The applicable responses are as follows:

(1) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(2) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;

(3) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator or an intermediate or reclamation facility [~~operating under a verified recycler exclusion under Subsection R315-260-31(d)~~] has knowledge that a spill has reached surface water, the generator or an

intermediate or reclamation facility [~~operating under a verified recycler exclusion under Subsection R315-260-31(d)~~] shall immediately notify the National Response Center, using their 24-hour toll free number 800/424-8802 and follow the requirements Section R316-263-33. The report shall include the following information:

(i) The name, address, and U.S. EPA Identification Number of the facility;

(ii) Date, time, and type of incident, e.g., spill or fire;

(iii) Quantity and type of hazardous waste involved in the incident;

(iv) Extent of injuries, if any; and

(v) Estimated quantity and disposition of recovered materials, if any.

R315-261-420. Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials - Contingency Planning and Emergency Procedures for Facilities Generating or Accumulating More Than 6000 Kg of Hazardous Secondary Material.

A generator or an intermediate or reclamation facility [~~operating under a verified recycler exclusion under Subsection R315-260-31(d)~~] that generates or accumulates more than 6000 kg of hazardous secondary material shall comply with the following requirements:

(a) Purpose and implementation of contingency plan.

(1) Each generator or an intermediate or reclamation facility [~~operating under a verified recycler exclusion under Subsection R315-260-31(d)~~] that accumulates more than 6000 kg of hazardous secondary material shall have a contingency plan for his facility. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water.

(2) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of hazardous secondary material or hazardous secondary material constituents which could threaten human health or the environment.

(b) Content of contingency plan.

(1) The contingency plan shall describe the actions facility personnel shall take to comply with Subsection R315-261-420(a) and (f) in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water at the facility.

(2) If the generator or an intermediate or reclamation facility [~~operating under a verified recycler exclusion under Subsection R315-260-31(d)~~] accumulating more than 6000 kg of hazardous secondary material has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR 112, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of Rule R315-261. The hazardous secondary material generator or an intermediate or reclamation facility [~~operating under a verified recycler exclusion under Subsection R315-260-31(d)~~] may develop one contingency plan

which meets all regulatory requirements. The Director recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan"). When modifications are made to non-hazardous waste provisions in an integrated contingency plan, the changes do not trigger the need for a hazardous waste permit modification.

(3) The plan shall describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to Subsection R315-262-410(f).

(4) The plan shall list names, addresses, and phone numbers, office and home, of all persons qualified to act as emergency coordinator, see Subsection R315-261-420(e), and this list shall be kept up-to-date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they shall assume responsibility as alternates.

(5) The plan shall include a list of all emergency equipment at the facility, such as fire extinguishing systems, spill control equipment, communications and alarm systems, internal and external, and decontamination equipment, where this equipment is required. This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(6) The plan shall include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes, in cases where the primary routes could be blocked by releases of hazardous waste or fires.

(c) Copies of contingency plan. A copy of the contingency plan and all revisions to the plan shall be:

(1) Maintained at the facility; and

(2) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

(d) Amendment of contingency plan. The contingency plan shall be reviewed, and immediately amended, if necessary, whenever:

(1) Applicable regulations are revised;

(2) The plan fails in an emergency;

(3) The facility changes-in its design, construction, operation, maintenance, or other circumstances-in a way that materially increases the potential for fires, explosions, or releases of hazardous secondary material or hazardous secondary material constituents, or changes the response necessary in an emergency;

(4) The list of emergency coordinators changes; or

(5) The list of emergency equipment changes.

(e) Emergency coordinator. At all times, there shall be at least one employee either on the facility premises or on call, i.e., available to respond to an emergency by reaching the facility within a short period of time, with the responsibility for coordinating all emergency response measures. This emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of hazardous secondary material handled, the

location of all records within the facility, and the facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan. The emergency coordinator's responsibilities are more fully spelled out in Subsection R315-261-420(f). Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of hazardous secondary material(s) handled by the facility, and type and complexity of the facility.

(f) Emergency procedures.

(1) Whenever there is an imminent or actual emergency situation, the emergency coordinator, or his designee when the emergency coordinator is on call, shall immediately:

(i) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(ii) Notify appropriate State or local agencies with designated response roles if their help is needed.

(2) Whenever there is a release, fire, or explosion, the emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any released materials. The emergency coordinator may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.

(3) Concurrently, the emergency coordinator shall assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment shall consider both direct and indirect effects of the release, fire, or explosion, e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions.

(4) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he shall report his findings as follows:

(i) If his assessment indicates that evacuation of local areas may be advisable, the emergency coordinator shall immediately notify appropriate local authorities. The emergency coordinator shall be available to help appropriate officials decide whether local areas should be evacuated; and

(ii) The emergency coordinator shall immediately notify the Utah Department of Environmental Quality 24 hour answering service at 801/536-4123, and the National Response Center, using their 24-hour toll free number 800/424-8802. The report shall include:

(A) Name and telephone number of reporter;

(B) Name and address of facility;

(C) Time and type of incident, e.g., release, fire;

(D) Name and quantity of material(s) involved, to the extent known;

(E) The extent of injuries, if any; and

(F) The possible hazards to human health, or the environment, outside the facility.

(5) During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous secondary material at the facility. These measures shall include,

where applicable, stopping processes and operations, collecting and containing released material, and removing or isolating containers.

(6) If the facility stops operations in response to a fire, explosion or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(7) Immediately after an emergency, the emergency coordinator shall provide for treating, storing, or disposing of recovered secondary material, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility. Unless the hazardous secondary material generator can demonstrate, in accordance with Subsections R315-261-3(c) or (d), that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of Rules R315-262, 263, and 265.

(8) The emergency coordinator shall ensure that, in the affected area(s) of the facility:

(i) No secondary material that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

(ii) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(9) The hazardous secondary material generator shall note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he shall submit a written report on the incident to the Director. The report shall include:

(i) Name, address, and telephone number of the hazardous secondary material generator;

(ii) Name, address, and telephone number of the facility;

(iii) Date, time, and type of incident, e.g., fire, explosion;

(iv) Name and quantity of material(s) involved;

(v) The extent of injuries, if any;

(vi) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(vii) Estimated quantity and disposition of recovered material that resulted from the incident.

(g) Personnel training. All employees must be thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies.

KEY: hazardous waste
Date of Enactment or Last Substantive Amendment: August 31, 2017
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

Waste Management and Radiation Control Board
Executive Summary
University of Utah Radiation Safety
Radioactive Materials License Number UT 1800001

What is the issue before the Board?	The University of Utah (U of U) is requesting an exemption from the requirements in 10 CFR 71.5(b) which are equivalent to the requirements found in R313-19-100(5)(b).
What is the historical background or context for this issue?	In 1993, the U of U wrote to the U.S. Department of Transportation (DOT) requesting an exemption from DOT requirements to move a device containing radioactive materials from one building on campus to another campus building. The DOT responded that "hazardous materials transported by a state agency which are packaged and handled solely by state employees and transported in state owned and operated vehicles were not considered to be in commerce and were therefore excepted from the Hazardous Materials Transportation Act and the Hazardous Materials Regulations [DOT Requirements] developed under the Act." Therefore, the U of U did not need an exemption to transport the radioactive material as requested. This DOT interpretation of 49 CFR 171.1(d)(5) has been applied by university personnel at various universities across the nation for a number of years. On June 1, 2018, the U.S. Nuclear Regulatory Commission (NRC) sent a communication to the Agreement States to clarify the applicability of the DOT requirements found in Title 49 of the Code of Federal Regulations (CFR) to the transportation of radioactive materials and when licensees would need to request an exemption from the NRC's transportation requirements found in 10 CFR Part 71. (Copy follows this Executive Summary.) The communication explained that, during an inspection at a State university, an inspector was informed by university personnel that the DOT requirements did not apply to the transportation of radioactive materials as described above since the materials were not considered to be "in commerce" and were excepted by 49CFR 171.1(d)(5). Under the NRC's authority, the requirements of 10 CFR 71.5(b) were promulgated to ensure that licensees transporting radioactive materials comply with the applicable portions of DOT regulations even when those shipments do not enter into commerce and therefore are not subject to DOT requirements. Pursuant to 10 CFR 71.5(b), all radioactive materials transported by State personnel in State owned and operated vehicles would be required to comply with the DOT requirements even though the radioactive materials are not considered to be in commerce. All Agreement States are required to adopt and implement requirements that are essentially identical to the requirements found in 10 CFR 71.5(b) in order to maintain compatibility with NRC Program requirements. The State of Utah adopted requirements that are essentially identical to

DRC-2018-006389
Attachment: DRC-2018-006008
DRC-2018-006390

	10 CFR 71.5(b) in Utah Administrative Code (UAC) R313-19-100(5)(b). When the Radiation Safety Officer (RSO) at the U of U read the June 1, 2018 communication from the NRC, he realized that the U of U had been following the DOT's interpretation and were treating shipments that were not in commerce as excepted from the requirements, but they did not have an exemption to 10 CFR 71.5(b) or Utah's equivalent requirement, UAC R313-19-100(5)(b). The U of U's RSO immediately contacted the Division to verify that he had correctly interpreted the communication. When the Division agreed that the RSO had correctly determined that the U of U was operating in accordance with DOT requirements but not with the requirements of the NRC, the RSO sent a request to the Director for an exemption to the requirements in 10 CFR 71.5(b) [R313-19-100(5)(b)]. (Copy follows this Executive Summary.) As discussed with the RSO, the exemption would only apply to the radioactive materials which are packaged and handled solely by state employees and transported in state owned and operated vehicles and are not considered to be in commerce. An example of transportation of radioactive materials that would be exempted, if the exemption is approved by the Board, would be radioactive waste that is collected from U of U laboratories and transported to the U of U's building where radioactive waste is collected, packaged, and stored while awaiting shipment to the disposal site in Hanford, Washington. Another example of radioactive material management that would potentially be exempted from the applicable DOT requirements would be the transportation of small sources of radioactive materials that are transported by State personnel in State owned and operated vehicles to various buildings at the U of U to calibrate or verify the operation of certain devices or instruments used to locate contamination.
What is the governing statutory or regulatory citation?	Pursuant to UAC R313-12-55, the Board is authorized to grant exemptions to the requirements upon application.
Is Board action required?	Yes.
What is the Division Director's recommendation?	Since this exemption request will typically apply to only very small quantities of radioactive materials that are transported by U of U personnel in State owned and operated vehicles on local roadways and poses no undue hazard to the public or the environment, the Director recommends that the exemption be approved.

DRC-2018-006389
Attachment: DRC-2018-006008
DRC-2018-006390

Where can more information be obtained?	Please contact Phil Goble at (801) 536-4044 or Gwyn Galloway at (801) 536-4258. NRC's Communication, STC-2018-037 may be found at: "https://scp.nrc.gov/asletters/index.cfm"

DRC-2018-006389
Attachment: DRC-2018-006008
DRC-2018-006390

THE UNIVERSITY OF UTAH

June 14, 2018

Sent via Certified Mail (Article No. 7003 2260 0002 0318 8000)

Mr. Scott Anderson, Director
Utah Department of Environmental Quality
Utah Division of Waste Management and Radiation Control
195 North 1950 West
Salt Lake City, UT 84116

Subject: Request for an Exemption from R313-19-100(5)(b)

Dear Mr. Anderson:

On June 7, 2018, I spoke with Phil Goble and Gwyn Galloway regarding a letter from the Nuclear Regulatory Commission dated June 1, 2018, titled "APPLICABILITY OF U.S. DEPARTMENT OF TRANSPORTATION (DOT) REQUIREMENTS IN TITLE 49 OF THE CODE OF FEDERAL REGULATIONS TO CLASS 7 (RADIOACTIVE) MATERIAL TRANSPORT, AND WHEN TO REQUEST AN EXEMPTION FROM 10 CFR 71.5(b) (STC-18-037)." This letter is to follow up that conversation with a written request for an exemption from R313-19-100(5)(b), which is the equivalent State regulation to 10 CFR 71.5(b).

Attached is a letter to the University of Utah Radiological Health Department from the U.S. Department of Transportation, dated February 19, 1993, which states that "Recently, our Office of Chief Council determined that hazardous materials transported by a state agency which are packaged and handled solely by state employees and transported in state owned and operated vehicles are not considered to be in commerce and are therefore excepted from the Hazardous Materials Transportation Act and the Hazardous Materials Regulations developed under the Act." During my conversation with Phil Goble and Gwyn Galloway on June 7, I explained that the University of Utah has been operating under the above statement in the DOT letter. Phil and Gwyn were both supportive of our continued operation under the conditions stated in the DOT letter.

Further, I had a phone conversation with Phil Goble on February 22, 2018, in which he expressed that our continued interpretation and operation under the DOT letter was correct and valid.

I respectfully request that the University of Utah Broadscope License # UT1800001 be exempted from R313-19-100(5)(b). I can reassure you that the safe transport of radioactive material remains a priority in our operations. Your consideration is appreciated.

Sincerely,

Frederick A. Monette, M.S., CHP
Radiation Safety Officer

cc: Andrew Weyrich, VP for Research
Radiation Safety Committee

Attachment

University of Utah
RADIATION SAFETY
75 South 2000 East, Room 322
Salt Lake City, Utah 84112-8930
(801) 581-6141 • FAX: (801) 581-4206

U.S. Department
of Transportation

**Research and
Special Programs
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

FEB 19 1993

Keith J. Schiager, PhD, CHP
University of Utah
Radiological Health Department
100 Orson Spencer Hall
Salt Lake City, UT 84112

Dear Dr. Schiager:

In your July 31, 1992 application, you requested an exemption from the Type B packaging requirements of the Title 49 Code of Federal Regulations to allow the transportation of your Model GR-9 Irradiator from one of your research facilities to another over a distance of few miles.

Recently, our Office of Chief Council determined that hazardous materials transported by a state agency which are packaged and handled solely by state employees and transported in state owned and operated vehicles are not considered to be in commerce and are therefore excepted from the Hazardous Materials Transportation Act and the Hazardous Materials Regulations developed under the Act. Therefore, your planned transportation of your GR-9 Irradiator, as described in your application, does not require an exemption from us.

If you have any further questions concerning the transportation of your irradiator, please feel free to call me at (202) 366-4545.

Sincerely,

George A. Brown, Chief
Radioactive Materials Branch
Office of Hazardous Materials
Technology

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

June 1, 2018

ALL AGREEMENT STATES, VERMONT, WYOMING

APPLICABILITY OF U.S. DEPARTMENT OF TRANSPORTATION (DOT) REQUIREMENTS IN TITLE 49 OF THE *CODE OF FEDERAL REGULATIONS* TO CLASS 7 (RADIOACTIVE) MATERIAL TRANSPORT, AND WHEN TO REQUEST AN EXEMPTION FROM 10 CFR 71.5(b) (STC-18-037)

Purpose: This letter has two purposes:

- It explains how the U.S. Department of Transportation (DOT) regulations in Title 49 of the *Code of Federal Regulations* (CFR) are incorporated into U.S. Nuclear Regulatory Commission's (NRC's) transportation regulations in 10 CFR Part 71, "Packaging and Transportation of Radioactive Material," and how they apply to Agreement States.

- It informs the Agreement State programs that NRC and Agreement State licensees are required to follow the standards and requirements of the DOT regulations in 49 CFR applicable to Class 7 (radioactive) material transport. These requirements apply even for shipments not covered by DOT regulations, unless the licensee requests an exemption from 10 CFR 71.5(b) or the Agreement State's equivalent regulation.

For the purposes of this discussion, "licensed material" and "Class 7 (radioactive) material" may be used interchangeably.

Background: During an inspection, a State university that is also an Agreement State licensee informed an Agreement State inspector that the university did not need to comply with the DOT regulations for transport of Class 7 (radioactive) materials because the university transported the material itself on public roads in State-owned vehicles. The university referenced 49 CFR 171.1(d)(5), which specifies some functions and activities that are <u>not</u> subject to the DOT regulations. The licensee concluded that the DOT regulations do not apply when transporting a hazardous material in a conveyance by a Federal, State, or local government employee solely for non-commercial purposes, since the shipment is not considered to be "in commerce." The NRC is providing clarification.

Discussion: The purpose of 10 CFR 71.5(a) is to ensure that NRC licensees transporting licensed material comply with the applicable DOT regulations, including those regulations in 49 CFR Parts 107, 171 through 180, and 390 through 397, appropriate to the mode of transport (e.g., requirements for the use of proper packaging, labeling, and marking).

The purpose of 10 CFR 71.5(b) is to impose, by NRC authority, pertinent DOT requirements for shipments of Class 7 (radioactive) material by NRC licensees even when those shipments do not enter commerce and are, therefore, not subject to the DOT regulations. The NRC regulation in 10 CFR 71.5(b) is designated as Compatibility Category B; therefore, Agreement State programs must adopt and implement essentially identical transportation regulations. As summarized in the enclosed analysis, the regulatory jurisdiction and any related enforcement action for radioactive material shipments resides with the NRC (under 10 CFR 71.5(b)) or with the Agreement State Program (under equivalent Agreement State regulations), not with DOT.

Although a licensee may not be required to follow the DOT regulations per 49 CFR 171.1(d)(5) because a shipment does not enter commerce, NRC and Agreement State licensees are nevertheless required to follow transportation regulations per 10 CFR 71.5(b) or equivalent Agreement State regulation. The NRC and Agreement State licensees shall conform to the applicable DOT regulations unless the licensee requests an exemption from 10 CFR 71.5(b) or equivalent Agreement State regulation. Such a request is made to the NRC or the respective Agreement State program.

If you have any questions regarding this correspondence, please contact your Regional State Agreements Officer, or the point of contact named below:

POINT OF CONTACT: Kathy Dolce Modes E-MAIL: Kathy.Modes@nrc.gov
TELEPHONE: (215) 872-5804

/RA/

Theresa V. Clark, Acting Director
Division of Materials Safety, Security, State
and Tribal Programs
Office of Nuclear Material Safety
and Safeguards

Enclosure:
Detailed Explanation

Detailed Explanation – Applicability of U.S. Department of Transportation Requirements to Class 7 (Radioactive) Material Transport, and When to Request an Exemption from 10 CFR 71.5(b)

Title 10 of the *Code of Federal Regulations* (10 CFR), Section 71.5, "Transportation of licensed material," is specifically designed to address the joint regulatory structure of the U.S. Nuclear Regulatory Commission (NRC) and U.S. Department of Transportation (DOT). It also provides consistent and equivalent standards governing the safety of Class 7 (radioactive) material in transport. Specifically, 10 CFR 71.5 encompasses the NRC's expectations for the transportation of Class 7 (radioactive) material and compliance with both NRC and DOT regulations.

10 CFR 71.5(a)

This paragraph provides directions to the NRC licensees transporting Class 7 (radioactive) material to ensure compliance with the applicable DOT regulations, including those regulations in 49 CFR Parts 107, 171 through 180, and 390 through 397, appropriate to the mode of transport (e.g., requirements for the use of proper packaging, labeling, and marking).

10 CFR 71.5(b)

This paragraph indicates, in part, that if the DOT regulations do not apply to a shipment of Class 7 (radioactive) material (e.g., 49 CFR 171.1(d)), the licensee shall follow the standards and requirements of the DOT regulations as specified in 10 CFR 71.5(a) to the same extent as if the shipment were subject to the DOT regulations. The NRC licensees who transport licensed material shall comply with the applicable DOT regulations, unless the licensee requests an exemption.

Commerce

The DOT's jurisdiction has generally focused on the shipments of Class 7 (radioactive) material that are considered to be "in commerce." There are instances where a Class 7 (radioactive) material shipment does not enter commerce. For example, a State university may transport Class 7 (radioactive) material to other buildings on and off-campus, and the Class 7 (radioactive) material may not enter commerce. However, 10 CFR 71.5(b) or the equivalent Agreement State regulation, would still require an NRC and/or Agreement State licensee to comply with the standards and requirements of the DOT regulations for that Class 7 (radioactive) material shipment even though it may not enter commerce.

Purpose of 10 CFR 71.5(b)

In the early 1970s, the Atomic Energy Commission (AEC), the precursor to the NRC, recognized there may be some shipments of radioactive material that would not be required to meet applicable safety requirements because it did not enter commerce and, therefore, were outside of the DOT's jurisdiction. To remedy this potential gap and ensure uniform applicability of relevant safety requirements, in 1972, the AEC issued 10 CFR 71.5(b). This new requirement imposed applicable DOT requirements such as packaging, marking, and labeling on licensees shipping Class 7 (radioactive) materials, even when the licensee was not subject to the DOT regulations [60 FR 50253 (September 28, 1995)]. The regulatory authority for shipments under 10 CFR 71.5(b) resides with the NRC, and not the DOT.

Compatibility Category

The NRC regulation in 10 CFR 71.5 is designated as Compatibility Category B, indicating that this program element (e.g., regulation) has significant cross-jurisdictional implications. The Agreement State program element must be essentially identical to that of the NRC.

Agreement State Regulations

An Agreement State licensee is subject to the equivalent 10 CFR Part 71 regulations that the Agreement State program has adopted. As required by an Agreement State program's equivalent regulation to 10 CFR 71.5(b), Agreement State licensees are required to follow the standards and requirements in the appropriate DOT regulations in 49 CFR applicable to Class 7 (radioactive) material transport, unless the licensee requests an exemption from the Agreement State's equivalent regulation to 10 CFR 71.5(b).

Summary

The purpose of 10 CFR 71.5(b) is to impose, by NRC authority, the pertinent DOT requirements for shipments of licensed Class 7 (radioactive) material by the NRC licensees (and subsequently the Agreement State licensees) even when those shipments do not enter commerce and are, therefore, not subject to the DOT regulations. The NRC regulation in 10 CFR 71.5(b) is designated as Compatibility Category B, therefore the Agreement State programs must adopt essentially identical transportation regulations and implement them. As summarized here, the regulatory jurisdiction and any related enforcement action for radioactive material shipments resides with the NRC (under 10 CFR 71.5(b)) and with the Agreement State program (under equivalent Agreement State regulations), not with DOT.

Even though a licensee may not be required to follow the DOT regulations per 49 CFR 171.1(d)(5) because the material does not enter commerce, licensees are nevertheless required to follow the applicable DOT transportation requirements per 10 CFR 71.5(b). The NRC and Agreement State licensees are required to conform to the DOT regulations (e.g., requirements for the use of proper packaging, labeling, and marking) unless the licensee requests an exemption from 10 CFR 71.5(b) (or equivalent Agreement State regulation). Such a request is made to the NRC or the respective Agreement State program.

Waste Management and Radiation Control Board
Request for a Site-Specific Treatment Variance
Executive Summary
Energy*Solutions*, LLC
July 12, 2018

What is the issue before the Board?	On June 27, 2018, Energy*Solutions* LLC submitted a request to the Director of the Division of Waste Management and Radiation Control for a one-time site-specific treatment variance from the Utah Administrative Code (Hazardous Waste Management Rules). Energy*Solutions* seeks authorization to receive an ash with dioxin/furan contamination.
What is the historical background or context for this issue?	The Mixed Waste Facility proposes to receive up to 100 tons of ash contaminated with metals at varying levels with dioxins and furans as Underlying Hazardous Constituents. If, upon receipt, this waste meets Land Disposal Restrictions for characteristic metals, the waste may be directly disposed in the Low Level Radioactive Waste embankment regardless of dioxin and furan concentrations. However, if the Facility is required to treat the waste for metals to meet the Land Disposal Restrictions for characteristic metals, then it is also required to treat the dioxins and furans as Underlying Hazardous Constituents. Energy*Solutions* proposes to receive this waste and treat it to meet Land Disposal Restriction standards for the hazardous metals, if necessary. Energy*Solutions* is asking to be relieved of the requirement for treating the dioxins and furans. In order to ensure that this treatment is protective to the environment, Energy*Solutions* proposes to macroencapsulate the waste for disposal in the Mixed Waste Landfill Cell. This request is based on the fact that treatment of the dioxin and furan contaminants is contingent only upon the hazardous metal levels. The proposed treatment will include further encapsulating the waste and protect it from contact with precipitation, thereby decreasing the potential of leaching. A notice for public comment was published in the *Salt Lake Tribune*, the *Deseret News* and the *Tooele County Transcript Bulletin* on July 10, 2018. The comment period began July 10, 2018, and will end August 8, 2018.
What is the governing statutory or regulatory citation?	Variances are provided for in 19-6-111 of the Utah Solid and Hazardous Waste Act. This is a one-time site-specific variance from an applicable treatment standard as allowed by R315-268.44 of the Utah Administrative Code.

DSHW-2018-006192
Attachment: DSHW-2018-005927

Is Board action required?	No. This is an informational item before the Board.
What is the Division/Director's recommendation?	The Director will provide a recommendation at the next Board meeting.

ENERGYSOLUTIONS

DSHW-2018-005927

Div of Waste Management
and Radiation Control

JUN 27 2018

June 27, 2018 CD18-0120

Mr. Scott T. Anderson
Director
Division of Waste Management and Radiation Control
195 North 1950 West
Salt Lake City, UT 84114-4880

Subject: EPA ID Number UTD982598898 – Request for a Site-Specific Treatment Variance for Ash with Dioxin/Furan Contamination

Dear Mr. Anderson:

Energy*Solutions* hereby requests a variance to receive an exemption from Utah Administrative Code (UAC) R315-268-40(a)(3) for an incinerator ash waste that meets all treatment standards except those for dioxins and furans as Underlying Hazardous Constituents (UHCs). This request is submitted in accordance with the requirements of UAC R315-260-19.

The regulatory requirement authorizing this request is found in UAC R315-268-44 which allows a site-specific variance from an applicable treatment standard provided that the following condition is met:

> *UAC R315-268-44268.44(h)(2) It is inappropriate to require the waste to be treated to the level specified in the treatment standard or by the method specified as the treatment standard, even though such treatment is technically possible.*

Energy*Solutions* requests approval to receive ash from incinerator and metal recycling processes that contains dibenzo-p-dioxin and dibenzofuran UHCs above their respective treatment standards denoted in the Universal Treatment Standards (UTS) table in R315-268-48. All other treatment standards associated with the waste will be met prior to disposal.

Requiring the waste to meet the dioxin and furan treatment standards is inappropriate based on the processes that generate the waste. Because of the waste generation processes, all of the ash waste contains dioxins and furans; however, in accordance with regulations, only a portion of the waste needs to be treated for those contaminants. The generator analyzes each container of ash for metals contamination. If metals are below the Toxicity Characteristic concentrations described in 40 CFR 261.24 (R315-261-24), the waste is shipped to the Clive facility as Low-Level Radioactive Waste (LLRW) and disposed in the Class A Embankment. If metals are above the Toxicity Characteristic concentrations, then the waste must be treated for those metals as well as all UHCs, including dioxins and furans. Therefore it is inappropriate to require treatment of dioxin and furan contaminants in instances where characteristic metals are found in the waste when treatment is not required if metals are below characteristic concentrations in the waste.

299 South Main Street, Suite 1700 ▪ Salt Lake City, Utah 84111
(801) 649-2000 ▪ Fax: (801) 880-2879 ▪ www.energysolutions.com

Furthermore, the stabilized ash is currently re-incinerated in an attempt to reduce the concentration of dioxins and furans in the ash. This is unnecessary extra incineration of waste with very little intrinsic value for the boiler. Therefore, it is also inappropriate to require additional incineration in order to attempt to meet the standards.

Energy*Solutions* proposes to confirm the waste meets all treatment standards with the exception of the dioxin and furan UHC standards and then to macroencapsulate the residue in MACRO Vaults using requirements approved in the state-issued Part B Permit. This will provide much better protection of the waste and will avoid unnecessary additional incineration of the waste.

This variance is being requested for up to approximately 100 tons of ash that will contain elevated concentrations of dioxins and furans.

Energy*Solutions* requests that a variance be granted to macroencapsulate ash waste that meets all treatment standards except those for dioxin and furan UHCs.

The name, phone number, and address of the person who should be contacted to notify Energy*Solutions* of decisions by the Director is:

Mr. Vern Rogers
Manager, Compliance and Permitting
Energy*Solutions* LLC
299 South Main Street, Suite 1700
Salt Lake City, UT 84111
(801) 649-2000

Should there be any questions to this request, please contact me at (801) 649-2144.

Sincerely,

Timothy L. Orton, P.E.
Environmental Engineer

cc: Don Verbica, DWMRC

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.