



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

L. Scott Baird
Interim Executive Director

DIVISION OF WASTE MANAGEMENT
AND RADIATION CONTROL
Ty L. Howard
Director

A meeting of the Waste Management and Radiation Control Board has been scheduled for August 8, 2019 at 1:30 p.m. at the Utah Department of Environmental Quality, Multi-Agency State Office Building, (Conference Room #1015), 195 North 1950 West, SLC.

(One or more Board members may participate telephonically.)

General Public Audio Conferencing Access Number: 1-877-820-7831; Passcode Number 853610#

AGENDA

- I. Call to Order.
- II. Public Comments on Agenda Items.
- III. Declarations of Conflict of Interest.
- IV. Approval of Meeting Minutes for the June 13, 2019 Board Meeting (**Board Action Item**).
- V. Underground Storage Tanks Update.
- VI. Hazardous Waste Section.
 - A. Approval to proceed with formal rulemaking and 30-day public comment period for proposed rule changes to Hazardous Waste Rules UAC R315-260, 261, 262, 263, 264, 265, 266, and 273 to incorporate changes promulgated by the Environmental Protection Agency (EPA) and published in the November 28, 2016 (81 FR 85696) and December 26, 2017 *Federal Register* (82 FR 60894) (**Board Action Item**).
- VII. Radioactive Materials.
 - A. Approval of final adoption of proposed rule changes to proposed rule changes to R313-19-34, R313-22-75, and R313-32 of the Radiation Control Rules to incorporate changes promulgated by the Nuclear Regulatory Commission and published in the July 16, 2018 *Federal Register* (83 FR 33046) with an additional proposed change to R313-32-2(5) (**Board Action Item**).
- VIII. Director's Report.

(Over)

IX. Other Business.

- A. Misc. Information Items.
- B. Scheduling of next Board meeting (September 12, 2019).

X. Adjourn.

Following the meeting, Board members are invited to tour the new DEQ Technical Support Center.

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
June 13, 2019
1:30 p.m.

Board Members Participating By Phone: Richard Codell, Steve McIff, Shawn Milne, Dennis Riding (Vice Chair), Mark Franc and Shane Whitney

Board Members Present at Anchor Location: Brett Mickelson (Chair), Alan Matheson, Nathan Rich and Vern Rogers

Board Members Excused/Absent: Danielle Endres and Jeremy Hawk

Staff Members Present: Ty Howard, Brent Everett, Gwyn Galloway, Arlene Lovato, Rusty Lundberg, Deborah Ng, Elisa Smith and Raymond Wixom

Other Phone Call Participants: David Cronshaw, Bryan Moss

Others Present at Anchor Location: Linda Ebert, Mario A. Bettolo

I. Call to Order.

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

II. Public Comments on Agenda Items. – None to Report.

III. Declarations of Conflict of Interest. – None to Report.

IV. Approval of the Meeting Minutes for the May 9, 2019 Board Meeting (Board Action Item).

It was moved by Nathan Rich and seconded by Shane Whitney and UNANIMOUSLY CARRIED to approve the May 9, 2019 Board Meeting minutes.

V. Underground Storage Tanks Update.

Brent Everett, Director of the Division of Environmental Response and Remediation (DERR), informed the Board that the cash balance of the Petroleum Storage Tank (PST) Trust Fund at the end of April 2019 was \$13,764,148.00. The preliminary estimate for the cash balance of the PST Trust Fund for the end of May 2019 is \$14,383,336.00. The PST Trust Fund is managed on a cash balance basis to ensure sufficient coverage for known claims that have been reported. The balance of the PST Trust Fund is watched closely to ensure sufficient coverage for covered releases. Mr. Rich asked about supporting information in the Board packet being dated February 2019. Mr. Everett committed that updated information would be provided to Board members. (The corrected version was emailed to the Board on June 13, 2019.)

VI. Radioactive Materials.

- A. Approval to proceed with formal rulemaking and 30-day public comment period for proposed rule changes to R313-19-34, R313-22-75, and R313-32 of the Radiation Control Rules to incorporate changes promulgated by the Nuclear Regulatory Commission and published in the July 16, 2018 Federal Register (83 FR 33046) with an additional proposed change to R313-32-2(5) (Board Action Item).

Gwyn Galloway, Environmental Scientist, Uranium Mills and Radioactive Materials Section, reviewed the request for approval from the Board to proceed with formal rulemaking and 30-day public comment on the proposed rule changes to R313-19-34, *Terms and Conditions of Licenses*, R313-22-75, *Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices Which Contain Radioactive Material*, and R313-32, *Medical Use 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 July 16, 2018 (83 FR 33046).

The Director also requested additional wording to the NRC's requirements in 10 CFR 35.92. The following wording is added to address anticipated variance requests from Utah licensees for Board approval due to the use of a new radioactive drug at medical facilities:

(b) The Director may approve a radioactive material with a physical half-life of greater than 120 days but less than 175 days for decay-in-storage before disposal without regard to its radioactivity on a case by case basis if the licensee:

(1) Requests an amendment to the licensee's radioactive materials license for the approval;

(2) Can demonstrate that the radioactive waste will be safely stored, and accounted for during the decay-in-storage period and that the additional radioactive waste will not exceed the licensee's radioactive waste storage capacity; and,

(3) Commits to monitor the waste before disposal as stated in paragraphs (a)(1) and (a)(2) of this section before the waste is disposed."

On July 16, 2018, the NRC amended the federal radioactive materials regulations regarding the medical use of radioactive material. These amendments update the medical use of radioactive materials requirements which were last updated in their entirety in 2002. The proposed rule changes address technological advances, changes to medical procedures, and enhance patient safety. In addition, the NRC amended certain federal requirements for radioactive materials licensees that manufacture and prepare radioactive drugs for distribution to medical use licensees for administration to patients.

The proposed changes to R313-19-34(8) revises the requirement to include a quality control test for each generator eluate of a molybdenum-99/technitium-99m generator and introduces a requirement for generator users to report test results for any generator that exceeds the permissible breakthrough concentration.

The proposed changes to R313-22-75 clarifies the requirements for the labels for radioactive drugs and removes the requirement for a written attestation statement for individuals who are board certified by an approved specialty board and who seek to be named on a radioactive materials license as an Authorized Nuclear Pharmacist.

Because R313-32 incorporates 10 CFR Part 35 by reference, the date of the incorporation by reference was changed from 2010 to 2019 which includes the changes published by the NRC on July 16, 2018.

Some of the major changes included in the revised rules are as follows:

- Written attestation statements will no longer be required to be submitted for individuals who are board certified by an appropriate approved specialty board and are seeking to be named on a radioactive materials license as an authorized user; authorized medical physicist, or authorized nuclear pharmacist;
- The ability to have an Associate Radiation Safety Officer (ARSO) named to the license and requirements related to ARSOs were added;
- The medical event criteria was modified and new requirements for medical events involving permanent brachytherapy implants were added. This change requires licensees to develop specific procedures;
- A requirement to provide reports to the DWMRC for breakthrough tests exceeding permissible concentrations was added; and,
- A new training requirement for the use of remote afterloader units, teletherapy devices and gamma stereotactic surgery units was added.

In addition to the adoption of the NRC revisions as stated above, Board approval was requested to add a requirement for an issue not currently addressed by the NRC. The requirements in 10 CFR 35.92 include specific requirements for holding radioactive waste for "decay-in-storage" (DIS) if the radioactive materials have half-lives of 120 days or less. Radioactive waste containing materials with longer half-lives is required to be disposed as low-level radioactive waste (LLRW) unless a variance to hold the waste for DIS is requested and granted. NRC has granted variances for waste with longer half-lives to be held for DIS on a case by case basis in the past.

Recently, a new radioactive drug using Lutetium-177 (Lu-177) was introduced into use at medical facilities. It has been determined that this drug contains a very small quantity of a radioactive impurity that has a half-life of about 161 days. If the impurity is detected in the radioactive waste, the waste created from the administration of Lu-177 would be required to be disposed as LLRW unless a variance from the Board was requested. In anticipation of the increased use of this radioactive drug, the Director recommended that the proposed requirement allowing the Director to approve an amendment for the DIS of radioactive waste with half-lives greater than 120 days but less than 175 days on a case-by-case basis. In to receive the Director's approval, the licensee would be required to demonstrate that the waste will be secured and safely stored, that the additional waste would not exceed the licensee's storage capacity, and that the licensee will meet the survey criteria required for DIS waste with half-lives of 120 days or less.

The Draft rule analysis forms and the proposed rule changes to R313-19-34, R313-22-75, and R313-32 were provided in the June 13, 2019 Board Packet:

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. Board action is required to publish the proposed rule changes in the Utah State Bulletin and start a 30-day public comment period. The Director recommended that the Board authorize the publication of the proposed 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 July 1, 2019 issue of the Utah State Bulletin with the public comment period beginning on July 1 and ending on July 31, 2019.

Nathan Rich asked what form the radioactive waste would have when the waste becomes "regulated" by the State. Mr. Rich asked if it is the "unused" portions of the medicine or bodily fluids, and questioned what kind of waste would be stored?

Gwyn Galloway clarified that each time a licensee administers radioactive material to a patient, radioactive waste is created, such as gloves, tubing, needles, etc. The rule change addresses all of this radioactive waste that is held for DIS. For the waste the licensee presently stores, the licensee has an authorized secure area. This is where they keep this type of waste and periodically, the licensee will conduct a survey to ensure no radioactive material remains in the waste. If the waste is at background levels, they dispose of the material in the regular trash.

Ms. Galloway also clarified that once radioactive material is administered to a patient and the patient is to be released from the facility, the patient has to meet certain criteria before they can be released (go home). Once released, the patient's excreta is considered exempt from regulation.

It was moved by Dennis Riding and seconded by Steve McIff and UNANIMOUSLY CARRIED to approve to proceed with formal rulemaking and 30-day public comment period on proposed rule changes to the Radiation Control Rules R313-19-34, R313-22-75, and R313-32 to incorporate changes promulgated by the Nuclear Regulatory Commission and published in the July 16, 2018 Federal Register (83 FR 33046) with an additional proposed change to R313-32-2(5).

VII. Other Business.

A. Misc. Information Items.

Ty Howard thanked Alan Matheson for his dedicated service to the Division and the Board and wished him the best in his future endeavors. Mr. Matheson has accepted other employment; he will be deeply missed.

Alan Matheson commented that it has been a pleasure working with the Board, and thanked the Division and the Board for their commitment to serving the public and thanked the Board for their time and commitment in serving on the Board.

(Scott Baird has been appointed to serve as the Interim Department Director, effective July 1, 2019.).

B. Scheduling of next Board meeting.

The Board meeting scheduled for July 8, 2019 was cancelled. The next Board meeting is scheduled for August 8, 2019 at 1:30 pm at the Utah Department of Environmental Quality.

VIII. Adjourn.

The meeting adjourned at 2:50 p.m.

UST STATISTICAL SUMMARY

July 1, 2018 -- June 30, 2019

PROGRAM

	July	August	September	October	November	December	January	February	March	April	May	June	(+/-) OR Total
Regulated Tanks	4,058	4,067	4,068	4,065	4,072	4,068	4,062	4,067	4,071	4,071	4,075	4,084	26
Tanks with Certificate of Compliance	3,986	3,992	3,986	3,989	3,990	3,999	4,002	3,998	4,000	4,004	4,005	4,009	23
Tanks without COC	72	75	82	76	82	69	60	69	71	67	70	75	3
Cumulative Facilities with Registered A Operators	1,296	1,300	1,299	1,300	1,302	1,304	1,302	1,300	1,298	1,297	1,297	1,298	97.52%
Cumulative Facilities with Registered B Operators	1,301	1,304	1,303	1,302	1,304	1,306	1,304	1,302	1,300	1,298	1,297	1,298	97.52%
New LUST Sites	15	5	7	7	9	4	2	4	3	4	5	4	69
Closed LUST Sites	15	16	6	16	4	7	9	4	2	3	11	2	95
Cumulative Closed LUST Sites	5146	5162	5167	5182	5187	5196	5204	5209	5212	5215	5226	5228	82
FINANCIAL													
	July	August	September	October	November	December	January	February	March	April	May	June	(+/-)
Tanks on PST Fund	2,704	2,703	2,690	2,692	2,696	2,697	2,693	2,689	2,687	2,694	2,692	2,692	(12)
PST Claims (Cumulative)	688	686	687	688	688	689	689	690	690	692	692	692	4
Equity Balance	-\$14,362,717	-\$14,322,626	-\$12,290,504	-\$11,828,687	-\$11,575,752	-\$12,246,462	-\$12,233,897	-\$11,795,381	-\$12,311,881	-\$12,373,863	-\$11,754,675	-\$11,876,207	\$2,486,510
Cash Balance	\$14,082,179	\$14,122,270	\$13,847,507	\$14,309,324	\$14,562,259	\$13,891,549	\$13,904,114	\$14,342,630	\$13,826,130	\$13,764,148	\$14,383,336	\$14,261,804	\$179,625
Loans	0	0	0	0	0	0	2	2	0	0	1	2	2
Cumulative Loans	113	113	113	113	113	113	115	117	117	117	118	120	7
Cumulative Amount	\$4,229,887	\$4,229,887	\$4,229,887	\$4,229,887	\$4,229,887	\$4,229,887	\$4,253,415	\$4,317,727	\$4,317,727	\$4,317,727	\$4,617,727	\$4,732,507	\$502,620
Defaults/Amount	1	1	1	1	1	1	1	1	1	1	2	1	0
FINANCIAL													
	July	August	September	October	November	December	January	February	March	April	May	June	TOTAL
Speed Memos	16	38	20	29	25	0	25	16	28	63	49	21	330
Compliance Letters	3	13	7	6	0	1	4	4	10	2	3	2	55
Notice of Intent to Revoke	0	0	1	0	0	0	0	0	0	0	0	0	1
Orders	0	1	0	0	1	0	0	1	0	2	0	2	7

WASTE MANAGEMENT AND RADIATION CONTROL BOARD
Executive Summary
Public Comment -- Proposed Rule Changes
UAC R315-260, R315-261, R315-262, R315-263, R315-264, R315-265,
R315-266, and R315-273
August 8, 2019

<p>What is the issue before the Board?</p>	<p>Approval from the Board to proceed with formal rulemaking and public comment on a proposed change to R315-260, R315-261, R315-262, R315-263, R315-264, R315-265, R315-266, R315-273 of the hazardous waste rules to incorporate federal regulatory changes promulgated by the Environmental Protection Agency (EPA) and published in the Federal Register in November of 2016 (81 FR 85696) and in December of 2017 (82 FR 60894). Copies of the Federal Registers follow this Executive Summary.</p> <p>Additionally, as part of the adoption of the revised import and export rules the following parts are being adopted into R315-265: R315-265-1, 265-4, 265-10 through 19, 265-30 through 35, 265-37, 265-50 through 56, 265-70 through 77, 265-90 through 94, 265-110 through 121, 265-140 through 148, 265-170 through 174, 265-176 through 178, 265-190 through 200, 265-202, 265-220 through 226, 265-228 through 231, 265-250 through 260.</p>
<p>What is the historical background or context for this issue?</p>	<p>In November of 2016 the EPA published final revisions to the Hazardous Waste Export-Import rules. Then in December of 2017 the EPA published additional final revisions to rules regarding Confidentiality Determinations for Hazardous Waste Export and Import Documents.</p> <p>Only the federal government, through the EPA, is authorized to administer the import and export of hazardous waste as part of the federal government's role in handling matters of foreign policy. However; authorized State programs are still required to adopt export and import provisions into their rules in order to maintain equivalency with the Federal program. The purpose of the proposed changes is to adopt the appropriate revisions into R315 of the Utah Administrative Code.</p> <p>These rule changes became effective at the Federal level on December 31, 2016 and June 26, 2018.</p> <p>In the past, the rules for hazardous waste management in R315 relied heavily on incorporating the federal rules found in 40 Code of Federal Regulations (CFR) by reference. In January of 2016 the rules for hazardous waste management were re-numbered so that the numbering and content of the rules essentially matched that of 40 CFR. This was done so that regulated entities and the public in Utah would only have to go to one source to be able to read and understand the rules for</p>

	<p>management of hazardous waste instead of being referred from one source to another.</p> <p>Due to a misunderstanding R315-265 was not included in this re-numbering and continued to incorporate by reference 40 CFR. It has been determined that certain sections of 40 CFR 265 need to be adopted into R315-265. This will be done in parts as other rules are revised that make reference to 40 CFR 265.</p> <p>The proposed changes to UAC R315-260, 261, 262, 263, 264, 265, 266, and 273 follow this Executive Summary.</p>
What is the governing statutory or regulatory citation?	<p>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.</p> <p>The rule changes also meet existing DEQ and state rulemaking procedures.</p>
Is Board action required?	<p>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 <i>Utah State Bulletin</i> and conducting a public comment period.</p>
What is the Division Director's recommendation?	<p>The Director recommends the Board approve proceeding with formal rulemaking and public comment by publishing in the September 1, 2019, <i>Utah State Bulletin</i> the proposed changes to UAC R315-260, 261, 262, 263, 264, 265, 266, and 273 and conducting a public comment period from September 1, 2019 to October 1, 2019.</p>
Where can more information be obtained?	<p>Please contact Tom Ball (801) 536-0251, (tball@utah.gov) or Rusty Lundberg (801) 536-4257, (rlundberg@utah.gov).</p>

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-260. Hazardous Waste Management System.

R315-260-2. Availability of Information and Confidentiality of Information.

(a) Any information provided to The Director under Rules R315-15 and 101; Rules R315-260 through 266, 268, 270 and 273 will be made available to the public to the extent and in the manner authorized by Sections 63G-2-101 through 901.

(b) Except as provided under Subsection R315-260-2 (c) and (d), any person who submits information to the Director in accordance with Rules R315-15 and 101; Rules R315-260 through 266, 268, 270 and 273 may assert a claim of business confidentiality covering part or all of that information by following the procedures set forth in Section 63G-2-309. Information covered by such a claim shall be disclosed by the Director only to the extent, and by means of the procedures, set forth Sections 63G-2-101 through 901 [~~except that information required by Subsection R315-262-53(a) and Subsection R315-262-83 that is submitted to EPA in a notification of intent to export a hazardous waste shall be provided to the U.S. Department of State and the appropriate authorities in the transit and receiving or importing countries regardless of any claims of confidentiality~~]. However, if no claim under Sections 63G-2-101 through 804 accompanies the information when it is received by the Director, it may be made available to the public without further notice to the person submitting it.

(c) (1) After August 6, 2014, no claim of business confidentiality may be asserted by any person with respect to information entered on a Hazardous Waste Manifest, EPA Form 8700-22, a Hazardous Waste Manifest Continuation Sheet, EPA Form 8700-22A, or an electronic manifest format that may be prepared and used in accordance with Subsection R315-262-20(a) (3).

(2) EPA shall make any electronic manifest that is prepared and used in accordance with Subsection R315-262-20(a) (3), or any paper manifest that is submitted to the system under Subsection R315-264-71(a) (6) or Subsection R315-265-71(a) (6) [40 CFR 265.71(a) (6), which is adopted by reference], available to the public under Section R315-260-2 when the electronic or paper manifest is a complete and final document. Electronic manifests and paper manifests submitted to the system are considered by EPA to be complete and final documents and publicly available information after 90 days have passed since the delivery to the designated facility of the hazardous waste shipment identified in the manifest.

(d) (1) After June 26, 2018, no claim of business confidentiality may be asserted by any person with respect to information contained in cathode ray tube export documents prepared, used and submitted under Subsections R315-261-39(a) (5) and 261-41(a), and with respect to information contained in hazardous waste export, import, and transit documents prepared, used and submitted under Sections R315-262-82, 262-83, 262-84, 263-20, 264-12, 264-71, 265-12, and 265-71, whether submitted electronically into EPA's Waste Import Export Tracking System or in paper format.

(2) EPA will make any cathode ray tube export documents

prepared, used and submitted under Subsections R315-261-39(a) (5) and 261-41(a), and any hazardous waste export, import, and transit documents prepared, used and submitted under Sections R315-262-82, 262-83, 262-84, 263-20, 264-12, 264-71, 265-12, and 265-71 available to the public under Section R315-260-2 when these electronic or paper documents are considered by EPA to be final documents. These submitted electronic and paper documents related to hazardous waste exports, imports and transits and cathode ray tube exports are considered by EPA to be final documents on March 1 of the calendar year after the related cathode ray tube exports or hazardous waste exports, imports, or transits occur.

R315-260-10. Definitions.

(a) Terms used in Rules R315-15, R315-260 through 266, R315-268, R315-270, R315-273, and Rule R315-101 are defined in Sections 19-1-103 and 19-6-102.

(b) Terms used in Rule R315-15 are also defined in Sections 19-6-703 and 19-6-706(b).

(c) Additional terms used in Rules R315-260 through 266, R315-268, R315-270, R315-273, and Rule R315-101 are defined as follows:

(1) "Above ground tank" means a device meeting the definition of "tank" in Section R315-260-10 and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank, including the tank bottom, is able to be visually inspected.

(2) "Acute hazardous waste" means hazardous wastes that meet the listing criteria in Subsection R315-261-11(a) (2) and therefore are either listed in Section R315-261-31 with the assigned hazard code of (H) or are listed in Subsection R315-261-33(e).

(3) "Active life" of a facility means the period from the initial receipt of hazardous waste at the facility until the Director receives certification of final closure.

(4) "Active portion" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after November 19, 1980 and which is not a closed portion. See also "closed portion" and "inactive portion."

(5) "AES filing compliance date" means the date that EPA announces in the Federal Register, on or after which exporters of hazardous waste and exporters of cathode ray tubes for recycling are required to file EPA information in the Automated Export System or its successor system, under the International Trade Data System (ITDS) platform.

~~[(5)]~~ (6) "Airbag waste" means any hazardous waste airbag modules or hazardous waste airbag inflators.

~~[(6)]~~ (7) "Airbag waste collection facility" means any facility that receives airbag waste from airbag handlers subject to regulation under Subsection R315-261-4(j), and accumulates the waste for more than ten days.

~~[(7)]~~ (8) "Airbag waste handler" means any person, by site, who generates airbag waste that is subject to regulation under Rules R315-260 through 266, R315-268, R315-270, and R315-273.

~~[(8)]~~ (9) "Approved hazardous waste management facility" or

"approved facility" means a hazardous waste treatment, storage, or disposal facility which has received an EPA permit in accordance with federal requirements, has been approved under Section 19-6-108 and Rule R315-270, or has been permitted or approved under any other EPA authorized hazardous waste state program.

~~[(9)]~~ (10) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to a storage or treatment tank(s), between hazardous waste storage and treatment tanks to a point of disposal onsite, or to a point of shipment for disposal off-site.

~~[(10)]~~ (11) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.

~~[(11)]~~ (12) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit, i.e., part of a facility, e.g., the plant manager, superintendent or person of equivalent responsibility.

~~[(12)]~~ (13) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections, electrical and mechanical, as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

~~[(13)]~~ (14) "Boiler" means an enclosed device using controlled flame combustion and having the following characteristics:

(i) (A) The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(B) The unit's combustion chamber and primary energy recovery sections(s) shall be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s), such as waterwalls and superheaters, shall be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment, such as economizers or air preheaters, need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section.

The following units are not precluded from being boilers solely because they are not of integral design: process heaters, units that transfer energy directly to a process stream, and fluidized bed combustion units; and

(C) While in operation, the unit shall maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(D) The unit shall export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. Examples of internal use are the

preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps; or

(ii) The unit is one which the Board has determined, on a case-by-case basis, to be a boiler, after considering the standards in Section R315-260-32

~~[(14)]~~ (15) "Carbon dioxide stream" means carbon dioxide that has been captured from an emission source, e.g., power plant, plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process.

~~[(15)]~~ (16) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

~~[(16)]~~ (17) "Cathode ray tube" or "CRT" means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released.

~~[(17)]~~ (18) "Central accumulation area" means any on-site hazardous waste accumulation area with hazardous waste accumulating in units subject to either Section R315-262-16, for small quantity generators, or Section R315-262-17, for large quantity generators.

A central accumulation area at an eligible academic entity that chooses to operate under Sections R315-262-200 through 216 is also subject to Section R315-262-211 when accumulating unwanted material or hazardous waste, or both.

~~[(18)]~~ (19) "Certification" means a statement of professional opinion based upon knowledge and belief.

~~[(19)]~~ (20) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. See also "active portion" and "inactive portion".

~~[(20)]~~ (21) "Component" means either the tank or ancillary equipment of a tank system.

~~[(21)]~~ (22) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined ground water.

~~[(22)]~~ (23) "Contained" means held in a unit, including a land-based unit as defined in R315-260-10, that meets the following criteria:

(i) The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit, such as a permit to discharge to water or air, and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures;

(ii) The unit is properly labeled or otherwise has a system, such as a log, to immediately identify the hazardous secondary materials in the unit; and

(iii) The unit holds hazardous secondary materials that are

compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.

(iv) Hazardous secondary materials in units that meet the applicable requirements of Rules R315-264 or 265 are presumptively contained.

~~[(23)]~~ (24) "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

~~[(24)]~~ (25) "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of Subsections R315-264-1100 through 1102 or 40 CFR 265.1100 through 1102, which are adopted and incorporated by reference.

~~[(25)]~~ (26) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

~~[(26)]~~ (27) "Corrosion expert" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person shall be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

~~[(27)]~~ (28) "CRT collector" means a person who receives used, intact CRTs for recycling, repair, resale, or donation.

~~[(28)]~~ (29) "CRT glass manufacturer" means an operation or part of an operation that uses a furnace to manufacture CRT glass.

~~[(29)]~~ (30) "CRT processing" means conducting all of the following activities:

- (i) Receiving broken or intact CRTs; and
- (ii) Intentionally breaking intact CRTs or further breaking or separating broken CRTs; and
- (iii) Sorting or otherwise managing glass removed from CRT monitors.

~~[(30)]~~ (31) "Designated facility" means:

(i) A hazardous waste treatment, storage, or disposal facility which:

(A) Has received a permit, or interim status, in accordance with the requirements of Rule R315-270 and 124;

(B) Has received a permit, or interim status, from a State authorized in accordance with 40 CFR 271; or

(C) Is regulated under Subsection R315-261-6(c)(2) or Section R315-266-70; and

(D) That has been designated on the manifest by the generator pursuant to Section R315-262-20.

(ii) "Designated facility" also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with

Subsections R315-264-72(f) or R315-265-72(f) [40 CFR 265.72(f), which is adopted and incorporated by reference].

(iii) If a waste is destined to a facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving State to accept such waste.

~~[(31)]~~ (32) "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Subsection R315-273-13(a) and (c) and Section R315-273-33. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

~~[(32)]~~ (33) "Dike" means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

~~[(33)]~~ (34) "Dioxins and furans (D/F)" means tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

~~[(34)]~~ (35) "Discharge" or "hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land or water.

~~[(35)]~~ (36) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure.

The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

~~[(36)]~~ (37) "Division" means the Division of Waste Management and Radiation Control.

~~[(37)]~~ (38) "Drip pad" is an engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(39) "Electronic import-export reporting compliance date" means the date that EPA announces in the Federal Register, on or after which exporters, importers, and receiving facilities are required to submit certain export and import related documents to EPA using EPA's Waste Import Export Tracking System, or its successor system.

~~[(38)]~~ (40) "Elementary neutralization unit" means a device which:

(i) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Section R315-261-22, or they are listed in Sections R315-261-30 through 35 only for this reason; and

(ii) Meets the definition of tank, tank system, container, transport vehicle, or vessel in Sections R315-260-10.

~~[(39)]~~ (41) "Electronic manifest, or e-Manifest" means the electronic format of the hazardous waste manifest that is obtained from EPA's national e-Manifest system and transmitted electronically to the system, and that is the legal equivalent of EPA Forms 8700-22, Manifest, and 8700-22A, Continuation Sheet.

~~[(40)]~~ (42) "Electronic Manifest System, or e-Manifest System" means EPA's national information technology system through which the

electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.

~~[(41)]~~ (43) "EPA hazardous waste number" means the number assigned by EPA to each hazardous waste listed in Sections R315-261-30 through 35 and to each characteristic identified in Sections R315-261-20 through 24.

~~[(42)]~~ (44) "EPA identification number" means the number assigned by EPA to each generator, transporter, and treatment, storage, or disposal facility.

~~[(43)]~~ (45) "EPA region" means the states and territories found in any one of the following ten regions:

(i) Region I-Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island.

(ii) Region II-New York, New Jersey, Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

(iii) Region III-Pennsylvania, Delaware, Maryland, West Virginia, Virginia, and the District of Columbia.

(iv) Region IV-Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, and Florida.

(v) Region V-Minnesota, Wisconsin, Illinois, Michigan, Indiana and Ohio.

(vi) Region VI-New Mexico, Oklahoma, Arkansas, Louisiana, and Texas.

(vii) Region VII-Nebraska, Kansas, Missouri, and Iowa.

(viii) Region VIII-Montana, Wyoming, North Dakota, South Dakota, Utah, and Colorado.

(ix) Region IX-California, Nevada, Arizona, Hawaii, Guam, American Samoa, Commonwealth of the Northern Mariana Islands.

(x) Region X-Washington, Oregon, Idaho, and Alaska.

~~[(44)]~~ (46) "Equivalent method" means any testing or analytical method approved by the Director under Sections R315-260-20 and 21.

~~[(45)]~~ (47) "Existing hazardous waste management (HWM) facility" or "existing facility" means a facility which was in operation or for which construction commenced on or before November 19, 1980. A facility has commenced construction if:

(i) The owner or operator has obtained the Federal, State and local approvals or permits necessary to begin physical construction; and either

(ii) (A) A continuous on-site, physical construction program has begun; or

(B) The owner or operator has entered into contractual obligations-which cannot be cancelled or modified without substantial loss-for physical construction of the facility to be completed within a reasonable time.

~~[(46)]~~ (48) "Existing portion" means that land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

~~[(47)]~~ (49) "Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986, or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank

regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of R315. A non-HSWA existing tank system or non-HSWA tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1. Installation shall be considered to have commenced if the owner or operator has obtained all Federal, State, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(i) a continuous on-site physical construction or installation program has begun; or

(ii) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

~~[(48)]~~ (50) "Facility" means:

(i) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(ii) For the purpose of implementing corrective action under Section R315-264-101, all contiguous property under the control of the owner or operator seeking a permit under Section 19-6-108. This definition also applies to facilities implementing corrective action under Section R315-263-31 and Rule R315-101.

(iii) Notwithstanding Subsection R315-260-10(c)(48)(ii), a remediation waste management site is not a facility that is subject to Section R315-264-101, but is subject to corrective action requirements if the site is located within such a facility.

~~[(49)]~~ (51) "Federal agency" means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.

~~[(50)]~~ (52) "Federal, State and local approvals or permits necessary to begin physical construction" means permits and approvals required under Federal, State or local hazardous waste control statutes, regulations or ordinances.

~~[(51)]~~ (53) "Final closure" means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Rules R315-264 and 265 are no longer conducted at the facility unless subject to the provisions in Section R315-262-34.

~~[(52)]~~ (54) "Food-chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

~~[(53)]~~ (55) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

~~[(54)]~~ (56) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

~~[(55)]~~ (57) "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in Rule R315-261 or whose act first causes a hazardous waste to become subject to regulation.

~~[(56)]~~ (58) "Ground water" means water below the land surface in a zone of saturation.

~~[(57)]~~ (59) "Hazard class" means:

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

(ii) If the DOT hazard class is "OTHER REGULATED MATERIAL," ORM, the EPA hazardous waste characteristic exhibited by the waste and identified in Sections R315-261-20 through 24.

~~[(58)]~~ (60) "Hazardous secondary material" means a secondary material, e.g., spent material, by-product, or sludge, that, when discarded, would be identified as hazardous waste under Rule R315-261.

~~[(59)]~~ (61) "Hazardous secondary material generator" means any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of Subsection R315-260-10(c)(59), "generating facility" means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator. For the purposes of Subsections R315-261-2(a)(2)(ii) and R315-261-4(a)(23), a facility that collects hazardous secondary materials from other persons is not the hazardous secondary material generator.

~~[(60)]~~ (62) "Hazardous waste constituent" means a constituent that caused the Board to list the hazardous waste in Sections R315-261-30 through 35, or a constituent listed in table 1 of Section R315-261-24.

~~[(61)]~~ (63) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

~~[(62)]~~ (64) "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

~~[(63)]~~ (65) "Inactive portion" means that portion of a facility which is not operated after November 19, 1980. See also "active portion" and "closed portion".

~~[(64)]~~ (66) "Incinerator" means any enclosed device that:

(i) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(ii) Meets the definition of infrared incinerator or plasma arc incinerator.

~~[(65)]~~ (67) "Incompatible waste" means a hazardous waste which is unsuitable for:

(i) Placement in a particular device or facility because it may cause corrosion or decay of containment materials, e.g., container inner liners or tank walls; or

(ii) Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat

or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

~~[(66)]~~ (68) "Individual generation site" means the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

~~[(67)]~~ (69) "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

- (i) Cement kilns;
- (ii) Lime kilns;
- (iii) Aggregate kilns;
- (iv) Phosphate kilns;
- (v) Coke ovens;
- (vi) Blast furnaces;
- (vii) Smelting, melting and refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machine, roasters, and foundry furnaces;
- (viii) Titanium dioxide chloride process oxidation reactors;
- (ix) Methane reforming furnaces;
- (x) Pulping liquor recovery furnaces;
- (xi) Combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(xii) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as-generated.

(xiii) Such other devices as the Board may, after notice and comment, add to this list on the basis of one or more of the following factors:

(A) The design and use of the device primarily to accomplish recovery of material products;

(B) The use of the device to burn or reduce raw materials to make a material product;

(C) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;

(D) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;

(E) The use of the device in common industrial practice to produce a material product; and

(F) Other factors, as appropriate.

~~[(68)]~~ (70) "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

~~[(69)]~~ (71) "Inground tank" means a device meeting the definition of "tank" in Section R315-260-10 whereby a portion of the tank wall is situated to any degree within the ground, thereby

preventing visual inspection of that external surface area of the tank that is in the ground.

~~[(70)]~~ (72) "Injection well" means a well into which fluids are injected. See also "underground injection".

~~[(71)]~~ (73) "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

~~[(72)]~~ (74) "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

~~[(73)]~~ (75) "Intermediate facility" means any facility that stores hazardous secondary materials for more than 10 days, other than a hazardous secondary material generator or reclaimer of such material.

~~[(74)]~~ (76) "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

~~[(75)]~~ (77) "Lamp," also referred to as "universal waste lamp", is defined as the bulb or tube portion of an electric lighting device.

A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

~~[(76)]~~ (78) "Land-based unit" means an area where hazardous secondary materials are placed in or on the land before recycling. This definition does not include land-based production units.

~~[(77)]~~ (79) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

~~[(78)]~~ (80) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

~~[(79)]~~ (81) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

~~[(80)]~~ (82) "Large quantity generator" is a generator who generates any of the following amounts in a calendar month:

(i) Greater than or equal to 1,000 kilograms (2,200 lbs) of non-acute hazardous waste; or

(ii) Greater than 1 kilogram (2.2 lbs) of acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e); or

(iii) Greater than 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e).

~~[(81)]~~ (83) "Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

~~[(82)]~~ (84) "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of hazardous waste or accumulated liquid in the secondary containment structure. Such a system shall employ operational controls, e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks, or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of hazardous waste into the secondary containment structure.

~~[(83)]~~ (85) "Liner" means a continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents, or leachate.

~~[(84)]~~ (86) "Management" or "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

~~[(85)]~~ (87) "Manifest" is defined in Subsection 19-6-102(14) and is further defined as: the shipping document EPA Form 8700-22, including, if necessary, EPA Form 8700-22A, or the electronic manifest, originated and signed in accordance with the applicable requirements of Rules R315-262 through 265.

~~[(86)]~~ (88) "Manifest tracking number" means: The alphanumeric identification number, i.e., a unique three letter suffix preceded by nine numerical digits, which is pre-printed in Item 4 of the Manifest by a registered source.

~~[(87)]~~ (89) "Mercury-containing equipment" means a device or part of a device, including thermostats, but excluding batteries and lamps, that contains elemental mercury integral to its function.

~~[(88)]~~ (90) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

~~[(89)]~~ (91) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR 146, containment building, corrective action management unit, unit eligible for a research, development, and demonstration permit under Section R315-270-65, or staging pile.

~~[(90)]~~ (92) "Monitoring" means all procedures used to systematically inspect and collect data on operational parameters of the facility or on the quality of the air, ground water, surface water, or soils.

~~[(91)]~~ (93) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

~~[(92)]~~ (94) "New hazardous waste management facility" or "new facility" means a facility which began operation, or for which construction commenced after November 19, 1980. See also "Existing

hazardous waste management facility".

~~[(93)]~~ (95) "New tank system" or "new tank component" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of Subsections R315-264-193(g)(2) and R315-265-193(g)(2) ~~[40 CFR 265.193(g)(2), which is adopted and incorporated by reference]~~, a new tank system is one for which construction commences after July 14, 1986, or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of R315; except, however, for purposes of Subsection R315-265-193(g)(2) ~~[40 CFR 265-193(g)(2), which is adopted and incorporated by reference,]~~ and Subsection R315-264-193(g)(2), a new tank system is one which construction commences after July 14, 1986. A non-HSWA new tank system or non-HSWA new tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1. See also "existing tank system."

~~[(94)]~~ (96) "No free liquids, as used in Subsections R315-261-4(a)(26) and R315-261-4(b)(18)", means that solvent-contaminated wipes may not contain free liquids as determined by Method 9095B, Paint Filter Liquids Test, included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, and that there is no free liquid in the container holding the wipes. No free liquids may also be determined using another standard or test method as defined by the Director.

~~[(95)]~~ (97) "Non-acute hazardous waste" means all hazardous wastes that are not acute hazardous waste, as defined in Section R315-260-10.

~~[(96)]~~ (98) "On ground tank" means a device meeting the definition of "tank" in Section R315-260-10 and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

~~[(97)]~~ (99) "On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

~~[(98)]~~ (100) "Open burning" means the combustion of any material without the following characteristics:

(i) Control of combustion air to maintain adequate temperature for efficient combustion,

(ii) Containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and

(iii) Control of emission of the gaseous combustion products.

See also "incineration" and "thermal treatment".

~~[(99)]~~ (101) "Operator" means the person responsible for the overall operation of a facility.

~~[(100)]~~ (102) "Owner" means the person who owns a facility or part of a facility.

~~[(101)]~~ (103) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of Rules R315-264 and 265 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank, including its associated piping and underlying containment systems, landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

~~[(102)]~~ (104) "Polychlorinated biphenyl, PCB" and "PCBs" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance. PCB and PCBs as contained in PCB items are defined in Section R315-260-10. For any purposes under Rules R315-260 through 266, 268, 270, 273, R315-15, and R315-101, inadvertently generated non-Aroclor PCBs are defined as the total PCBs calculated following division of the quantity of monochlorinated biphenyls by 50 and dichlorinated biphenyls by 5.

~~[(103)]~~ (105) "PCB Item" means any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.

~~[(104)]~~ (106) "Permit" means the plan approval as required by subsection 19-6-108(3)(a), or equivalent control document issued by the Director to implement the requirements of the Utah Solid and Hazardous Waste Act;

~~[(105)]~~ (107) "Permittee" is defined in Subsection 19-6-102(18) and includes any person who has received an approval of a hazardous waste operation plan under Section 19-6-108 and Rule R315-262 or a Federal RCRA permit for a treatment, storage, or disposal facility.

~~[(106)]~~ (108) "Person" means an individual, trust, firm, joint stock company, Federal Agency, corporation, including a government corporation, partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

~~[(107)]~~ (109) "Personnel" or "facility personnel" means all persons who work at, or oversee the operations of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of Rules R315-264 or 265.

~~[(108)]~~ (110) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(i) Is a new animal drug under FFDCa section 201(w), or
(ii) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(iii) Is an animal feed under FFDCa section 201(x) that bears or contains any substances described by Subsection R315-260-10(c)(108)(i) or (ii).

~~[(109)]~~ (111) "Pile" means any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

~~[(110)]~~ (112) "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of

heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

~~[(111)]~~ (113) "POHC's" means principle organic hazardous constituents.

~~[(112)]~~ (114) "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

~~[(113)]~~ (115) "Precipitation run-off" means water generated from naturally occurring storm events. If the precipitation run-off has been in contact with a waste defined in Sections R315-261-20 through 24, it qualifies as "precipitation run-off" if the water does not exhibit any of the characteristics identified in Section R315-261-20 through 24. If the precipitation run-off has been in contact with a waste listed in Sections R315-261-30 through 35, then it qualifies as "precipitation run-off" when the water has been excluded under Section R315-260-22. Water containing any leachate does not qualify as "precipitation run-off".

~~[(114)]~~ (116) "Publicly owned treatment works" or "POTW" means any device or system used in the treatment, including recycling and reclamation, of municipal sewage or industrial wastes of a liquid nature which is owned by the State or a political subdivision within the State. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

~~[(115)]~~ (117) "Qualified Ground-Water Scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in ground-water hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgements regarding ground-water monitoring and contaminant fate and transport.

~~[(116)]~~ (118) "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. section 6901 et seq.

(119) "Recognized trader" means a person domiciled in the United States, by site of business, who acts to arrange and facilitate transboundary movements of wastes destined for recovery or disposal operations, either by purchasing from and subsequently selling to United States and foreign facilities, or by acting under arrangements with a United States waste facility to arrange for the export or import of the wastes.

~~[(117)]~~ (120) "Remanufacturing" means processing a higher-value hazardous secondary material in order to manufacture a product that serves a similar functional purpose as the original commercial-grade material. For the purpose of this definition, a hazardous secondary material is considered higher-value if it was generated from the use of a commercial-grade material in a manufacturing process and can be remanufactured into a similar commercial-grade material.

~~[(118)]~~ (121) "Remediation waste" means all solid and hazardous

wastes, and all media, including ground water, surface water, soils, and sediments, and debris, that are managed for implementing cleanup.

~~[(119)]~~ (122) "Remediation waste management site" means a facility where an owner or operator is or will be treating, storing or disposing of hazardous remediation wastes. A remediation waste management site is not a facility that is subject to corrective action under Section R315-264-101, but is subject to corrective action requirements if the site is located in such a facility.

~~[(120)]~~ (123) (i) "Replacement unit" means a landfill, surface impoundment, or waste pile unit:

(A) from which all or substantially all of the waste is removed; and

(B) that is subsequently reused to treat, store, or dispose of hazardous waste.

(ii) "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with a closure plan approved by the Director or a corrective action approved by the Director.

~~[(121)]~~ (124) "Representative sample" means a sample of a universe or whole, e.g., waste pile, lagoon, ground water, which can be expected to exhibit the average properties of the universe or whole.

~~[(122)]~~ (125) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

~~[(123)]~~ (126) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

~~[(124)]~~ (127) "Saturated zone" or "zone of saturation" means that part of the earth's crust in which all voids are filled with water.

~~[(125)]~~ (128) "Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

~~[(126)]~~ (129) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu/lb of sludge treated on a wet-weight basis.

~~[(127)]~~ (130) "Small Quantity Generator" is a generator who generates the following amounts in a calendar month:

(i) Greater than 100 kilograms (220 lbs) but less than 1,000 kilograms (2,200 lbs) of non-acute hazardous waste; and

(ii) Less than or equal to 1 kilogram (2.2 lbs) of acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e); and

(iii) Less than or equal to 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e).

~~[(128)]~~ (131) "Solid Waste Management Unit" means any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of

solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

~~[(129)]~~ (132) "Solvent-contaminated wipe" means:

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

(A) Contains one or more of the F001 through F005 solvents listed in Section R315-261-31 or the corresponding P- or U- listed solvents found in Section R315-261-33;

(B) Exhibits a hazardous characteristic found in Sections R315-261-20 through 24 when that characteristic results from a solvent listed in Rule R315-261; and/or

(C) Exhibits only the hazardous waste characteristic of ignitability found in Section R315-261-21 due to the presence of one or more solvents that are not listed in Rule R315-261.

(ii) Solvent-contaminated wipes that contain listed hazardous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other than solvents, are not eligible for the exclusions at Subsections R315-261-4(a) (26) and R315-261-4(b) (18).

~~[(130)]~~ (133) "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

~~[(131)]~~ (134) "Sorb" means to either adsorb or absorb, or both.

~~[(132)]~~ (135) A "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

~~[(133)]~~ (136) "Spill" means the accidental discharging, spilling, leaking, pumping, pouring, emitting, emptying, releasing, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes, into or on any land or water.

~~[(134)]~~ (137) "Staging pile" means an accumulation of solid, non-flowing remediation waste, as defined in Section R315-260-10, that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles shall be designated by the Director according to the requirements of Section R315-264-554.

~~[(135)]~~ (138) "State" means the state of Utah.

~~[(136)]~~ (139) "Storage" is defined in Subsection 19-6-102(20) and includes the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

~~[(137)]~~ (140) "Sump" means any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serve to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

~~[(138)]~~ (141) "Surface impoundment" or "impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials, although it may be lined with man-made materials, which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration

pits, ponds, and lagoons.

~~[(139)]~~ (142) "Tank" means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials, e.g., wood, concrete, steel, plastic, which provide structural support.

~~[(140)]~~ (143) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

~~[(141)]~~ (144) "TEQ" means toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

~~[(142)]~~ (145) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. See also "incinerator" and "open burning".

~~[(143)]~~ (146) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Subsections R315-273-13(c) (2) or R315-273-33(c) (2).

~~[(144)]~~ (147) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

~~[(145)]~~ (148) "Transfer facility" means any transportation-related facility, including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste or hazardous secondary materials are held during the normal course of transportation.

~~[(146)]~~ (149) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body; trailer, railroad freight car, etc.; is a separate transport vehicle.

~~[(147)]~~ (150) "Transportation" is defined in Subsection 19-6-102(21) and includes the movement of hazardous waste by air, rail, highway, or water.

~~[(148)]~~ (151) "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

~~[(149)]~~ (152) (i) "Treatability study" means a study in which a hazardous waste is subjected to a treatment process to determine:

(A) Whether the waste is amenable to the treatment process,
(B) what pretreatment, if any, is required,
(C) the optimal process conditions needed to achieve the desired treatment,

(D) the efficiency of a treatment process for a specific waste or wastes, or

(E) the characteristics and volumes of residuals from a particular treatment process.

(ii) Also included in this definition for the purpose of the Subsection R315-261-4 (e) and (f) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

(iii) A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

~~[(150)]~~ (153) "Treatment" is defined in Subsection 19-6-102(22) and includes any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

~~[(151)]~~ (154) "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

~~[(152)]~~ (155) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. See also "injection well".

~~[(153)]~~ (156) "Underground tank" means a device meeting the definition of "tank" in Section R315-260-10 whose entire surface area is totally below the surface of and covered by the ground.

~~[(154)]~~ (157) "Unfit-for use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

~~[(155)]~~ (158) "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

~~[(156)]~~ (159) "Universal waste" means any of the following hazardous wastes that are managed under the universal waste requirements of Rule R315-273:

(i) Batteries as described in Section R315-273-2;

(ii) Pesticides as described in Section R315-273-3;

(iii) Mercury-containing equipment as described in Section R315-273-4;

(iv) Lamps as described in Section R315-273-5;

(v) Antifreeze as described in Subsection R315-273-6(a); and

(vi) Aerosol cans as described in Subsection R315-273-6(b).

~~[(157)]~~ (160) Universal waste handler

(i) Means:

(A) A generator of universal waste; or

(B) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(ii) Does not mean:

(A) A person who treats, except under the provisions of Subsection R315-273-13(a) or (c), or R315-273-33(a) or (c), disposes

of, or recycles universal waste; or

(B) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

~~[(158)]~~ (161) "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

~~[(159)]~~ (162) "Unsaturated zone" or "zone of aeration" means the zone between the land surface and the water table.

~~[(160)]~~ (163) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

~~[(161)]~~ (164) Used oil is defined in Subsection 19-6-703(19).

~~[(162)]~~ (165) "User of the electronic manifest system" means a hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that:

(i) Is required to use a manifest to comply with:

(A) Any federal or state requirement to track the shipment, transportation, and receipt of hazardous waste or other waste material that is shipped from the site of generation to an off-site designated facility for treatment, storage, recycling, or disposal; or

(B) Any federal or state requirement to track the shipment, transportation, and receipt of rejected wastes or regulated container residues that are shipped from a designated facility to an alternative facility, or returned to the generator; and

(ii) Elects to use the system to obtain, complete and transmit an electronic manifest format supplied by the EPA electronic manifest system, or

(iii) Elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest, or data from such a paper copy, in accordance with Subsections R315-264-71(a)(2)(v) or R315-265-71(a)(2)(v) [~~40 CFR 265.71(a)(2)(v) which is adopted and incorporated by reference~~]. These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

~~[(163)]~~ (166) "Very small quantity generator" is a generator who generates less than or equal to the following amounts in a calendar month:

(i) 100 kilograms (220 lbs) of non-acute hazardous waste; and

(ii) 1 kilogram (2.2 lbs) of acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e); and

(iii) 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e).

~~[(164)]~~ (167) "Vessel" includes every description of watercraft, used or capable of being used as a means of transportation on the water.

~~[(165)]~~ (168) "Waste management area" means the limit projected in the horizontal plane of the area on which waste will be placed during the active life of a regulated unit. The waste management area includes horizontal space taken up by any liner, dike, or other

barrier designed to contain waste in a regulated unit. If the facility contains more than one regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.

~~[(166)]~~ (169) "Wastewater treatment unit" means a device which:

(i) Is part of a wastewater treatment facility that is subject to regulation under either section 402 or 307(b) of the Clean Water Act; and

(ii) Receives and treats or stores an influent wastewater that is a hazardous waste as defined in Section R315-261-3, or that generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in Section R315-261-3, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section R315-261-3; and

(iii) Meets the definition of tank or tank system in Section R315-260-10.

~~[(167)]~~ (170) "Water, bulk shipment" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

~~[(168)]~~ (171) "Well" means any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

~~[(169)]~~ (172) "Well injection": See "underground injection"

~~[(170)]~~ (173) "Wipe" means a woven or non-woven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

~~[(171)]~~ (174) "Zone of engineering control" means an area under the control of the owner/operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to ground water or surface water.

R315-260-11. References.

(a) For purposes of Rules R315-260 through 266, 268, 270, and 273, Rule R315-15 and Rule R315-101, the references of 40 CFR 260.11, 2015 ed, with the modifications to 40 CFR 260.11 adopted in Federal Register Vol. 81, No 228 page 85713 and page 85806 published on ~~as amended by 81 FR 85806,~~ November 28, 2016, are adopted and incorporated by reference.

KEY: hazardous waste

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R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-261. General Requirements -- Identification and Listing of Hazardous Waste.

R315-261-1. Purpose and Scope.

(a) This rule identifies those solid wastes which are subject to regulation as hazardous wastes under Rules R315-262 through 265, 268, 270, and 124 and which are subject to the notification

requirements of these rules.

(1) Sections R315-261-1 through 9 define the terms "solid waste" and "hazardous waste", [identify]identifies those wastes which are excluded from regulation under Rules R315-262 through R315-266, R315-268 and R315-270 and establish special management requirements for hazardous waste produced by very small quantity generators and hazardous waste which is recycled.

(2) Sections R315-261-10 and 11 set forth the criteria used to identify characteristics of hazardous waste and to list particular hazardous wastes.

(3) Sections R315-261-20 through 24 identify characteristics of hazardous waste.

(4) Sections R315-261-30 through 35 list particular hazardous wastes.

(b)(1) The definition of solid waste contained in this rule applies only to wastes that also are hazardous for purposes of the rules implementing Title 19 Chapter 6. For example, it does not apply to materials such as non-hazardous scrap, paper, textiles, or rubber that are not otherwise hazardous wastes and that are recycled.

(2) Rule R315-261 identifies only some of the materials which are solid wastes and hazardous wastes under the Utah Solid and Hazardous Waste Act. A material which is not defined as a solid waste in Rule R315-261, or is not a hazardous waste identified or listed in Rule R315-261, is still a solid waste and a hazardous waste for purposes of these sections if:

(i) In the case of section 19-6-109, the Director has reason to believe that the material may be a solid waste within the meaning of Subsection 19-6-102(13) and a hazardous waste within the meaning of Subsection 19-6-102(7) or

(ii) In the case of section 19-6-115, the material is presenting an imminent and substantial danger to human health or the environment.

(c) For the purposes of Sections R315-261-2 and 261-6:

(1) A "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing;

(2) "Sludge" has the same meaning used in Section R315-260-10;

(3) A "by-product" is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a co-product that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(4) A material is "reclaimed" if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

In addition, for purposes of Subsections R315-261-4(a)(23), and (24) smelting, melting and refining furnaces are considered to be solely engaged in metals reclamation if the metal recovery from the hazardous secondary materials meets the same requirements as those specified for metals recovery from hazardous waste found in Subsection R315-266-100(d)(1) through (3), and if the residuals meet the requirements specified in Section R315-266-112.

(5) A material is "used or reused" if it is either:

(i) Employed as an ingredient, including use as an intermediate,

in an industrial process to make a product, for example, distillation bottoms from one process used as feedstock in another process. However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products, as when metals are recovered from metal-containing secondary materials; or

(ii) Employed in a particular function or application as an effective substitute for a commercial product, for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment.

(6) "Scrap metal" is bits and pieces of metal parts; for example bars, turnings, rods, sheets, or wire; or metal pieces that may be combined together with bolts or soldering; for example radiators, scrap automobiles, or railroad box cars; which when worn or superfluous can be recycled.

(7) A material is "recycled" if it is used, reused, or reclaimed.

(8) A material is "accumulated speculatively" if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that during the calendar year, commencing on January 1, the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. Materials shall be placed in a storage unit with a label indicating the first date that the material began to be accumulated. If placing a label on the storage unit is not practicable, the accumulation period shall be documented through an inventory log or other appropriate method. In calculating the percentage of turnover, the 75 percent requirement is to be applied to each material of the same type, e.g., slags from a single smelting process, that is recycled in the same way, i.e., from which the same material is recovered or that is used in the same way. Materials accumulating in units that would be exempt from regulation under Subsection R315-261-4(c) are not to be included in making the calculation. Materials that are already defined as solid wastes also are not to be included in making the calculation. Materials are no longer in this category once they are removed from accumulation for recycling, however.

(9) "Excluded scrap metal" is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.

(10) "Processed scrap metal" is scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type, i.e., sorted, and, fines, drosses and related materials which have been agglomerated. Note: shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled Subsection R315-261-4(a) (14).

(11) "Home scrap metal" is scrap metal as generated by steel mills, foundries, and refineries such as turnings, cuttings,

punchings, and borings.

(12) "Prompt scrap metal" is scrap metal as generated by the metal working/fabrication industries and includes such scrap metal as turnings, cuttings, punchings, and borings. Prompt scrap is also known as industrial or new scrap metal.

R315-261-4. Exclusions.

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

(1)(i) Domestic sewage; and

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

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

(3) Irrigation return flows.

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

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

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

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

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

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

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

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

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

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

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

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

conditions:

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

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

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

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in 40 CFR 265.440 through 265.445, which are adopted and incorporated by reference, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator prepares a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant shall maintain a copy of that document in its on-site records until closure of the facility. The exclusion applies so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the Director for reinstatement.

The Director may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that the violations are not likely to recur.

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

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

(12) (i) Oil-bearing hazardous secondary materials, i.e., sludges, byproducts, or spent materials, that are generated at a petroleum refinery, SIC code 2911, and are inserted into the petroleum refining process, SIC code 2911-including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units, i.e., cokers, unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under Subsection R315-261-4(12)(i), provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous

secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery and still be excluded under this provision. Except as provided in Subsection R315-261-4(a)(12)(ii), oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry, i.e., from sources other than petroleum refineries, are not excluded under Section R315-261-4. Residuals generated from processing or recycling materials excluded under Subsection R315-261-4(a)(12)(i), where such materials as generated would have otherwise met a listing under Sections R315-261-30 through R315-261-35, are designated as F037 listed wastes when disposed of or intended for disposal.

(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in Subsection R315-261-4(a)(12)(i).

Recovered oil is oil that has been reclaimed from secondary materials, including wastewater, generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto, SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5172.

Recovered oil does not include oil-bearing hazardous wastes listed in Sections R315-261-30 through 35; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in Subsection 19-6-703(19).

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

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

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

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

(15) Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e).

The exemption applies only to combustion at the mill generating the condensates.

(16) Reserved.

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

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

(ii) The spent material is not accumulated speculatively;

(iii) Except as provided in Subsection R315-261-4(a)(17)(iv), the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building shall be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support, except smelter buildings may have partially earthen floors provided the secondary material is stored on the non-earthen portion, and have a roof suitable for diverting rainwater away from the foundation; a tank shall be free standing, not be a surface impoundment, as defined in Section R315-260-10, and be manufactured of a material suitable for containment of its contents; a container shall be free standing

and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator shall operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings shall be designed, constructed and operated to prevent significant releases to the environment of these materials.

(iv) The Director may make a site-specific determination, after public review and comment, that only solid mineral processing spent material may be placed on pads rather than tanks containers, or buildings. Solid mineral processing spent materials do not contain any free liquid. The Director shall affirm that pads are designed, constructed and operated to prevent significant releases of the secondary material into the environment. Pads shall provide the same degree of containment afforded by the non-RCRA tanks, containers and buildings eligible for exclusion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The fertilizers meet the following contaminant limits:

(A) For metal contaminants:

TABLE

Constituent Maximum Allowable Total Concentration
in Fertilizer, per Unit (1%) of Zinc ppm)

Arsenic	0.3
Cadmium	1.4
Chromium	0.6
Lead	2.8
Mercury	0.3

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

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

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

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

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

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

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

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

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

(22) Used cathode ray tubes (CRTs)

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

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

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

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

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

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

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

(C) The hazardous secondary material is generated pursuant to a written contract between a tolling contractor and a toll manufacturer and is reclaimed by the tolling contractor, if the tolling contractor certifies the following: "On behalf of (insert tolling contractor name), I certify that (insert tolling contractor name) has a written contract with (insert toll manufacturer name) to manufacture (insert name of product or intermediate) which is made from specified unused materials, and that (insert tolling contractor name) will reclaim the hazardous secondary materials generated during this manufacture.

On behalf of (insert tolling contractor name), I also certify that (insert tolling contractor name) retains ownership of, and responsibility for, the hazardous secondary materials that are generated during the course of the manufacture, including any releases of hazardous secondary materials that occur during the manufacturing

process". The tolling contractor shall maintain at its facility for no less than three years records of hazardous secondary materials received pursuant to its written contract with the tolling manufacturer, and the tolling manufacturer shall maintain at its facility for no less than three years records of hazardous secondary materials shipped pursuant to its written contract with the tolling contractor. In both cases, the records shall contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received pursuant to the written contract. These requirements may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations. For purposes of Subsection R315-261-4(a)(23)(i)(C), tolling contractor means a person who arranges for the production of a product or intermediate made from specified unused materials through a written contract with a toll manufacturer. Toll manufacturer means a person who produces a product or intermediate made from specified unused materials pursuant to a written contract with a tolling contractor.

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

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

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

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

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

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

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

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

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

(iii) The material is not otherwise subject to material-specific management conditions under Subsection

R315-261-4(a) when reclaimed, and it is not a spent lead-acid battery, see Sections R315-266-80 and R315-273-2;

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

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

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

(B) Prior to arranging for transport of hazardous secondary materials to a reclamation facility (or facilities) where the management of the hazardous secondary materials is not addressed under a hazardous waste part B permit or interim status standards, the hazardous secondary material generator shall make reasonable efforts to ensure that each reclaimer intends to properly and legitimately reclaim the hazardous secondary material and not discard it, and that each reclaimer will manage the hazardous secondary material in a manner that is protective of human health and the environment. If the hazardous secondary material will be passing through an intermediate facility where the management of the hazardous secondary materials is not addressed under a hazardous waste part B permit or interim status standards, the hazardous secondary material generator shall make contractual arrangements with the intermediate facility to ensure that the hazardous secondary material is sent to the reclamation facility identified by the hazardous secondary material generator, and the hazardous secondary material generator shall perform reasonable efforts to ensure that the intermediate facility will manage the hazardous secondary material in a manner that is protective of human health and the environment. Reasonable efforts shall be repeated at a minimum of every three years for the hazardous secondary material generator to claim the exclusion and to send the hazardous secondary materials to each reclaimer and any intermediate facility.

In making these reasonable efforts, the generator may use any credible evidence available, including information gathered by the hazardous secondary material generator, provided by the reclaimer or intermediate facility, and/or provided by a third party. The hazardous secondary material generator shall affirmatively answer all of the following questions for each reclamation facility and any intermediate facility:

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

(II) Does the publicly available information indicate that the reclamation facility and any intermediate facility that is used by the hazardous secondary material generator notified the appropriate authorities of hazardous secondary materials reclamation activities pursuant to Section R315-260-42 and have they notified the appropriate

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

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

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

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

(C) The hazardous secondary material generator shall maintain for a minimum of three years documentation and certification that reasonable efforts were made for each reclamation facility and, if applicable, intermediate facility where the management of the

hazardous secondary materials is not addressed under a hazardous waste part B permit or interim status standards prior to transferring hazardous secondary material. Documentation and certification shall be made available upon request by the Director within 72 hours, or within a longer period of time as specified by the Director. The certification statement shall:

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

(II) Incorporate the following language: "I hereby certify in good faith and to the best of my knowledge that, prior to arranging for transport of excluded hazardous secondary materials to (insert name(s) of reclamation facility and any intermediate facility), reasonable efforts were made in accordance with Subsection R315-261-4(a)(24)(v)(B) to ensure that the hazardous secondary materials would be recycled legitimately, and otherwise managed in a manner that is protective of human health and the environment, and that such efforts were based on current and accurate information."

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

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

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

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

(E) The hazardous secondary material generator shall maintain at the generating facility for no less than three years confirmations of receipt from each reclaimer and, if applicable, each intermediate facility for all off-site shipments of hazardous secondary materials.

Confirmations of receipt shall include the name and address of the reclaimer, or intermediate facility, the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt;

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

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

(A) The reclaimer and intermediate facility shall maintain at its facility for no less than three years records of all shipments of hazardous secondary material that were received at the facility and, if applicable, for all shipments of hazardous secondary materials that were received and subsequently sent off-site from the facility for further reclamation. For each shipment, these records shall at a minimum contain the following information:

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

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

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

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

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

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

(D) The reclaimer and intermediate facility shall manage the hazardous secondary material in a manner that is at least as protective as that employed for analogous raw material and shall be contained.

An "analogous raw material" is a raw material for which a hazardous secondary material is a substitute and serves the same function and has similar physical and chemical properties as the hazardous secondary material.

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

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

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

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

(i) Notify EPA of an intended export before the hazardous

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

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

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

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

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

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

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

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

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

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

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

(iii) Except for changes to the telephone number in Subsection R315-261-4(a)(25)(i)(A) and decreases in the quantity of hazardous secondary material indicated pursuant to Subsection R315-261-4(a)(25)(i)(D), when the conditions specified on the original notification change, including any exceedance of the estimate of the quantity of hazardous secondary material specified in the original notification, the hazardous secondary material generator shall provide EPA with a written renotification of the change. The shipment cannot take place until consent of the country of import to the changes, except for changes to Subsection R315-261-4(a)(25)(i)(I) and in the ports of entry to and departure from countries of transit pursuant to Subsection R315-261-4(a)(25)(i)(E), has been obtained and the hazardous

secondary material generator receives from EPA an EPA Acknowledgment of Consent reflecting the country of import's consent to the changes.

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

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

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

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

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

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

(x) Hazardous secondary material generators shall keep a copy of each notification of intent to export and each EPA Acknowledgment of Consent for a period of three years following receipt of the EPA Acknowledgment of Consent. They may satisfy this recordkeeping requirement by retaining electronically submitted notifications or electronically generated Acknowledgements in their account on EPA's Waste Import Export Tracking System, WIETS, or its successor system,

provided that such copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No hazardous secondary material generator may be held liable for the inability to produce a notification or Acknowledgement for inspection under Subsection R315-261-4(a) (25) if they can demonstrate that the inability to produce such copies are due exclusively to technical difficulty with EPA's Waste Import Export Tracking System, WIETS, or its successor system for which the hazardous secondary material generator bears no responsibility.

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

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

(B) The calendar year covered by the report;

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

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

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

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

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

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

container shall be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;

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

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

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

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

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

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

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

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

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

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

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

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

(iv) After remanufacturing one or more of the solvents listed in Subsection R315-261-4(a)(27)(i), the use of the remanufactured solvent shall be limited to reacting, extracting, purifying, or blending chemicals, or for rinsing out the process lines associated

with these functions, in the pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and the paints and coatings manufacturing sectors, NAICS 325510; or to using them as ingredients in a product. These allowed uses correspond to chemical functional uses enumerated under the Chemical Data Reporting Rule of the Toxic Substances Control Act, 40 CFR parts 704, 710-711, including Industrial Function Codes U015, solvents consumed in a reaction to produce other chemicals, and U030, solvents become part of the mixture;

(v) After remanufacturing one or more of the solvents listed in Subsection R315-261-4(a)(27)(i), the use of the remanufactured solvent does not involve cleaning or degreasing oil, grease, or similar material from textiles, glassware, metal surfaces, or other articles.

(These disallowed continuing uses correspond to chemical functional uses in Industrial Function Code U029 under the Chemical Data Reporting Rule of the Toxics Substances Control Act.); and

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

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

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

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

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

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

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

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

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

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

available record of the material being stored;

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

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

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

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered, e.g., refuse-derived fuel, or reused. "Household waste" means any material, including garbage, trash and sanitary wastes in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas.

A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under this subtitle, if such facility:

(i) Receives and burns only

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

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

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

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

(i) The growing and harvesting of agricultural crops.

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

(3) Mining overburden returned to the mine site.

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

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

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

(B) Boiler cleaning solutions. For purposes of Subsection

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Specific wastes which meet the standard in Subsections R315-261-4(b)(6)(i)(A), (B), and (C), so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic, are:

(A) Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry; hair

pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

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

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

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

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

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

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

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

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

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

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

- (A) Slag from primary copper processing;
- (B) Slag from primary lead processing;
- (C) Red and brown muds from bauxite refining;

- (D) Phosphogypsum from phosphoric acid production;
- (E) Slag from elemental phosphorus production;
- (F) Gasifier ash from coal gasification;
- (G) Process wastewater from coal gasification;
- (H) Calcium sulfate wastewater treatment plant sludge from primary copper processing;
- (I) Slag tailings from primary copper processing;
- (J) Fluorogypsum from hydrofluoric acid production;
- (K) Process wastewater from hydrofluoric acid production;
- (L) Air pollution control dust/sludge from iron blast furnaces;
- (M) Iron blast furnace slag;
- (N) Treated residue from roasting/leaching of chrome ore;
- (O) Process wastewater from primary magnesium processing by the anhydrous process;
- (P) Process wastewater from phosphoric acid production;
- (Q) Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;
- (R) Basic oxygen furnace and open hearth furnace slag from carbon steel production;
- (S) Chloride process waste solids from titanium tetrachloride production;
- (T) Slag from primary zinc processing.

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

- (A) Processes at least 50 percent by weight normal beneficiation raw materials or normal mineral processing raw materials; and,
- (B) Legitimately reclaims the secondary mineral processing materials.

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

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

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

(11) Injected groundwater that is hazardous only because it exhibits the Toxicity Characteristic, Hazardous Waste Codes D018 through D043 only, in Section R315-261-24 that is reinjected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines, and petroleum transportation spill sites until January 25, 1993. This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For groundwater returned through infiltration galleries from such operations at petroleum refineries, marketing terminals, and bulk

plants, until October 2, 1991. New operations involving injection wells, beginning after March 25, 1991, will qualify for this compliance date extension, until January 25, 1993, only if:

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

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

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

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

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

(ii) Hot-draining and crushing;

(iii) Dismantling and hot-draining; or

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

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

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

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

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

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

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

(v) As of February 13, 2001, leachate or gas condensate derived from K169-K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. As of November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After February 26, 2007, leachate or gas condensate derived from K181 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is

one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation, e.g., shutdown of wastewater treatment system, provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of Subsection R315-261-4(b)(15)(v) after the emergency ends.

(16) Reserved

(17) Reserved

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

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

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

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

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

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

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

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

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

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

(A) To a solid waste landfill that:

~~[(1)]~~ (I) is regulated under R315-301 through R315-320

~~[(2)]~~ (II) is a Class I or V Landfill; and

~~[(3)]~~ (III) 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~~ Subsections R315-261-4(d) (2) and (4), 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).

(4) In order to qualify for the exemption in Subsections R315-261-4(d) (1) (i) and (ii), the mass of a sample that will be exported to a foreign laboratory or that will be imported to a U.S. laboratory from a foreign source must additionally no exceed 25 kg.

(e) (1) Treatability Study Samples. Except as provided in [Subsection] Subsections R315-261-4(e) (2) and (4), 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.

(4) In order to qualify for the exemption in Subsection R315-261-4(e)(1)(i), the mass of a sample that will be exported to a foreign laboratory or testing facility or that will be imported to a U.S. laboratory or testing facility from a foreign source must additionally no exceed 25 kg.

(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.

(i) Reserved

(j)(1) Airbag waste at the airbag waste handler or during transport to an airbag waste collection facility or designated facility is not subject to regulation under Rules R315-262 through 268, R315-270 or R315-124, and is not subject to the notification requirements of section 3010 of RCRA provided that:

(i) The airbag waste is accumulated in a quantity of no more than 250 airbag modules or airbag inflators, for no longer than 180 days;

(ii) The airbag waste is packaged in a container designed to address the risk posed by the airbag waste and labeled "Airbag Waste -- Do Not Reuse;"

(iii) The airbag waste is sent directly to either

(A) An airbag waste collection facility in the United States under the control of a vehicle manufacturer or their authorized representative, or under the control of an authorized party administering a remedy program in response to a recall under the National Highway Traffic Safety Administration, or

(B) A designated facility as defined in Section R315-260-10;

(iv) The transport of the airbag waste complies with all applicable U.S. Department of Transportation regulations in 49 CFR part 171 through 180 during transit;

(v) The airbag waste handler maintains at the handler facility for no less than three years records of all off-site shipments of airbag waste and all confirmations of receipt from the receiving facility. For each shipment, these records must, at a minimum, contain the name of the transporter and date of the shipment; name and address of receiving facility; and the type and quantity of airbag waste, i.e., airbag modules or airbag inflators, in the shipment. Confirmations of receipt must include the name and address of the receiving facility; the type and quantity of the airbag waste, i.e., airbag modules and airbag inflators, received; and the date which

it was received. Shipping records and confirmations of receipt must be made available for inspection and may be satisfied by routine business records, e.g., electronic or paper financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt.

(2) Once the airbag waste arrives at an airbag waste collection facility or designated facility, it becomes subject to all applicable hazardous waste regulations, and the facility receiving airbag waste is considered the hazardous waste generator for the purposes of the hazardous waste regulations and must comply with the requirements of Rule R315-262.

(3) Reuse in vehicles of defective airbag modules or defective airbag inflators subject to a recall under the National Highway Traffic Safety Administration is considered sham recycling and prohibited under Subsection R315-261-2(g).

R315-261-6. Requirements for Recyclable Materials.

(a) (1) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of Subsections R315-261-6(b) and (c), except for the materials listed in Subsections R315-261-6(a) (2) and (a) (3). Hazardous wastes that are recycled shall be known as "recyclable materials."

(2) The following recyclable materials are not subject to the requirements of Section R315-261-6 but are regulated under Sections R315-266-20 through 23, Section R315-266-70, Section R315-266-80, Sections R315-266-100 through 112, Sections R315-266-200 through 206, and Sections R315-266-210, 220, 225, 230, 235, 240, 245, 250, 255, 260, 310, 315, 320, 325, 330, 335, 340, 345, 350, 355, and 360 and all applicable provisions in Rules R315-268, 270 and 124.

(i) Recyclable materials used in a manner constituting disposal, Sections R315-266-20 through 23;

(ii) Hazardous wastes burned, as defined in Subsection R315-266-100(a), in boilers and industrial furnaces that are not regulated under Sections R315-264-340 through 345, 347 and 351; Sections R315-370, 373, 375, 377, and 381 through 383; and Section R315-266-100 through 112;

(iii) Recyclable materials from which precious metals are reclaimed, Section R315-266-70;

(iv) Spent lead-acid batteries that are being reclaimed, Section R315-266-80.

(3) The following recyclable materials are not subject to regulation under Rules R315-262 through 268, 270 and 124, and are not subject to the notification requirements of section 3010 of RCRA:

(i) Industrial ethyl alcohol that is reclaimed except that exports and imports of such recyclable materials must comply with the requirements of Sections R315-262-80 through 84. [, unless provided otherwise in an international agreement as specified in Section R315-262-58:

~~— (A) A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, shall comply with the requirements applicable to a primary exporter in Section R315-262-53, Subsections R315-262-56(a) (1) through (4), (6), and (b), and Section R315-262-57, export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgment~~

~~of Consent as defined in Sections R315-262-50 through 58, and provide a copy of the EPA Acknowledgment of Consent to the shipment to the transporter transporting the shipment for export;~~

~~(B) Transporters transporting a shipment for export may not accept a shipment if he knows the shipment does not conform to the EPA Acknowledgment of Consent, shall ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment and shall ensure that it is delivered to the facility designated by the person initiating the shipment.]~~

(ii) Scrap metal that is not excluded under Subsection R315-261-4(a)(13);

(iii) Fuels produced from the refining of oil-bearing hazardous waste along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices, this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under Subsection R315-261-4(a)(12);

(iv)(A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under Subsection R315-15-1.2(c) and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under Subsection R315-15-1.2(c); and

(C) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under Subsection R315-15-1.2(c).

(4) Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of Rules R315-260 through 268, but is regulated under Rule R315-15. Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose, including the purpose for which the oil was originally used. Such term includes, but is not limited to, oil which is re-refined, reclaimed, burned for energy recovery, or reprocessed.

(5) Hazardous waste that is exported ~~[to]~~ or imported ~~for~~ purpose of recovery is subject to the requirements of Sections R315-262-80 through 84. ~~[from designated member countries of the Organization for Economic Cooperation and Development (OECD), as defined in Subsection R315-262-58(a)(1), for purpose of recovery is subject to the requirements of Sections R315-262-80 through 87 and 89, if it is subject to either the manifesting requirements of Rule R315-262, to the universal waste management standards of Rule R315-273.]~~

(b) Generators and transporters of recyclable materials are subject to the applicable requirements of Rules R315-262 and 263 and the notification requirements under section 3010 of RCRA, except as provided in Subsection R315-261-6(a).

(c) (1) Owners and operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of Rules R315-264 and 265, and under Rules R315-266, 268, 270 and 124 and the notification requirements under section 3010 of RCRA, except as provided in Subsection R315-261-6(a). The recycling process itself is exempt from regulation except as provided in Subsection R315-261-6(d).

(2) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in R315-261-6(a):

(i) Notification requirements under section 3010 of RCRA;

(ii) ~~[40 CFR 265.71 and 72, which are adopted by reference,]~~ Sections R315-265-71 and 72 dealing with the use of the manifest and manifest discrepancies;

(iii) Subsection R315-261-6(d); and

(iv) Section R315-265-75, addressing biennial reporting requirements.

(d) Owners or operators of facilities subject to permitting requirements under Section 19-6-108 with hazardous waste management units that recycle hazardous wastes are subject to the requirements of Sections R315-264-1030 through 1036; and Sections R315-264-1050 through 1065; 40 CFR 265.1030 through 1035, which are adopted and incorporated by reference; or 40 CFR 265.1050 through 1064.

R315-261-39. Exclusions and Exemptions - Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling.

Used, broken CRTs are not solid wastes if they meet the following conditions:

(a) Prior to processing: These materials are not solid wastes if they are destined for recycling and if they meet the following requirements:

(1) Storage. The broken CRTs shall be either:

(i) Stored in a building with a roof, floor, and walls, or

(ii) Placed in a container, i.e., a package or a vehicle, that is constructed, filled, and closed to minimize releases to the environment of CRT glass, including fine solid materials.

(2) Labeling. Each container in which the used, broken CRT is contained shall be labeled or marked clearly with one of the following phrases: "Used cathode ray tube(s)-contains leaded glass" or "Leaded glass from televisions or computers." It shall also be labeled: "Do not mix with other glass materials."

(3) Transportation. The used, broken CRTs shall be transported in a container meeting the requirements of Subsections R315-261-39(a) (1) (ii) and (2).

(4) Speculative accumulation and use constituting disposal. The used, broken CRTs are subject to the limitations on speculative accumulation as defined in Subsection R315-261-39(c) (8). If they are used in a manner constituting disposal, they shall comply with

the applicable requirements of Sections R315-266-20 through 23 instead of the requirements of Section R315-261-39.

(5) Exports. In addition to the applicable conditions specified in Subsections R315-261-39(a) (1) through (4), exporters of used, broken CRTs shall comply with the following requirements:

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

(A) Name, mailing address, telephone number and EPA ID number, if applicable, of the exporter of the CRTs.

(B) The estimated frequency or rate at which the CRTs are to be exported and the period of time over which they are to be exported.

(C) The estimated total quantity of CRTs specified in kilograms.

(D) All points of entry to and departure from each foreign country through which the CRTs will pass.

(E) A description of the means by which each shipment of the CRTs will be transported; e.g., mode of transportation vehicle, air, highway, rail, water, etc.; type(s) of container, drums, boxes, tanks, etc.

(F) The name and address of the recycler or recyclers and the estimated quantity of used CRTs to be sent to each facility, as well as the names of any alternate recyclers.

(G) A description of the manner in which the CRTs will be recycled in the foreign country that will be receiving the CRTs.

(H) The name of any transit country through which the CRTs will be sent and a description of the approximate length of time the CRTs will remain in such country and the nature of their handling while there.

(ii) Notifications must be submitted electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. [Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 1200 Pennsylvania Ave., NW., Washington, DC. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export CRTs."]

(iii) Upon request by EPA, the exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(iv) EPA shall provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of Subsection R315-261-39(a) (5) (i). [~~Where a claim of confidentiality is asserted with respect to any notification~~]

information required by Subsection R315-261-39(a)(5)(i), EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.]

(v) [The export of CRTs is prohibited unless the receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the CRTs, EPA shall forward an Acknowledgment of Consent to Export CRTs to the exporter. Where the receiving country objects to receipt of the CRTs or withdraws a prior consent, EPA shall notify the exporter in writing. EPA shall also notify the exporter of any responses from transit countries.] The export of CRTs is prohibited unless all of the following occur:

(A) The receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the CRTs, EPA will forward an Acknowledgment of Consent to Export CRTs to the exporter. Where the receiving country objects to receipt of the CRTs or withdraws a prior consent, EPA will notify the exporter in writing. EPA will also notify the exporter of any responses from transit countries.

(B) On or after the AES filing compliance date, the exporter or a U.S. authorized agent must:

(I) Submit Electronic Export Information (EEI) for each shipment to the Automated Export System (AES) or its successor system, under the International Trade Data System (ITDS) platform, in accordance with 15 CFR 30.4(b).

(II) Include the following items in the EEI, along with the other information required under 15 CFR 30.6: EPA license code; Commodity classification code per 15 CFR 30.6(a)(12); EPA consent number; Country of ultimate destination per 15 CFR 30.6(a)(5); Date of export per 15 CFR 30.6(a)(2); Quantity of waste in shipment and units for reported quantity, if required reporting units established by value for the reported commodity classification number are in units of weight or volume per 15 CFR 30.6(a)(15); or EPA net quantity reported in units of kilograms, if required reporting units established by value for the reported commodity classification number are not in units of weight or volume.

(vi) When the conditions specified on the original notification change, the exporter must provide EPA with a written renotification of the change using the allowable methods listed in Subsection R315-261-39(a)(5)(ii), except for changes to the telephone number in Subsection R315-261-39(a)(5)(i)(A) and decreases in the quantity indicated pursuant to Subsection R315-261-39(a)(5)(i)(C). The shipment cannot take place until consent of the receiving country to the changes has been obtained (except for changes to information about points of entry and departure and transit countries pursuant to Subsections R315-261-39(a)(5)(i)(D) and (H) and the exporter of CRTs receives from EPA a copy of the Acknowledgment of Consent to Export CRTs reflecting the receiving country's consent to the changes. [When the conditions specified on the original notification change, the exporter shall provide EPA with a written renotification of the change, except for changes to the telephone number in Subsection R315-261-39(a)(5)(i)(A) and decreases in the quantity indicated pursuant to Subsection R315-261-39(a)(5)(i)(C). The shipment cannot take place until consent of the receiving country to the changes has been obtained, except for changes to information about points of entry

~~and departure and transit countries pursuant to Subsections R315-261-39(a)(5)(i)(D) and (a)(5)(i)(H), and the exporter of CRTs receives from EPA a copy of the Acknowledgment of Consent to Export CRTs reflecting the receiving country's consent to the changes.]~~

(vii) A copy of the Acknowledgment of Consent to Export CRTs shall accompany the shipment of CRTs. The shipment shall conform to the terms of the Acknowledgment.

(viii) If a shipment of CRTs cannot be delivered for any reason to the recycler or the alternate recycler, the exporter of CRTs shall renotify EPA of a change in the conditions of the original notification to allow shipment to a new recycler in accordance with Subsection R315-261-39(a)(5)(vi) and obtain another Acknowledgment of Consent to Export CRTs.

(ix) Exporters must keep copies of notifications and Acknowledgments of Consent to Export CRTs for a period of three years following receipt of the Acknowledgment. Exporters may satisfy this recordkeeping requirement by retaining electronically submitted notifications or electronically generated Acknowledgements in the CRT exporter's 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 CRT exporter may be held liable for the inability to produce a notification or Acknowledgement for inspection under Section R315-261-39 if the CRT exporter 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 CRT exporter bears no responsibility. [Exporters shall keep copies of notifications and Acknowledgments of Consent to Export CRTs for a period of three years following receipt of the Acknowledgment.]

(x) CRT exporters shall file with EPA no later than March 1 of each year, an annual report summarizing the quantities, in kilograms; frequency of shipment; and ultimate destination(s), i.e., the facility or facilities where the recycling occurs, of all used CRTs exported during the previous calendar year. Such reports shall also include the following:

(A) The name; EPA ID number, if applicable; and mailing and site address of the exporter;

(B) The calendar year covered by the report;

(C) A certification signed by the CRT exporter that states:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(xi) Prior to one year after the AES filing compliance date, annual reports must be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Hand-delivered annual reports on used CRTs exported during 2016 should be sent to: Office of Enforcement and

Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 1200 Pennsylvania Ave. NW., Washington, DC. Subsequently, annual reports must be submitted to the office listed using the allowable methods specified in Subsection R315-261-39(a)(5)(ii). Exporters must keep copies of each annual report for a period of at least three years from the due date of the report. Exporters may satisfy this recordkeeping requirement by retaining electronically submitted annual reports in the CRT exporter's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that a copy is readily available for viewing and production if requested by any EPA or authorized Utah inspector. No CRT exporter may be held liable for the inability to produce an annual report for inspection under Section R315-261-39 if the CRT exporter can demonstrate that the inability to produce the annual report is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system for which the CRT Exporter bears no responsibility. [Annual reports shall be submitted to the office specified in Subsection R315-261-39(a)(5)(ii). Exporters shall keep copies of each annual report for a period of at least three years from the due date of the report.]

(b) Requirements for used CRT processing: Used, broken CRTs undergoing CRT processing as defined in Section R315-260-10 are not solid wastes if they meet the following requirements:

(1) Storage. Used, broken CRTs undergoing processing are subject to the requirement of Subsection R315-261-39(a)(4).

(2) Processing.

(i) All activities specified in Subsections (ii) and (iii) of the definition of CRT Processing in Section R315-260-10 shall be performed within a building with a roof, floor, and walls; and

(ii) No activities may be performed that use temperatures high enough to volatilize lead from CRTs.

(c) Processed CRT glass sent to CRT glass making or lead smelting: Glass from used CRTs that is destined for recycling at a CRT glass manufacturer or a lead smelter after processing is not a solid waste unless it is speculatively accumulated as defined in Subsection R315-261-1(c)(8).

(d) Use constituting disposal: Glass from used CRTs that is used in a manner constituting disposal shall comply with the requirements of Section R315-266-20 through 23 instead of the requirements of Section R315-261-39.

KEY: hazardous waste

Date of Enactment or Last Substantive Amendment: April 15, 2019

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-262. Hazardous Waste Generator Requirements.

R315-262-10. General -- Purpose, Scope, and Applicability.

(a) The regulations in Rule R315-262 establish standards for

generators of hazardous waste as defined by Section R315-260-10.

(1) A person who generates a hazardous waste as defined by Rule R315-261 is subject to all the applicable independent requirements in the sections listed below:

(i) Independent requirements of a very small quantity generator.

(A) Subsections R315-262-11(a) through (d) Hazardous waste determination and recordkeeping; and

(B) Section R315-262-13 Generator category determination.

(ii) Independent requirements of a small quantity generator.

(A) Section R315-262-11 Hazardous waste determination and recordkeeping;

(B) Section R315-262-13 Generator category determination;

(C) Section R315-262-18 EPA identification numbers and re-notification for small quantity generators and large quantity generators;

(D) Sections R315-262-20 through R315-262-27--Manifest requirements applicable to small and large quantity generators;

(E) Sections R315-262-30 through R315-262-34--Pre-transport requirements applicable to small and large quantity generators;

(F) Section R315-262-40 Recordkeeping;

(G) Section R315-262-44 Recordkeeping for small quantity generators; and

(H) Sections R315-262-80 through R315-262-~~89~~84--Transboundary movements of hazardous waste for recovery or disposal.

(iii) Independent requirements of a large quantity generator.

(A) Section R315-262-11 Hazardous waste determination and recordkeeping;

(B) Section R315-262-13 Generator category determination;

(C) Section R315-262-18 EPA identification numbers and re-notification for small quantity generators and large quantity generators;

(D) Sections R315-262-20 through R315-262-27--Manifest requirements applicable to small and large quantity generators;

(E) Sections R315-262-30 through R315-262-34--Pre-transport requirements applicable to small and large quantity generators;

(F) Sections R315-262-40 through R315-262-44--Recordkeeping and reporting applicable to small and large quantity generators, except Section R315-262-44; and

(G) Sections R315-262-80 through R315-262-~~89~~84--Transboundary movements of hazardous waste for recovery or disposal.

(2) A generator that accumulates hazardous waste on site is a person that stores hazardous waste; such generator is subject to the applicable requirements of Rule R315-124, R315-264 through R315-266, R315-270 and section 3010 of RCRA, unless it is one of the following:

(i) A very small quantity generator that meets the conditions for exemption in Section R315-262-14;

(ii) A small quantity generator that meets the conditions for exemption in Sections R315-262-15 and R315-262-16; or

(iii) A large quantity generator that meets the conditions for exemption in Sections R315-262-15 and R315-262-17.

(3) A generator shall not transport, offer its hazardous waste for transport, or otherwise cause its hazardous waste to be sent to a facility that is not a designated facility, as defined in Section R315-260-10, or not otherwise authorized to receive the generator's hazardous waste.

(b) Determining generator category. A generator shall use Section R315-262-13 to determine which provisions of Rule R315-262 are applicable to the generator based on the quantity of hazardous waste generated per calendar month.

(c) Reserved.

(d) Any person who exports or imports hazardous wastes shall comply with Section R315-262-18 and Sections R315-262-80 through R315-262-~~89~~84.

(e) Any person who imports hazardous waste into the United States shall comply with the standards applicable to generators established in Rule R315-262.

(f) A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of Section R315-262-70 is not required to comply with other standards in Rule R315-262 or Rules R315- 270, 264, 265, or 268 with respect to such pesticides.

(1) A generator's violation of an independent requirement is subject to penalty and injunctive relief under Sections 19-6-112 and 19-6-113.

(2) A generator's noncompliance with a condition for exemption in Rule R315-262 is not subject to penalty or injunctive relief under Sections 19-6-112 and 19-6-113 as a violation of a Rule R315-262 condition for exemption. Noncompliance by any generator with an applicable condition for exemption from storage permit and operations requirements means that the facility is a storage facility operating without an exemption from the permit, interim status, and operations requirements in Rules R315-124, R315-264 through R315-266, and R315-270, and the notification requirements of section 3010 of RCRA. Without an exemption, any violations of such storage requirements are subject to penalty and injunctive relief under Sections 19-6-112 and 19-6-113.

(h) An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility shall comply with the generator standards established in Rule R315-262.

Note 1: The provisions of Section R315-262-34 are applicable to the on-site accumulation of hazardous waste by generators. Therefore, the provisions of Section R315-262-34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

Note 2: A generator who treats, stores, or disposes of hazardous waste on-site shall comply with the applicable standards and permit requirements set forth in Rules R315-264, 265, 266, 268, and 270.

(i) Reserved.

(j) Reserved.

(k) Reserved.

(l) The laboratories owned by an eligible academic entity that chooses to be subject to the requirements of Sections R315-262-200 through R315-262-216 are not subject to, for purposes of Subsection R315-262-10(1), the terms "laboratory" and "eligible academic entity"

shall have the meaning as defined in Section R315-262-200:

(1) The independent requirements of Section R315-262-11 or the regulations in Section R315-262-15 for large quantity generators and small quantity generators, except as provided in Sections R315-262-200 through R315-262-216, and

(2) The conditions of Section R315-262-14, for very small quantity generators, except as provided in Sections R315-262-200 through R315-262-216.

(m) Generators of lamps, as defined in Section R315-273-9, using a drum-top crusher, as defined in Section R315-273-9, shall meet the requirements of Subsection R315-273-13(d)(3), except for the registration requirement; and Subsections R315-273-13(d)(4) and (5).

Note: A generator who treats, stores, or disposes of hazardous waste on-site shall comply with the applicable standards and permit requirements set forth in Rules R315-264, R315-265, R315-266, R315-268, and R315-270.

~~[R315-262-50. Exports of Hazardous Waste -- Applicability.~~

~~Sections R315-262-50 through 58 establish requirements applicable to exports of hazardous waste. Except to the extent Section R315-262-58 provides otherwise, a primary exporter of hazardous waste shall comply with the special requirements of Sections R315-262-50 through 58 and a transporter transporting hazardous waste for export shall comply with applicable requirements of Rule R315-263. Section R315-262-58 sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, treatment, storage and disposal of hazardous waste for shipments between the United States and those countries.~~

~~R315-262-51. Exports of Hazardous Waste -- Definitions.~~

~~In addition to the definitions set forth at Section R315-260-10, the following definitions apply to Sections R315-262-50 through 58:~~

~~Consignee means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste will be sent.~~

~~EPA Acknowledgement of Consent means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment. Primary Exporter means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Sections R315-262-20 through 25 and 27 which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.~~

~~Receiving country means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal, except short-term storage incidental to transportation. Transit country means any foreign country, other than a receiving country, through which a hazardous waste is transported.~~

~~R315-262-52. Exports of Hazardous Waste -- General Requirements.~~

Exports of hazardous waste are prohibited except in compliance with the applicable requirements of Sections R315-262-50 through 58 and Rule R315-263. Exports of hazardous waste are prohibited unless:

(a) Notification in accordance with Section R315-262-53 has been provided;

(b) The receiving country has consented to accept the hazardous waste;

(c) A copy of the EPA Acknowledgment of Consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest; or shipping paper for exports by water, bulk shipment.

(d) The hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the EPA Acknowledgment of Consent.

R315-262-53. Exports of Hazardous Waste -- Notification of Intent to Export.

(a) A primary exporter of hazardous waste shall notify EPA of an intended export before such waste is scheduled to leave the United States. A complete notification should be submitted sixty days before the initial shipment is intended to be shipped off site. This notification may cover export activities extending over a twelve month or lesser period. The notification shall be in writing, signed by the primary exporter, and include the following information:

(1) Name, mailing address, telephone number and EPA ID number of the primary exporter;

(2) By consignee, for each hazardous waste type:

(i) A description of the hazardous waste and the EPA hazardous waste number, from Sections R315-261-20 through 24, and R315-261-30 through 35, U.S. DOT proper shipping name, hazard class and ID number (UN/NA) for each hazardous waste as identified in 49 CFR parts 171 through 177;

(ii) The estimated frequency or rate at which such waste is to be exported and the period of time over which such waste is to be exported.

(iii) The estimated total quantity of the hazardous waste in units as specified in the instructions to the Uniform Hazardous Waste Manifest Form (8700-22);

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

(v) A description of the means by which each shipment of the hazardous waste will be transported; e.g., mode of transportation vehicle, air, highway, rail, water, etc.; type(s) of container, drums, boxes, tanks, etc.;

(vi) A description of the manner in which the hazardous waste will be treated, stored or disposed of in the receiving country, e.g., land or ocean incineration, other land disposal, ocean dumping, recycling;

(vii) The name and site address of the consignee and any alternate consignee; and

(viii) The name of any transit countries through which the hazardous waste will be sent and a description of the approximate length of time the hazardous waste will remain in such country and the nature of its handling while there;

~~_____ (b) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 12th St. and Pennsylvania Ave., NW., Washington, DC 20004. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export."~~

~~_____ (c) Except for changes to the telephone number in Subsection R315-262-53(a)(1), changes to Subsection R315-262-53(a)(2)(v) and decreases in the quantity indicated pursuant to Subsection R315-262-53(a)(2)(iii) when the conditions specified on the original notification change, including any exceedance of the estimate of the quantity of hazardous waste specified in the original notification, the primary exporter shall provide EPA with a written renotification of the change. The shipment cannot take place until consent of the receiving country to the changes, except for changes to Subsection R315-262-53(a)(2)(viii) and in the ports of entry to and departure from transit countries pursuant to Subsection R315-262-53(a)(2)(iv), has been obtained and the primary exporter receives an EPA Acknowledgment of Consent reflecting the receiving country's consent to the changes.~~

~~_____ (d) Upon request by EPA, a primary exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.~~

~~_____ (e) In conjunction with the Department of State, EPA shall provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of Subsection R315-262-53(a). Where a claim of confidentiality is asserted with respect to any notification information required by Subsection R315-262-53(a), EPA may find the notification not complete until any such claim is resolved in accordance with Section R315-260-2.~~

~~_____ (f) Where the receiving country consents to the receipt of the hazardous waste, EPA shall forward an EPA Acknowledgment of Consent to the primary exporter for purposes of Subsection R315-262-54(h). Where the receiving country objects to receipt of the hazardous waste or withdraws a prior consent, EPA shall notify the primary exporter in writing. EPA shall also notify the primary exporter of any responses from transit countries.~~

~~R315-262-54. Exports of Hazardous Waste -- Special Manifest Requirements.~~

~~_____ A primary exporter shall comply with the manifest requirements of Sections R315-262-20 through 23 except that:~~

~~_____ (a) In lieu of the name, site address and EPA ID number of the designated permitted facility, the primary exporter shall enter the name and site address of the consignee;~~

~~_____ (b) In lieu of the name, site address and EPA ID number of a permitted alternate facility, the primary exporter may enter the name~~

and site address of any alternate consignee.

(c) In the International Shipments block, the primary exporter shall check the export box and enter the point of exit, city and State, from the United States.

(d) The following statement shall be added to the end of the first sentence of the certification set forth in Item 16 of the Uniform Hazardous Waste Manifest Form: "and conforms to the terms of the attached EPA Acknowledgment of Consent";

(e) The primary exporter may obtain the manifest from any source that is registered with the U.S. EPA as a supplier of manifests (e.g., states, waste handlers, and/or commercial forms printers).

(f) The primary exporter shall require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies, as defined in Subsection R315-264-72(a), between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste.

(g) In lieu of the requirements of Subsection R315-262-20(d), where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter shall:

(1) Renotify EPA of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with Subsection R315-262-53(c) and obtain an EPA Acknowledgment of Consent prior to delivery; or

(2) Instruct the transporter to return the waste to the primary exporter in the United States or designate another facility within the United States; and

(3) Instruct the transporter to revise the manifest in accordance with the primary exporter's instructions.

(h) The primary exporter shall attach a copy of the EPA Acknowledgment of Consent to the shipment to the manifest which shall accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter shall provide the transporter with an EPA Acknowledgment of Consent which shall accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter shall attach the copy of the EPA Acknowledgment of Consent to the shipping paper.

(i) The primary exporter shall provide the transporter with an additional copy of the manifest for delivery to the U.S. Customs official at the point the hazardous waste leaves the United States in accordance with Subsection R315-263-20(g)(4).

R315-262-55. Exports of Hazardous Waste -- Exception Reports.

In lieu of the requirements of Section R315-262-42, a primary exporter shall file an exception report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, if any of the following occurs:

(a) He has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within forty-five days from the date it was accepted by the initial transporter;

____ (b) Within ninety days from the date the waste was accepted by the initial transporter, the primary exporter has not received written confirmation from the consignee that the hazardous waste was received;

____ (c) The waste is returned to the United States.

R315-262-56. Exports of Hazardous Waste -- Annual Reports.

____ (a) Primary exporters of hazardous waste shall file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous calendar year. Such reports shall include the following:

____ (1) The EPA identification number, name, and mailing and site address of the exporter;

____ (2) The calendar year covered by the report;

____ (3) The name and site address of each consignee;

____ (4) By consignee, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number, from Sections R315-261-20 through 24 and R315-261-30 through 35, DOT hazard class, the name and US EPA ID number, where applicable, for each transporter used, the total amount of waste shipped and number of shipments pursuant to each notification;

____ (5) Except for hazardous waste produced by exporters of greater than 100 kg but less than 1000 kg in a calendar month, unless provided pursuant to Section R315-262-41, in even numbered years:

____ (i) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

____ (ii) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.

____ (6) A certification signed by the primary exporter which states: I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.

____ (b) Annual reports submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered reports should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 12th St. and Pennsylvania Ave., NW., Washington, DC 20004.

R315-262-57. Exports of Hazardous Waste -- Recordkeeping.

____ (a) For all exports a primary exporter shall:

____ (1) Keep a copy of each notification of intent to export for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

_____ (2) Keep a copy of each EPA Acknowledgment of Consent for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

_____ (3) Keep a copy of each confirmation of delivery of the hazardous waste from the consignee for at least three years from the date the hazardous waste was accepted by the initial transporter; and

_____ (4) Keep a copy of each annual report for a period of at least three years from the due date of the report.

_____ (b) The periods of retention referred to in Section R315-262-57 are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

R315-262-58. Exports of Hazardous Waste -- International Agreements.

_____ (a) Any person who exports or imports wastes that are considered hazardous under U.S. national procedures to or from designated Member countries of the Organization for Economic Cooperation and Development (OECD) as defined in Subsection R315-262-58(a)(1) for purposes of recovery is subject to Sections R315-262-80 through 89. The requirements of Sections R315-262-50 through 58 and R315-262-60 do not apply to such exports and imports. A waste is considered hazardous under U.S. national procedures if the waste meets the Federal definition of hazardous waste in Section R315-261-3 and is subject to either the manifesting requirements Sections R315-262-20 through 25 and 27, the universal waste management standards of Rule R315-273, the export requirements in the spent lead-acid battery management standards of Section R315-266-80.

_____ (1) For the purposes of Sections R315-262-80 through 89, the designated OECD Member countries consist of Australia, Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, the Republic of Korea, the Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

_____ (2) For the purposes of Sections R315-262-80 through 89, Canada and Mexico are considered OECD Member countries only for the purpose of transit.

_____ (b) Any person who exports hazardous waste to or imports hazardous waste from: A designated OECD Member country for purposes other than recovery; e.g., incineration, disposal; Mexico, for any purpose; or Canada, for any purpose, remains subject to the requirements of Sections R315-262-50 through 58 and 60, and is not subject to the requirements of Sections R315-262-80 through 89.

R315-262-60. Imports of Hazardous Waste.

_____ (a) Any person who imports hazardous waste from a foreign country into the United States shall comply with the requirements of Rule R315-262.

_____ (b) When importing hazardous waste, a person shall meet all the requirements of Section R315-262-20 for the manifest except that:

_____ (1) In place of the generator's name, address and EPA identification number, the name and address of the foreign generator and the importer's name, address and EPA identification number shall be used.

~~_____ (2) In place of the generator's signature on the certification statement, the U.S. importer or his agent shall sign and date the certification and obtain the signature of the initial transporter.~~

~~_____ (c) A person who imports hazardous waste may obtain the manifest form from any source that is registered with the U.S. EPA as a supplier of manifests; e.g., states, waste handlers, and/or commercial forms printers.~~

~~_____ (d) In the International Shipments block, the importer shall check the import box and enter the point of entry, city and State, into the United States.~~

~~_____ (e) The importer shall provide the transporter with an additional copy of the manifest to be submitted by the receiving facility to U.S. EPA in accordance with Subsections R315-264-71(a)(3) and 40 CFR 265.71(a)(3), which is adopted by reference.~~

]R315-262-70. Farmers.

A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in Rule R315-262 or other standards in Rules R315-264, R315-265, R315-268, or R315-270 for those wastes provided he triple rinses each emptied pesticide container in accordance with Subsection R315-261-7(b)(3) and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

R315-262-80. Transboundary Movements of Hazardous Waste for Recovery or Disposal -- Applicability.

(a) The requirements of Sections R315-262-80 through 84 apply to transboundary movements of hazardous wastes. ~~[The requirements of Sections R315-262-80 through 89 apply to imports and exports of wastes that are considered hazardous under U.S. national procedures and are destined for recovery operations in the countries listed in Subsection R315-262-58(a)(1). A waste is considered hazardous under U.S. national procedures if the waste:~~

~~_____ (1) Meets the Federal definition of hazardous waste in Section R315-261-3; and~~

~~_____ (2) Is subject to either the manifesting requirements Sections R315-262-20 through 25 and 27, the universal waste management standards of Rule R315-273, the export requirements in the spent lead-acid battery management standards of Section R315-266-80.]~~

(b) Any person, including exporter, importer, disposal facility operator, or recovery facility operator, who mixes two or more wastes, including hazardous and non-hazardous wastes, or otherwise subjects two or more wastes, including hazardous and nonhazardous wastes, to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under RCRA and any exporter duties, if applicable, under Sections R315-262-80 through 84. [Any person; exporter, importer, or recovery facility operator; who mixes two or more wastes, including hazardous and non-hazardous wastes, or otherwise subjects two or more wastes, including hazardous and non-hazardous wastes, to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under RCRA and any exporter duties, if applicable,

~~under Sections R315-262-80 through 89.]~~

R315-262-81. Transboundary Movements of Hazardous Waste for Recovery or Disposal -- Definitions.

In addition to the definitions set forth at Section R315-260-10, [The] the following definitions apply to Sections R315-262-80 through [89.] 84:

"Competent authority" means the regulatory authority or authorities of concerned countries having jurisdiction over transboundary movements of wastes.

"Countries concerned" means the countries of export or import and any countries of transit.

"Country of export" means any country from which a transboundary movement of hazardous wastes is planned to be initiated or is initiated.

"Country of import" means any country to which a transboundary movement of hazardous wastes is planned or takes place for the purpose of submitting the wastes to recovery or disposal operations therein.

"Country of transit" means any country other than the country of export or country of import across which a transboundary movement of hazardous wastes is planned or takes place.

"Disposal operations" means activities which do not lead to the possibility of resource recovery, recycling, reclamation, direct re-use or alternate uses, which include:

D1 Release or Deposit into or onto land, other than by any of operations D2 through D5 or D12.

D2 Land treatment, such as biodegradation of liquids or sludges in soils.

D3 Deep injection, such as injection into wells, salt domes or naturally occurring repositories.

D4 Surface impoundment, such as placing of liquids or sludges into pits, ponds or lagoons.

D5 Specially engineered landfill, such as placement into lined discrete cells which are capped and isolated from one another and the environment.

D6 Release into a water body other than a sea or ocean, and other than by operation D4.

D7 Release into a sea or ocean, including sea-bed insertion, other than by operation D4.

D8 Biological treatment not specified elsewhere in operations D1 through D12, which results in final compounds or mixtures which are discarded by means of any of operations D1 through D12.

D9 Physical or chemical treatment not specified elsewhere in operations D1 through D12, such as evaporation, drying, calcination, neutralization, or precipitation, which results in final compounds or mixtures which are discarded by means of any of operations D1 through D12.

D10 Incineration on land.

D11 Incineration at sea.

D12 Permanent storage.

D13 Blending or mixing, prior to any of operations D1 through D12.

D14 Repackaging, prior to any of operations D1 through D13.

D15 (or DC17 for transboundary movements with Canada only)

Interim Storage, prior to any of operations D1 through D12.

DC15 Release, including the venting of compressed or liquified gases, or treatment, other than by any of operations D1 to D12 (for transboundary movements with Canada only).

DC16 Testing of a new technology to dispose of a hazardous waste (for transboundary movements with Canada only).

"EPA Acknowledgment of Consent" (AOC) means the letter EPA sends to the exporter documenting the specific terms of the country of import's consent and the country(ies) of transit's consent(s). The AOC meets the definition of an export license in U.S. Census Bureau regulations 15 CFR 30.1.

"Export" means the transportation of hazardous waste from a location under the jurisdiction of the United States to a location under the jurisdiction of another country, or a location not under the jurisdiction of any country, for the purposes of recovery or disposal operations therein.

"Exporter, also known as primary exporter on the RCRA hazardous waste manifest", means the person domiciled in the United States who is required to originate the movement document in accordance with Subsection R315-262-83(d) or the manifest for a shipment of hazardous waste in accordance with Sections R315-262-20 through 27, which specifies a foreign receiving facility as the facility to which the hazardous wastes will be sent, or any recognized trader who proposes export of the hazardous wastes for recovery or disposal operations in the country of import.

"Foreign exporter" means the person under the jurisdiction of the country of export who has, or will have at the time the planned transboundary movement commences, possession or other forms of legal control of the hazardous wastes and who proposes shipment of the hazardous wastes to the United States for recovery or disposal operations.

"Foreign importer" means the person to whom possession or other form of legal control of the hazardous waste is assigned at the time the exported hazardous waste is received in the country of import.

"Foreign receiving facility" means a facility which, under the importing country's applicable domestic law, is operating or is authorized to operate in the country of import to receive the hazardous wastes and to perform recovery or disposal operations on them.

"Import" means the transportation of hazardous waste from a location under the jurisdiction of another country to a location under the jurisdiction of the United States for the purposes of recovery or disposal operations therein.

"Importer" means the person to whom possession or other form of legal control of the hazardous waste is assigned at the time the imported hazardous waste is received in the United States.

"OECD area" means all land or marine areas under the national jurisdiction of any OECD Member country. When the regulations refer to shipments to or from an OECD Member country, this means OECD area.

"OECD" means the Organization for Economic Cooperation and Development.

"OECD Member country" means the countries that are members of the OECD and participate in the Amended 2001 OECD Decision. (EPA provides a list of OECD Member countries at <https://www.epa.gov/hwgenerators/international-agreementstransboun>

dary- shipments-waste).

"Receiving facility" means a U.S. facility which, under RCRA and other applicable domestic laws, is operating or is authorized to operate to receive hazardous wastes and to perform recovery or disposal operations on them.

"Recovery operations" means activities leading to resource recovery, recycling, reclamation, direct re-use or alternative uses, which include:

R1 Use as a fuel (other than in direct incineration) or other means to generate energy.

R2 Solvent reclamation/ regeneration.

R3 Recycling/reclamation of organic substances which are not used as solvents.

R4 Recycling/reclamation of metals and metal compounds.

R5 Recycling/reclamation of other inorganic materials.

R6 Regeneration of acids or bases.

R7 Recovery of components used for pollution abatement.

R8 Recovery of components used from catalysts.

R9 Used oil re-refining or other reuses of previously used oil.

R10 Land treatment resulting in benefit to agriculture or ecological improvement.

R11 Uses of residual materials obtained from any of the operations numbered R1 through R10 or RC14 (for transboundary shipments with Canada only).

R12 Exchange of wastes for submission to any of the operations numbered R1 through R11 or RC14 (for transboundary shipments with Canada only).

R13 Accumulation of material intended for any operation numbered R1 through R12 or RC14 (for transboundary shipments with Canada only).

RC14 Recovery or regeneration of a substance or use or re-use of a recyclable material, other than by any of operations R1 to R10 (for transboundary shipments with Canada only).

RC15 Testing of a new technology to recycle a hazardous recyclable material (for transboundary shipments with Canada only).

RC16 Interim storage prior to any of operations R1 to R11 or RC14 (for transboundary shipments with Canada only).

"Transboundary movement" means any movement of hazardous wastes from an area under the national jurisdiction of one country to an area under the national jurisdiction of another country.

[Competent authority means the regulatory authority or authorities of concerned countries having jurisdiction over transboundary movements of wastes destined for recovery operations.

— Countries concerned means the OECD Member countries of export or import and any OECD Member countries of transit.

— Country of export means any designated OECD Member country listed in Subsection R315-262-58(a)(1) from which a transboundary movement of hazardous wastes is planned to be initiated or is initiated.

— Country of import means any designated OECD Member country listed in Subsection R315-262-58(a)(1) to which a transboundary movement of hazardous wastes is planned or takes place for the purpose of submitting the wastes to recovery operations therein.

— Country of transit means any designated OECD Member country listed in Subsections R315-262-58(a)(1) and (a)(2) other than the country of export or country of import across which a transboundary

movement of hazardous wastes is planned or takes place.

Exporter means the person under the jurisdiction of the country of export who has, or will have at the time the planned transboundary movement commences, possession or other forms of legal control of the wastes and who proposes transboundary movement of the hazardous wastes for the ultimate purpose of submitting them to recovery operations. When the United States (U.S.) is the country of export, exporter is interpreted to mean a person domiciled in the United States.

Importer means the person to whom possession or other form of legal control of the waste is assigned at the time the waste is received in the country of import.

OECD area means all land or marine areas under the national jurisdiction of any OECD Member country listed in Section R315-262-58. When the regulations refer to shipments to or from an OECD Member country, this means OECD area.

OECD means the Organization for Economic Cooperation and Development.

Recognized trader means a person who, with appropriate authorization of countries concerned, acts in the role of principal to purchase and subsequently sell wastes; this person has legal control of such wastes from time of purchase to time of sale; such a person may act to arrange and facilitate transboundary movements of wastes destined for recovery operations.

Recovery facility means a facility which, under applicable domestic law, is operating or is authorized to operate in the country of import to receive wastes and to perform recovery operations on them.

Recovery operations means activities leading to resource recovery, recycling, reclamation, direct re-use or alternative uses, which include:

R1 Use as a fuel (other than in direct incineration) or other means to generate energy.

R2 Solvent reclamation/regeneration.

R3 Recycling/reclamation of organic substances which are not used as solvents.

R4 Recycling/reclamation of metals and metal compounds.

R5 Recycling/reclamation of other inorganic materials.

R6 Regeneration of acids or bases.

R7 Recovery of components used for pollution abatement.

R8 Recovery of components used from catalysts.

R9 Used oil re-refining or other reuses of previously used oil.

R10 Land treatment resulting in benefit to agriculture or ecological improvement.

R11 Uses of residual materials obtained from any of the operations numbered R1-R10.

R12 Exchange of wastes for submission to any of the operations numbered R1-R11.

R13 Accumulation of material intended for any operation numbered R1-R12.

Transboundary movement means any movement of wastes from an area under the national jurisdiction of one OECD Member country to an area under the national jurisdiction of another OECD Member country.]

R315-262-82. Transboundary Movements of Hazardous Waste for Recovery or Disposal -- General Conditions.

(a) Scope. [—The level of control for exports and imports of waste is indicated by assignment of the waste to either a list of wastes subject to the Green control procedures or a list of wastes subject to the Amber control procedures and by the national procedures of the United States, as defined in Subsection R315-262-80(a). The OECD Green and Amber lists are incorporated by reference in Subsection R315-262-89(d).]

—— (1) Listed wastes subject to the Green control procedures.

—— (i) Green wastes that are not considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a) are subject to existing controls normally applied to commercial transactions.

—— (ii) Green wastes that are considered hazardous under U.S. national procedures as defined in Section R315-262-80(a) are subject to the Amber control procedures set forth in Sections R315-262-80 through 89.

—— (2) Listed wastes subject to the Amber control procedures.

—— (i) Amber wastes that are considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a) are subject to the Amber control procedures set forth in Sections R315-262-80 through 89.

—— (ii) Amber wastes that are considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a), are subject to the Amber control procedures in the United States, even if they are imported to or exported from a designated OECD Member country listed in Subsection R315-262-58(a) (1) that does not consider the waste to be hazardous. In such an event, the responsibilities of the Amber control procedures shift as provided:

—— (A) For U.S. exports, the United States shall issue an acknowledgement of receipt and assume other responsibilities of the competent authority of the country of import.

—— (B) For U.S. imports, the U.S. recovery facility/importer and the United States shall assume the obligations associated with the Amber control procedures that normally apply to the exporter and country of export, respectively.

—— (iii) Amber wastes that are not considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a), but are considered hazardous by an OECD Member country are subject to the Amber control procedures in the OECD Member country that considers the waste hazardous. All responsibilities of the U.S. importer/exporter shift to the importer/exporter of the OECD Member country that considers the waste hazardous unless the parties make other arrangements through contracts. Note to Subsection R315-262-82(a) (2): Some wastes subject to the Amber control procedures are not listed or otherwise identified as hazardous under RCRA, and therefore are not subject to the Amber control procedures of Sections R315-262-80 through 89. Regardless of the status of the waste under RCRA, however, other Federal environmental statutes, e.g., the Toxic Substances Control Act, restrict certain waste imports or exports. Such restrictions continue to apply with regard to Sections R315-262-80 through 89.

—— (3) Procedures for mixtures of wastes.

—— (i) A Green waste that is mixed with one or more other Green wastes such that the resulting mixture is not considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a) shall be subject to the Green control procedures, provided the composition of this mixture does not impair its environmentally sound recovery. Note to Subsection R315-262-82(a)(3)(i): The regulated community should note that some OECD Member countries may require, by domestic law, that mixtures of different Green wastes be subject to the Amber control procedures.

—— (ii) A Green waste that is mixed with one or more Amber wastes, in any amount, de minimis or otherwise, or a mixture of two or more Amber wastes, such that the resulting waste mixture is considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a) are subject to the Amber control procedures, provided the composition of this mixture does not impair its environmentally sound recovery. Note to Subsection R315-262-82(a)(3)(ii): The regulated community should note that some OECD Member countries may require, by domestic law, that a mixture of a Green waste and more than a de minimis amount of an Amber waste or a mixture of two or more Amber wastes be subject to the Amber control procedures.

—— (4) Wastes not yet assigned to an OECD waste list are eligible for transboundary movements, as follows:

—— (i) If such wastes are considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a), such wastes are subject to the Amber control procedures.

—— (ii) If such wastes are not considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a), such wastes are subject to the Green control procedures.

—— (b) General conditions applicable to transboundary movements of hazardous waste:

—— (1) The waste shall be destined for recovery operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the importing country;

—— (2) The transboundary movement shall be in compliance with applicable international transport agreements; and

—— Note to Subsection R315-262-82(b)(2): These international agreements include, but are not limited to, the Chicago Convention (1944), ADR (1957), ADN (1970), MARPOL Convention (1973/1978), SOLAS Convention (1974), IMDG Code (1985), COTIF (1985), and RID (1985).

—— (3) Any transit of waste through a non-OECD Member country shall be conducted in compliance with all applicable international and national laws and regulations.

—— (c) Provisions relating to re-export for recovery to a third country:

—— (1) Re-export of wastes subject to the Amber control procedures from the United States, as the country of import, to a third country listed in Subsection R315-262-58(a)(1) may occur only after an exporter in the United States provides notification to and obtains consent from the competent authorities in the third country, the original country of export, and any transit countries. The notification shall comply with the notice and consent procedures in Section R315-262-83 for all countries concerned and the original country of export. The competent authorities of the original country of export, as well as the competent authorities of all other countries

concerned have thirty days to object to the proposed movement.

—— (i) The thirty day period begins once the competent authorities of both the initial country of export and new country of import issue Acknowledgements of Receipt of the notification.

—— (ii) The transboundary movement may commence if no objection has been lodged after the thirty day period has passed or immediately after written consent is received from all relevant OECD importing and transit countries.

—— (2) In the case of re-export of Amber wastes to a country other than those listed in Subsection R315-262-58(a)(1), notification to and consent of the competent authorities of the original OECD Member country of export and any OECD Member countries of transit is required as specified in Subsection R315-262-82(c)(1), in addition to compliance with all international agreements and arrangements to which the first importing OECD Member country is a party and all applicable regulatory requirements for exports from the first country of import.

—— (d) Duty to return or re-export wastes subject to the Amber control procedures. When a transboundary movement of wastes subject to the Amber control procedures cannot be completed in accordance with the terms of the contract or the consent(s) and alternative arrangements cannot be made to recover the waste in an environmentally sound manner in the country of import, the waste shall be returned to the country of export or re-exported to a third country. The provisions of Subsection R315-262-82(c) apply to any shipments to be re-exported to a third country. The following provisions apply to shipments to be returned to the country of export as appropriate:

—— (1) Return from the United States to the country of export: The U.S. importer shall inform EPA at the specified address in Subsection R315-262-83(b)(1)(i) of the need to return the shipment. EPA shall then inform the competent authorities of the countries of export and transit, citing the reason(s) for returning the waste. The U.S. importer shall complete the return within ninety days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned Member countries. If the return shipment will cross any transit country, the return shipment may only occur after EPA provides notification to and obtains consent from the competent authority of the country of transit, and provides a copy of that consent to the U.S. importer.

—— (2) Return from the country of import to the United States: The U.S. exporter shall provide for the return of the hazardous waste shipment within ninety days from the time the country of import informs EPA of the need to return the waste or such other period of time as the concerned Member countries agree. The U.S. exporter shall submit an exception report to EPA in accordance with Subsection R315-262-87(b).

—— (c) Duty to return wastes subject to the Amber control procedures from a country of transit. When a transboundary movement of wastes subject to the Amber control procedures does not comply with the requirements of the notification and movement documents or otherwise constitutes illegal shipment, and if alternative arrangements cannot be made to recover these wastes in an environmentally sound manner, the waste shall be returned to the country of export. The following provisions apply as appropriate:

—— (1) Return from the United States, as country of transit, to the country of export: The U.S. transporter shall inform EPA at the specified address in Subsection R315-262-83(b) (1) (i) of the need to return the shipment. EPA shall then inform the competent authority of the country of export, citing the reason(s) for returning the waste. The U.S. transporter shall complete the return within ninety days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned Member countries.

—— (2) Return from the country of transit to the United States, as country of export: The U.S. exporter shall provide for the return of the hazardous waste shipment within ninety days from the time the competent authority of the country of transit informs EPA of the need to return the waste or such other period of time as the concerned Member countries agree. The U.S. exporter shall submit an exception report to EPA in accordance with Subsection R315-262-87(b).

—— (f) Requirements for wastes destined for and received by R12 and R13 facilities. The transboundary movement of wastes destined for R12 and R13 operations shall comply with all Amber control procedures for notification and consent as set forth in Section R315-262-83 and for the movement document as set forth in Section R315-262-84. Additional responsibilities of R12/R13 facilities include:

—— (1) Indicating in the notification document the foreseen recovery facility or facilities where the subsequent R1-R11 recovery operation takes place or may take place.

—— (2) Within three days of the receipt of the wastes by the R12/R13 recovery facility or facilities, the facility(ies) shall return a signed copy of the movement document to the exporter and to the competent authorities of the countries of export and import. The facility(ies) shall retain the original of the movement document for three years.

—— (3) As soon as possible, but no later than thirty (30) days after the completion of the R12/R13 recovery operation and no later than one calendar year following the receipt of the waste, the R12 or R13 facility(ies) shall send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by mail, e-mail without digital signature followed by mail, or fax followed by mail.

—— (4) When an R12/R13 recovery facility delivers wastes for recovery to an R1-R11 recovery facility located in the country of import, it shall obtain as soon as possible, but no later than one calendar year following delivery of the waste, a certification from the R1-R11 facility that recovery of the wastes at that facility has been completed. The R12/R13 facility shall promptly transmit the applicable certification to the competent authorities of the countries of import and export, identifying the transboundary movements to which the certification pertain.

—— (5) When an R12/R13 recovery facility delivers wastes for recovery to an R1-R11 recovery facility located:

—— (i) In the initial country of export, Amber control procedures

apply, including a new notification;

(ii) In a third country other than the initial country of export, Amber control procedures apply, with the additional provision that the competent authority of the initial country of export shall also be notified of the transboundary movement.

(g) Laboratory analysis exemption. The transboundary movement of an Amber waste is exempt from the Amber control procedures if it is in certain quantities and destined for laboratory analysis to assess its physical or chemical characteristics, or to determine its suitability for recovery operations. The quantity of such waste shall be determined by the minimum quantity reasonably needed to perform the analysis in each particular case adequately, but in no case exceed twenty-five kilograms. Waste destined for laboratory analysis shall still be appropriately packaged and labeled.] The level of control for exports and imports of waste is indicated by assignment of the waste to either a list of wastes subject to the Green control procedures or a list of wastes subject to the Amber control procedures and whether the waste is or is not hazardous waste. The OECD Green and Amber lists are incorporated by reference in Section R315-260-11.

(1) Green list wastes.

(i) Green wastes that are not hazardous wastes are subject to existing controls normally applied to commercial transactions, and are not subject to the requirements of Sections R315-262-80 through 84.

(ii) Green wastes that are hazardous wastes are subject to the requirements of Sections R315-262-80 through 84.

(2) Amber list wastes.

(i) Amber wastes that are hazardous wastes are subject to the requirements of Sections R315-262-80 through 84, even if they are imported to or exported from a country that does not consider the waste to be hazardous or control the transboundary shipment as a hazardous waste import or export.

(A) For exports, the exporter shall comply with Section R315-262-83.

(B) For imports, the recovery or disposal facility and the importer shall comply with Section R315-262-84.

(ii) Amber wastes that are not hazardous wastes, but are considered hazardous by the other country are subject to the Amber control procedures in the country that considers the waste hazardous, and are not subject to the requirements of Sections R315-262-80 through 84. All responsibilities of the importer or exporter shift to the foreign importer or foreign exporter in the other country that considers the waste hazardous unless the parties make other arrangements through contracts.

Note to Subsection R315-262-82(a)(2): Some Amber list wastes are not listed or otherwise identified as hazardous under RCRA, and therefore are not subject to the requirements of Sections R315-262-80 through 84. Regardless of the status of the waste under RCRA, however, other Federal environmental statutes, for example, the Toxic Substances Control Act, restrict certain waste imports or exports. Such restrictions continue to apply with regard to Sections R315-262-80 through 84.

(3) Mixtures of wastes.

(i) A Green waste that is mixed with one or more other Green

wastes such that the resulting mixture is not hazardous waste is not subject to the requirements of Sections R315-262-80 through 84.

Note to Subsection R315-262-82(a)(3)(i): The regulated community should note that some countries may require, by domestic law, that mixtures of different Green wastes be subject to the Amber control procedures.

(ii) A Green waste that is mixed with one or more Amber wastes, in any amount, de minimis or otherwise, or a mixture of two or more Amber wastes, such that the resulting waste mixture is hazardous waste is subject to the requirements of Sections R315-262-80 through 84.

Note to Subsection R315-262-82(a)(3)(ii): The regulated community should note that some countries may require, by domestic law, that a mixture of a Green waste and more than a de minimis amount of an Amber waste or a mixture of two or more Amber wastes be subject to the Amber control procedures.

(4) Wastes not yet assigned to an OECD waste list are eligible for transboundary movements, as follows:

(i) If such wastes are hazardous wastes, such wastes are subject to the requirements of Sections R315-262-80 through 84.

(ii) If such wastes are not hazardous wastes, such wastes are not subject to the requirements of Sections R315-262-80 through 84.

(b) General conditions applicable to transboundary movements of hazardous waste.

(1) The hazardous waste shall be destined for recovery or disposal operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the country of import;

(2) The transboundary movement shall be in compliance with applicable international transport agreements; and

Note to Subsection R315-262-82(b)(2): These international agreements include, but are not limited to, the Chicago Convention (1944), ADR (1957), ADN (1970), MARPOL Convention (1973/1978), SOLAS Convention (1974), IMDG Code (1985), COTIF (1985), and RID (1985).

(3) Any transit of hazardous waste through one or more countries shall be conducted in compliance with all applicable international and national laws and regulations.

(c) Duty to return wastes subject to the Amber control procedures during transit through the United States. When a transboundary movement of hazardous wastes transiting the United States and subject to the Amber control procedures does not comply with the requirements of the notification and movement documents or otherwise constitutes illegal shipment, and if alternative arrangements cannot be made to recover or dispose of these wastes in an environmentally sound manner, the waste shall be returned to the country of export. The U.S. transporter shall inform EPA at the specified mailing address in Subsection R315-262-82(e) of the need to return the shipment. EPA will then inform the competent authority of the country of export, citing the reason(s) for returning the waste. The U.S. transporter shall complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned countries.

(d) Laboratory analysis exemption. Export or import of a hazardous waste sample is exempt from the requirements of Sections R315-262-80 through 84 if the sample is destined for laboratory

analysis to assess its physical or chemical characteristics, or to determine its suitability for recovery or disposal operations, does not exceed twenty-five kilograms (25 kg) in quantity, is appropriately packaged and labeled, and complies with the conditions of Subsection R315-261-4(d) or (e).

(e) EPA Address for submittals by postal mail or hand delivery. Submittals required in Sections R315-262-80 through 84 to be made by postal mail or hand delivery should be sent to the following addresses:

(1) For postal mail delivery, the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

(2) For hand-delivery, the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, William Jefferson Clinton South Bldg., Room 6144, 12th St. and Pennsylvania Ave., NW., Washington, DC 20004.

R315-262-83. Transboundary Movements of Hazardous Waste for Recovery or Disposal - [Notification and Consent] Exports of Hazardous Waste.

(a) [~~Applicability. Consent shall be obtained from the competent authorities of the relevant OECD countries of import and transit prior to exporting hazardous waste destined for recovery operations subject to Sections R315-262-80 through 89. Hazardous wastes subject to the Amber control procedures are subject to the requirements of Subsection R315-262-83(b); and wastes not identified on any list are subject to the requirements of Subsection R315-262-83(c).~~]

(b) Amber wastes. Exports of hazardous wastes from the United States as described in Subsection R315-262-80(a) that are subject to the Amber control procedures are prohibited unless the notification and consent requirements of Subsections R315-262-83(b) (1) or (b) (2) are met.

(1) Transactions requiring specific consent:

(i) Notification. At least forty-five days prior to commencement of each transboundary movement, the exporter shall provide written notification in English of the proposed transboundary movement to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, with the words "Attention: OECD Export Notification" prominently displayed on the envelope. This notification shall include all of the information identified in Subsection R315-262-83(d). In cases where wastes having similar physical and chemical characteristics, the same United Nations classification, the same RCRA waste codes, and are to be sent periodically to the same recovery facility by the same exporter, the exporter may submit one general notification of intent to export these wastes in multiple shipments during a period of up to one year. Even when a general notification is used for multiple shipments, each shipment still shall be accompanied by its own movement document pursuant to Section R315-262-84.

(ii) Tacit consent. If no objection has been lodged by any

countries concerned; i.e., exporting, importing, or transit; to a notification provided pursuant to Subsection R315-262-83(b) (1) (i) within thirty days after the date of issuance of the Acknowledgement of Receipt of notification by the competent authority of the country of import, the transboundary movement may commence. Tacit consent expires one calendar year after the close of the thirty day period; renotification and renewal of all consents is required for exports after that date.

(iii) Written consent. If the competent authorities of all the relevant OECD importing and transit countries provide written consent in a period less than thirty days, the transboundary movement may commence immediately after all necessary consents are received. Written consent expires for each relevant OECD importing and transit country one calendar year after the date of that country's consent unless otherwise specified; renotification and renewal of each expired consent is required for exports after that date.

(2) Transboundary movements to facilities pre-approved by the competent authorities of the importing countries to accept specific wastes for recovery:

(i) Notification. The exporter shall provide EPA a notification that contains all the information identified in Subsection R315-262-83(d) in English, at least ten days in advance of commencing shipment to a pre-approved facility. The notification shall indicate that the recovery facility is pre-approved, and may apply to a single specific shipment or to multiple shipments as described in Subsection R315-262-83(b) (1) (i). This information shall be sent to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, with the words "OECD Export Notification-Pre-approved Facility" prominently displayed on the envelope. General notifications that cover multiple shipments as described in Subsection R315-262-83(b) (1) (i) may cover a period of up to three years. Even when a general notification is used for multiple shipments, each shipment still shall be accompanied by its own movement document pursuant to Section R315-262-84.

(ii) Exports to pre-approved facilities may take place after the elapse of seven working days from the issuance of an Acknowledgement of Receipt of the notification by the competent authority of the country of import unless the exporter has received information indicating that the competent authority of any countries concerned objects to the shipment.

(c) Wastes not covered in the OECD Green and Amber lists. Wastes destined for recovery operations, that have not been assigned to the OECD Green and Amber lists, incorporated by reference in Subsection R315-262-89(d), but which are considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a), are subject to the notification and consent requirements established for the Amber control procedures in accordance with Subsection R315-262-83(b). Wastes destined for recovery operations, that have not been assigned to the OECD Green and Amber lists incorporated by reference in Subsection R315-262-89(d), and are not considered hazardous under U.S. national procedures as defined by Subsection R315-262-80(a) are subject to the Green control procedures.

____ (d) Notifications submitted under Section R315-262-83 shall include the information specified in Subsections R315-262-83(d) (1) through (d) (14):

____ (1) Serial number or other accepted identifier of the notification document;

____ (2) Exporter name and EPA identification number, if applicable, address, telephone, fax numbers, and e-mail address;

____ (3) Importing recovery facility name, address, telephone, fax numbers, e-mail address, and technologies employed;

____ (4) Importer name, if not the owner or operator of the recovery facility, address, telephone, fax numbers, and e-mail address; whether the importer will engage in waste exchange recovery operation R12 or waste accumulation recovery operation R13 prior to delivering the waste to the final recovery facility and identification of recovery operations to be employed at the final recovery facility;

____ (5) Intended transporter(s) and/or their agent(s); address, telephone, fax, and e-mail address;

____ (6) Country of export and relevant competent authority, and point of departure;

____ (7) Countries of transit and relevant competent authorities and points of entry and departure;

____ (8) Country of import and relevant competent authority, and point of entry;

____ (9) Statement of whether the notification is a single notification or a general notification. If general, include period of validity requested;

____ (10) Date(s) foreseen for commencement of transboundary movement(s);

____ (11) Means of transport envisaged;

____ (12) Designation of waste type(s) from the appropriate OECD list incorporated by reference in Subsection R315-262-89(d), description(s) of each waste type, estimated total quantity of each, RCRA waste code, and the United Nations number for each waste type;

____ (13) Specification of the recovery operation(s) as defined in Section R315-262-81.

____ (14) Certification/Declaration signed by the exporter that states:

____ I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally enforceable written contractual obligations have been entered into, and that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement.

____ Name:

____ Signature:

____ Date:

____ Note to Subsection R315-262-83(d) (14): The United States does not currently require financial assurance for these waste shipments. However, U.S. exporters may be asked by other governments to provide and certify to such assurance as a condition of obtaining consent to a proposed movement.

____ (c) Certificate of Recovery. As soon as possible, but no later than thirty days after the completion of recovery and no later than one calendar year following receipt of the waste, the U.S. recovery facility shall send a certificate of recovery to the exporter and

to the competent authorities of the countries of export and import by mail, e-mail without a digital signature followed by mail, or fax followed by mail. The certificate of recovery shall include a signed, written and dated statement that affirms that the waste materials were recovered in the manner agreed to by the parties to the contract required under Section R315-262-85.]General export requirements. Except as provided in Subsections R315-262-83(a) (5) and (6), exporters that have received an AOC from EPA before December 31, 2016 are subject to that approval and the requirements listed in the AOC that existed at the time of that approval until such time the approval period expires. All other exports of hazardous waste are prohibited unless:

(1) The exporter complies with the contract requirements in Subsection R315-262-83(f);

(2) The exporter complies with the notification requirements in Subsection R315-262-83(b);

(3) The exporter receives an AOC from EPA documenting consent from the countries of import and transit, and original country of export if exporting previously imported hazardous waste;

(4) The exporter ensures compliance with the movement documents requirements in Subsection R315-262-83(d);

(5) The exporter ensures compliance with the manifest instructions for export shipments in Subsection R315-262-83(c); and

(6) The exporter or a U.S. authorized agent:

(i) For shipments initiated prior to the AES filing compliance date, does one of the following:

(A) Submits Electronic Export Information (EEI) for each shipment to the Automated Export System (AES) or its successor system, under the International Trade Data System (ITDS) platform, in accordance with 15 CFR 30.4(b), and includes the following items in the EEI, along with the other information required under 15 CFR 30.6:

(I) EPA license code;

(II) Commodity classification code for each hazardous waste per 15 CFR 30.6(a) (12);

(III) EPA consent number for each hazardous waste;

(IV) Country of ultimate destination code per 15 CFR 30.6(a) (5);

(V) Date of export per 15 CFR 30.6(a) (2);

(VI) RCRA hazardous waste manifest tracking number, if required;

(VII) Quantity of each hazardous waste in shipment and units for reported quantity, if required reporting units established by value for the reported commodity classification number are in units of weight or volume per 15 CFR 30.6(a) (15); or

(VIII) EPA net quantity for each hazardous waste reported in units of kilograms if solid or in units of liters if liquid, if required reporting units established by value for the reported commodity classification number are not in units of weight or volume.

(B) Complies with a paper-based process by:

(I) Attaching paper documentation of consent, for example, a copy of the EPA Acknowledgment of Consent, international movement document, to the manifest, or shipping papers if a manifest is not required, which shall accompany the hazardous waste shipment. For exports by rail or water, bulk shipment, the primary exporter shall provide the transporter with the paper documentation of consent which shall accompany the hazardous waste but which need not be attached

to the manifest except that for exports by water, bulk shipment, the primary exporter shall attach the paper documentation of consent to the shipping paper.

(II) Providing the transporter with an additional copy of the manifest, and instructing the transporter via mail, email or fax to deliver that copy to the U.S. Customs official at the point the hazardous waste leaves the United States in accordance with Subsection R315-263-20 (g) (4) (ii);

(ii) For shipments initiated on or after the AES filing compliance date, submits Electronic Export Information (EEI) for each shipment to the Automated Export System (AES) or its successor system, under the International Trade Data System (ITDS) platform, in accordance with 15 CFR 30.4(b), and includes the following items in the EEI, along with the other information required under 15 CFR 30.6:

(A) EPA license code;

(B) Commodity classification code for each hazardous waste per 15 CFR 30.6(a) (12);

(C) EPA consent number for each hazardous waste;

(D) Country of ultimate destination code per 15 CFR 30.6(a) (5);

(E) Date of export per 15 CFR 30.6(a) (2);

(F) RCRA hazardous waste manifest tracking number, if required;

(G) Quantity of each hazardous waste in shipment and units for reported quantity, if required reporting units established by value for the reported commodity classification number are in units of weight or volume per 15 CFR 30.6(a) (15); or

(H) EPA net quantity for each hazardous waste reported in units of kilograms if solid or in units of liters if liquid, if required reporting units established by value for the reported commodity classification number are not in units of weight or volume.

(b) Notifications.

(1) General notifications. At least sixty (60) days before the first shipment of hazardous waste is expected to leave the United States, the exporter shall provide notification in English to EPA of the proposed transboundary movement. Notifications shall be submitted electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The notification may cover up to one year of shipments of one or more hazardous wastes being sent to the same recovery or disposal facility, and shall include all of the following information:

(i) Exporter name and EPA identification number, address, telephone, fax numbers, and email address;

(ii) Foreign receiving facility name, address, telephone, fax numbers, email address, technologies employed, and the applicable recovery or disposal operations as defined in Section R315-262-81;

(iii) Foreign importer name (if not the owner or operator of the foreign receiving facility), address, telephone, fax numbers, and email address;

(iv) Intended transporter(s), their agent(s), or both; address, telephone, fax, and email address;

(v) ``U.S.`` as the country of export name, ``USA01`` as the relevant competent authority code, and the intended U.S. port(s) of exit;

(vi) The ISO standard 3166 country name 2-digit code, OECD/Basel competent authority code, and the ports of entry and exit for each

country of transit;

(vii) The ISO standard 3166 country name 2-digit code, OECD/Basel competent authority code, and port of entry for the country of import;

(viii) Statement of whether the notification covers a single shipment or multiple shipments;

(ix) Start and End Dates requested for transboundary movements;

(x) Means of transport planned to be used;

(xi) Description(s) of each hazardous waste, including whether each hazardous waste is regulated universal waste under Rule R315-273, spent lead-acid batteries being exported for recovery of lead under Sections R315-266-80, or industrial ethyl alcohol being exported for reclamation under Subsection R315-261-6(a)(3)(i), estimated total quantity of each waste in either metric tons or cubic meters, the applicable RCRA waste code(s) for each hazardous waste, the applicable OECD waste code from the lists incorporated by reference in Section R315-260-11, and the United Nations/U.S. Department of Transportation (DOT) ID number for each waste;

(xii) Specification of the recovery or disposal operation(s) as defined in Section R315-262-81.

(xiii) Certification/Declaration signed by the exporter that states: I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally enforceable written contractual obligations have been entered into and that any applicable insurance or other financial guarantee is or shall be in force covering the transboundary movement. Name: Signature: Date:

(2) Exports to pre-consented recovery facilities in OECD Member countries. If the recovery facility is located in an OECD member country and has been pre-consented by the competent authority of the OECD member country to recover the waste sent by exporters located in other OECD member countries, the notification may cover up to three years of shipments. Notifications proposing export to a pre-consented facility in an OECD member country shall include all information listed in Subsections R315-262-83(b)(1)(i) through (b)(1)(xiii) and additionally state that the facility is pre-consented. Exporters shall submit the notification to EPA using the allowable methods listed in Subsection R315-262-83(b)(1) at least ten days before the first shipment is expected to leave the United States.

(3) Notifications listing interim recycling operations or interim disposal operations. If the foreign receiving facility listed in Subsection R315-262-83(b)(1)(ii) will engage in any of the interim recovery operations R12 or R13 or interim disposal operations D13 through D15, or in the case of transboundary movements with Canada, any of the interim recovery operations R12, R13, or RC16, or interim disposal operations D13 to D14, or DC17, the notification submitted according to Subsection R315-262-83(b)(1) shall also include the final foreign recovery or disposal facility name, address, telephone, fax numbers, email address, technologies employed, and which of the applicable recovery or disposal operations R1 through R11 and D1 through D12, or in the case of transboundary movements with Canada, which of the applicable recovery or disposal operations R1 through R11, RC14 to RC15, D1 through D12, and DC15 to DC16 will be employed at the final foreign recovery or disposal facility. The recovery and disposal operations in Subsection R315-262-83(b) are defined in

Section R315-262-81.

(4) Renotifications. When the exporter wishes to change any of the information specified on the original notification (including increasing the estimate of the total quantity of hazardous waste specified in the original notification or adding transporters), the exporter shall submit a renotification of the changes to EPA using the allowable methods in Subsection R315-262-83(b) (1). Any shipment using the requested changes cannot take place until the countries of import and transit consent to the changes and the exporter receives an EPA AOC letter documenting the countries' consents to the changes.

(5) For cases where the proposed country of import and recovery or disposal operations are not covered under an international agreement to which both the United States and the country of import are parties, EPA will coordinate with the Department of State to provide the complete notification to country of import and any countries of transit. In all other cases, EPA will provide the notification directly 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 Subsections R315-262-83(b) (1) (i) through (b) (1) (xiii).

(6) Where the countries of import and transit consent to the proposed transboundary movement(s) of the hazardous waste(s), EPA will forward an EPA AOC letter to the exporter documenting the countries' consents. Where any of the countries of import and transit objects to the proposed transboundary movement(s) of the hazardous waste or withdraws a prior consent, EPA will notify the exporter.

(7) Export of hazardous wastes for recycling or disposal operations that were originally imported into the United States for recycling or disposal operations in a third country is prohibited unless an exporter in the United States complies with the export requirements in Section R315-262-83, including providing notification to EPA in accordance with Subsection R315-262-83(b) (1). In addition to listing all required information in Subsections R315-262-83(b) (1) (i) through (b) (1) (xiii), the exporter shall provide the original consent number issued for the initial import of the wastes in the notification, and receive an AOC from EPA documenting the consent of the competent authorities in new country of import, the original country of export, and any transit countries prior to re-export.

(8) Upon request by EPA, the exporter shall furnish to EPA any additional information which the country of import requests in order to respond to a notification.

(c) RCRA manifest instructions for export shipments. The exporter shall comply with the manifest requirements of Sections R315-262-20 through 23 except that:

(1) In lieu of the name, site address and EPA ID number of the designated permitted facility, the exporter shall enter the name and site address of the foreign receiving facility;

(2) In the International Shipments block, the exporter shall check the export box and enter the U.S. port of exit, city and State, from the United States.

(3) The exporter shall list the consent number from the AOC for each hazardous waste listed on the manifest, matched to the relevant list number for the hazardous waste from block 9b. If

additional space is needed, the exporter should use a Continuation Sheet(s) (EPA Form 8700-22A).

(4) The exporter may obtain the manifest from any source that is registered with the U.S. EPA as a supplier of manifests, for example, states, waste handlers, or commercial forms printers.

(d) Movement document requirements for export shipments.

(1) All exporters shall ensure that a movement document meeting the conditions of Subsection R315-262-83(d)(2) accompanies each transboundary movement of hazardous wastes from the initiation of the shipment until it reaches the foreign receiving facility, including cases in which the hazardous waste is stored, sorted by the foreign importer prior to shipment to the foreign receiving facility, or both, except as provided in Subsections R315-262-83(d)(1)(i) and (ii).

(i) For shipments of hazardous waste within the United States solely by water, bulk shipments only, the exporter shall forward the movement document to the last water, bulk shipment, transporter to handle the hazardous waste in the United States if exported by water.

(ii) For rail shipments of hazardous waste within the United States which start from the company originating the export shipment, the exporter shall forward the movement document to the next non-rail transporter, if any, or the last rail transporter to handle the hazardous waste in the United States if exported by rail.

(2) The movement document shall include the following Subsections R315-262-83(d)(2)(i) through (xv):

(i) The corresponding consent number(s) and hazardous waste number(s) for the listed hazardous waste from the relevant EPA AOC(s);

(ii) The shipment number and the total number of shipments from the EPA AOC;

(iii) Exporter name and EPA identification number, address, telephone, fax numbers, and email address;

(iv) Foreign receiving facility name, address, telephone, fax numbers, email address, technologies employed, and the applicable recovery or disposal operations as defined in Section R315-262-81;

(v) Foreign importer name, if not the owner or operator of the foreign receiving facility, address, telephone, fax numbers, and email address;

(vi) Description(s) of each hazardous waste, quantity of each hazardous waste in the shipment, applicable RCRA hazardous waste code(s) for each hazardous waste, applicable OECD waste code for each hazardous waste from the lists incorporated by reference in Section R315-260-11, and the United Nations/U.S. Department of Transportation (DOT) ID number for each hazardous waste;

(vii) Date movement commenced;

(viii) Name, if not exporter, address, telephone, fax numbers, and email of company originating the shipment;

(ix) Company name, EPA ID number, address, telephone, fax, and email address of all transporters;

(x) Identification (license, registered name or registration number) of means of transport, including types of packaging;

(xi) Any special precautions to be taken by transporter(s);

(xii) Certification/declaration signed and dated by the exporter that the information in the movement document is complete and correct;

(xiii) Appropriate signatures for each custody transfer, for example, transporter, importer, and owner or operator of the foreign receiving facility;

(xiv) Each U.S. person that has physical custody of the hazardous waste from the time the movement commences until it arrives at the foreign receiving facility shall sign the movement document, for example, transporter, foreign importer, and owner or operator of the foreign receiving facility; and

(xv) As part of the contract requirements per Subsection R315-262-83(f), the exporter shall require that the foreign receiving facility send a copy of the signed movement document to confirm receipt within three working days of shipment delivery to the exporter, to the competent authorities of the countries of import and transit, and for shipments occurring on or after the electronic import-export reporting compliance date, the exporter shall additionally require that the foreign receiving facility send a copy to EPA at the same time using the allowable methods listed in Subsection R315-262-83(b)(1).

(e) Duty to return or re-export hazardous wastes. When a transboundary movement of hazardous wastes cannot be completed in accordance with the terms of the contract or the consent(s) and alternative arrangements cannot be made to recover or dispose of the waste in an environmentally sound manner in the country of import, the exporter shall ensure that the hazardous waste is returned to the United States or re-exported to a third country. If the waste shall be returned, the exporter shall provide for the return of the hazardous waste shipment within ninety days from the time the country of import informs EPA of the need to return the waste or such other period of time as the concerned countries agree. In all cases, the exporter shall submit an exception report to EPA in accordance with Subsection R315-262-83(h).

(f) Export contract requirements.

(1) Exports of hazardous waste are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements shall be executed by the exporter, foreign importer (if different from the foreign receiving facility), and the owner or operator of the foreign receiving facility, and shall specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of Section R315-262-83 only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangements.

(2) Contracts or equivalent arrangements shall specify the name and EPA ID number, where available, of Subsection R315-262-83(f)(2)(i) through (iv):

(i) The company from where each export shipment of hazardous waste is initiated;

(ii) Each person who will have physical custody of the hazardous wastes;

(iii) Each person who will have legal control of the hazardous wastes; and

(iv) The foreign receiving facility.

(3) Contracts or equivalent arrangements shall specify which party to the contract will assume responsibility for alternate management of the hazardous wastes if their disposition cannot be carried out as described in the notification of intent to export. In such cases, contracts shall specify that:

(i) The transporter or foreign receiving facility having actual possession or physical control over the hazardous wastes will immediately inform the exporter, EPA, and either the competent authority of the country of transit or the competent authority of the country of import of the need to make alternate management arrangements; and

(ii) The person specified in the contract will assume responsibility for the adequate management of the hazardous wastes in compliance with applicable laws and regulations including, if necessary, arranging the return of hazardous wastes and, as the case may be, shall provide the notification for re-export to the competent authority in the country of import and include the equivalent of the information required in Subsection R315-262-83(b) (1), the original consent number issued for the initial export of the hazardous wastes in the notification, and obtain consent from EPA and the competent authorities in the new country of import and any transit countries prior to re-export.

(4) Contracts shall specify that the foreign receiving facility send a copy of the signed movement document to confirm receipt within three working days of shipment delivery to the exporter and to the competent authorities of the countries of import and transit. For contracts that will be in effect on or after the electronic import-export reporting compliance date, the contracts shall additionally specify that the foreign receiving facility send a copy to EPA at the same time using the allowable methods listed in Subsection R315-262-83(b) (1) on or after that date.

(5) Contracts shall specify that the foreign receiving facility shall send a copy of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the exporter and to the competent authority of the country of import. For contracts that will be in effect on or after the electronic import-export reporting compliance date, the contracts shall additionally specify that the foreign receiving facility send a copy to EPA at the same time using the allowable methods listed in Subsection R315-262-83(b) (1) on or after that date.

(6) Contracts shall specify that the foreign importer or the foreign receiving facility that performed interim recycling operations R12, R13, or RC16, or interim disposal operations D13 through D15 or DC17, (recovery and disposal operations defined in Section R315-262-81) as appropriate, will:

(i) Provide the notification required in Subsection R315-262-83(f) (3) (ii) prior to any re-export of the hazardous wastes to a final foreign recovery or disposal facility in a third country; and

(ii) Promptly send copies of the confirmation of recovery or disposal that it receives from the final foreign recovery or disposal facility within one year of shipment delivery to the final foreign

recovery or disposal facility that performed one of recovery operations R1 through R11, or RC16, or one of disposal operations D1 through D12, DC15 or DC16 to the competent authority of the country of import. For contracts that will be in effect on or after the electronic import-export reporting compliance date, the contracts shall additionally specify that the foreign facility send copies to EPA at the same time using the allowable method listed in Subsection R315-262-83(b) (1) on or after that date.

(7) Contracts or equivalent arrangements shall include provisions for financial guarantees, if required by the competent authorities of the country of import and any countries of transit, in accordance with applicable national or international law requirements.

Note 1 to Subsection R315-262-83(f) (7): Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD Member countries and other foreign countries do. It is the responsibility of the exporter to ascertain and comply with such requirements; in some cases, persons or facilities located in those OECD Member countries or other foreign countries may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.

(8) Contracts or equivalent arrangements shall contain provisions requiring each contracting party to comply with all applicable requirements of Sections R315-262-80 through 84.

(9) Upon request by EPA, U.S. exporters, importers, or recovery facilities shall submit to EPA copies of contracts, chain of contracts, or equivalent arrangements, when the movement occurs between parties controlled by the same corporate or legal entity.

(g) Annual reports. The exporter shall file an annual report with EPA no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. Prior to one year after the AES filing compliance date, the exporter shall mail or hand-deliver annual reports to EPA using one of the addresses specified in Subsection R315-262-82(e), or submit to EPA using the allowable methods specified in Subsection R315-262-83(b) (1) if the exporter has electronically filed EPA information in AES, or its successor system, per Subsection R315-262-83(a) (6) (i) (A) for all shipments made the previous calendar year. Subsequently, the exporter shall submit annual reports to EPA using the allowable methods specified in Subsection R315-262-83(b) (1). The annual report shall include all of the following Subsections R315-262-83(g) (1) through (6) specified as follows:

(1) The EPA identification number, name, and mailing and site address of the exporter filing the report;

(2) The calendar year covered by the report;

(3) The name and site address of each foreign receiving facility;

(4) By foreign receiving facility, for each hazardous waste exported:

(i) A description of the hazardous waste;

(ii) The applicable EPA hazardous waste code(s), from Sections R315-261-20 through 24 and 30 through 35, for each waste;

(iii) The applicable waste code from the appropriate OECD waste list incorporated by reference in Section R315-260-11;

(iv) The applicable DOT ID number;

(v) The name and U.S. EPA ID number, where applicable, for each transporter used over the calendar year covered by the report; and

(vi) The consent number(s) under which the hazardous waste was shipped, and for each consent number, the total amount of the hazardous waste and the number of shipments exported during the calendar year covered by the report;

(5) In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than 100kg but less than 1,000kg in a calendar month, and except for hazardous waste for which information was already provided pursuant to Section R315-262-41:

(i) A description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated; and

(ii) A description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and

(6) A certification signed by the exporter that states: I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining 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.

(h) Exception reports.

(1) The exporter shall file an exception report in lieu of the requirements of Section R315-262-42 (if applicable) with EPA if any of the following occurs:

(i) The exporter has not received a copy of the RCRA hazardous waste manifest, if applicable, signed by the transporter identifying the point of departure of the hazardous waste from the United States, within forty-five (45) days from the date it was accepted by the initial transporter, in which case the exporter shall file the exception report within the next thirty (30) days;

(ii) The exporter has not received a written confirmation of receipt from the foreign receiving facility in accordance with Subsection R315-262-83(d) within ninety (90) days from the date the waste was accepted by the initial transporter in which case the exporter shall file the exception report within the next thirty (30) days; or

(iii) The foreign receiving facility notifies the exporter, or the country of import notifies EPA, of the need to return the shipment to the U.S. or arrange alternate management, in which case the exporter shall file the exception report within thirty (30) days of notification, or one (1) day prior to the date the return shipment commences, whichever is sooner.

(2) Prior to the electronic import-export reporting compliance date, exception reports shall be mailed or hand delivered to EPA using

the addresses listed in Subsection R315-262-82(e). Subsequently, exception reports shall be submitted to EPA using the allowable methods listed in Subsection R315-262-83(b)(1).

(i) Recordkeeping.

(1) The exporter shall keep the following records as described in Subsections R315-262-83(i)(1)(i) through (v) and provide them to EPA or Utah personnel upon request:

(i) A copy of each notification of intent to export and each EPA AOC for a period of at least three (3) years from the date the hazardous waste was accepted by the initial transporter;

(ii) A copy of each annual report for a period of at least three (3) years from the due date of the report;

(iii) A copy of any exception reports and a copy of each confirmation of receipt, for example, movement document, sent by the foreign receiving facility to the exporter for at least three (3) years from the date the hazardous waste was accepted by the initial transporter; and

(iv) A copy of each confirmation of recovery or disposal sent by the foreign receiving facility to the exporter for at least three (3) years from the date that the foreign receiving facility completed interim or final processing of the hazardous waste shipment.

(v) A copy of each contract or equivalent arrangement established per Subsection R315-262-83(f) for at least three (3) years from the expiration date of the contract or equivalent arrangement.

(2) Exporters may satisfy these recordkeeping requirements by retaining electronically submitted documents in the exporter's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or Utah inspector. No exporter may be held liable for the inability to produce such documents for inspection under Section R315-262-83 if the exporter can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system for which the exporter bears no responsibility.

(3) The periods of retention referred to in Section R315-262-83 are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

R315-262-84. Transboundary Movements of Hazardous Waste for Recovery or Disposal - ~~[Movement Document]~~ Imports of Hazardous Waste.

(a) ~~[All U.S. parties subject to the contract provisions of Section R315-262-85 shall ensure that a movement document meeting the conditions of Subsection R315-262-84(b) accompanies each transboundary movement of wastes subject to the Amber control procedures from the initiation of the shipment until it reaches the final recovery facility, including cases in which the waste is stored and/or sorted by the importer prior to shipment to the final recovery facility, except as provided in Subsections R315-262-84(a)(1) and (2).~~

~~(1) For shipments of hazardous waste within the United States solely by water, bulk shipments only, the generator shall forward the movement document with the manifest to the last water, bulk~~

shipment, transporter to handle the waste in the United States if exported by water, in accordance with the manifest routing procedures at Subsection R315-262-23(c).

(2) For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator shall forward the movement document with the manifest, in accordance with the routing procedures for the manifest in Subsection R315-262-23(d), to the next non-rail transporter, if any, or the last rail transporter to handle the waste in the United States if exported by rail.

(b) The movement document shall include all information required under Section R315-262-83, for notification, as well as the following Subsection R315-262-84(b) (1) through (b) (7):

(1) Date movement commenced;

(2) Name; if not exporter, address; telephone; fax numbers; and e-mail of primary exporter;

(3) Company name and EPA ID number of all transporters;

(4) Identification; license, registered name or registration number; of means of transport, including types of packaging envisaged;

(5) Any special precautions to be taken by transporter(s);

(6) Certification/declaration signed by the exporter that no objection to the shipment has been lodged, as follows:

I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement, and that:

1. All necessary consents have been received; or

2. The shipment is directed to a recovery facility within the OECD area and no objection has been received from any of the countries concerned within the thirty day tacit consent period; or

3. The shipment is directed to a recovery facility pre-approved for that type of waste within the OECD area; such an authorization has not been revoked, and no objection has been received from any of the countries concerned.

Delete sentences that are not applicable

Name:

Signature:

Date:

(7) Appropriate signatures for each custody transfer, e.g., transporter, importer, and owner or operator of the recovery facility.

(c) Exporters also shall comply with the special manifest requirements of Subsections R315-262-54(a), (b), (c), (e), and (i) and importers shall comply with the import requirements of Section R315-262-60.

(d) Each U.S. person that has physical custody of the waste from the time the movement commences until it arrives at the recovery facility shall sign the movement document; e.g., transporter, importer, and owner or operator of the recovery facility.

(e) Within three working days of the receipt of imports subject to Sections R315-262-80 through 89, the owner or operator of the U.S. recovery facility shall send signed copies of the movement document to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania

Avenue, NW., Washington, DC 20460, and to the competent authorities of the countries of export and transit. If the concerned U.S. recovery facility is a R12/R13 recovery facility as defined under Section R315-262-81, the facility shall retain the original of the movement document for three years.]General import requirements.

(1) With the exception of Subsection R315-262-84(a)(5), importers of shipments covered under a consent from EPA to the country of export issued before December 31, 2016 are subject to that approval and the requirements that existed at the time of that approval until such time the approval period expires. Otherwise, any other person who imports hazardous waste from a foreign country into the United States shall comply with the requirements of Rule R315-262 and the special requirements of Sections R315-262-80 through 84.

(2) In cases where the country of export does not require the foreign exporter to submit a notification and obtain consent to the export prior to shipment, the importer shall submit a notification to EPA in accordance with Subsection R315-262-84(b).

(3) The importer shall comply with the contract requirements in Subsection R315-262-84(f).

(4) The importer shall ensure compliance with the movement documents requirements in Subsection R315-262-84(d); and

(5) The importer shall ensure compliance with the manifest instructions for import shipments in Subsection R315-262-84(c).

(b) Notifications. In cases where the competent authority of the country of export does not regulate the waste as hazardous waste and, thus, does not require the foreign exporter to submit to it a notification proposing export and obtain consent from EPA and the competent authorities for the countries of transit, but EPA does regulate the waste as hazardous waste:

(1) The importer is required to provide notification in English to EPA of the proposed transboundary movement of hazardous waste at least sixty (60) days before the first shipment is expected to depart the country of export. Notifications submitted prior to the electronic import-export reporting compliance date shall be mailed or hand delivered to EPA at the addresses specified in Subsection R315-262-82(e). Notifications submitted on or after the electronic import-export reporting compliance date shall be submitted electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The notification may cover up to one year of shipments of one or more hazardous wastes being sent from the same foreign exporter, and shall include all of the following information:

(i) Foreign exporter name, address, telephone, fax numbers, and email address;

(ii) Receiving facility name, EPA ID number, address, telephone, fax numbers, email address, technologies employed, and the applicable recovery or disposal operations as defined in Section R315-262-81;

(iii) Importer name (if not the owner or operator of the receiving facility), EPA ID number, address, telephone, fax numbers, and email address;

(iv) Intended transporter(s), their agent(s), or both; address, telephone, fax, and email address;

(v) ``U.S.`` as the country of import, ``USA01`` as the relevant

competent authority code, and the intended U.S. port(s) of entry;

(vi) The ISO standard 3166 country name 2-digit code, OECD/Basel competent authority code, and the ports of entry and exit for each country of transit;

(vii) The ISO standard 3166 country name 2-digit code, OECD/Basel competent authority code, and port of exit for the country of export;

(viii) Statement of whether the notification covers a single shipment or multiple shipments;

(ix) Start and End Dates requested for transboundary movements;

(x) Means of transport planned to be used;

(xi) Description(s) of each hazardous waste, including whether each hazardous waste is regulated universal waste under Rule R315-273, spent lead-acid batteries being exported for recovery of lead under Section R315-266-80, or industrial ethyl alcohol being exported for reclamation under Subsection R315-261-6(a)(3)(i), estimated total quantity of each hazardous waste, the applicable RCRA hazardous waste code(s) for each hazardous waste, the applicable OECD waste code from the lists incorporated by reference in Section R315-260-11, and the United Nations/ U.S. Department of Transportation (DOT) ID number for each hazardous waste;

(xii) Specification of the recovery or disposal operation(s) as defined in Section R315-262-81; and

(xiii) Certification/Declaration signed by the importer that states: I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally enforceable written contractual obligations have been entered into and that any applicable insurance or other financial guarantee is or shall be in force covering the transboundary movement. Name: Signature: Date:
Note to Subsection R315-262-84(b)(1)(xiii): The United States does not currently require financial assurance for these waste shipments.

(2) Notifications listing interim recycling operations or interim disposal operations. If the receiving facility listed in Subsection R315-262-84(b)(1)(ii) will engage in any of the interim recovery operations R12 or R13 or interim disposal operations D13 through D15, the notification submitted according to Subsection R315-262-84(b)(1) shall also include the final recovery or disposal facility name, address, telephone, fax numbers, email address, technologies employed, and which of the applicable recovery or disposal operations R1 through R11 and D1 through D12, will be employed at the final recovery or disposal facility. The recovery and disposal operations in Subsection R315-262-84(b)(2) are defined in Section R315-262-81.

(3) Renotifications. When the foreign exporter wishes to change any of the conditions specified on the original notification, including increasing the estimate of the total quantity of hazardous waste specified in the original notification or adding transporters, the importer shall submit a renotification of the changes to EPA using the allowable methods in Subsection R315-262-84(b)(1). Any shipment using the requested changes cannot take place until EPA and the countries of transit consent to the changes and the importer receives an EPA AOC letter documenting the consents to the changes.

(4) A notification is complete when EPA determines the notification satisfies the requirements of Subsections

R315-262-84(b) (1) (i) through (xiii).

(5) Where EPA and the countries of transit consent to the proposed transboundary movement(s) of the hazardous waste(s), EPA will forward an EPA AOC letter to the importer documenting the countries' consents and EPA's consent. Where any of the countries of transit or EPA objects to the proposed transboundary movement(s) of the hazardous waste or withdraws a prior consent, EPA will notify the importer.

(6) Export of hazardous wastes originally imported into the United States. Export of hazardous wastes that were originally imported into the United States for recycling or disposal operations is prohibited unless an exporter in the United States complies with the export requirements in Subsection R315-262-83(b) (7).

(c) RCRA Manifest instructions for import shipments.

(1) When importing hazardous waste, the importer shall meet all the requirements of Section R315-262-20 for the manifest except that:

(i) In place of the generator's name, address and EPA identification number, the name and address of the foreign generator and the importer's name, address and EPA identification number shall be used.

(ii) In place of the generator's signature on the certification statement, the importer or his agent shall sign and date the certification and obtain the signature of the initial transporter.

(2) The importer may obtain the manifest form from any source that is registered with the EPA as a supplier of manifests, for example, states, waste handlers, or commercial forms printers.

(3) In the International Shipments block, the importer shall check the import box and enter the point of entry, city and State, into the United States.

(4) The importer shall provide the transporter with an additional copy of the manifest to be submitted by the receiving facility to U.S. EPA in accordance with Subsection R315-264-71(a) (3) and Subsection R315-265-71(a) (3).

(5) In lieu of the requirements of Subsection R315-262-20(d), where a shipment cannot be delivered for any reason to the receiving facility, the importer shall instruct the transporter in writing via fax, email or mail to:

(i) Return the hazardous waste to the foreign exporter or designate another facility within the United States; and

(ii) Revise the manifest in accordance with the importer's instructions.

(d) Movement document requirements for import shipments.

(1) The importer shall ensure that a movement document meeting the conditions of Subsection R315-262-84(d) (2) accompanies each transboundary movement of hazardous wastes from the initiation of the shipment in the country of export until it reaches the receiving facility, including cases in which the hazardous waste is stored, sorted by the importer prior to shipment to the receiving facility, or both, except as provided in Subsections R315-262-84(d) (1) (i) and (ii).

(i) For shipments of hazardous waste within the United States by water, bulk shipments only, the importer shall forward the movement document to the last water, bulk shipment, transporter to handle the

hazardous waste in the United States if imported by water.

(ii) For rail shipments of hazardous waste within the United States which start from the company originating the export shipment, the importer shall forward the movement document to the next non-rail transporter, if any, or the last rail transporter to handle the hazardous waste in the United States if imported by rail.

(2) The movement document shall include the following Subsections R315-262-84(d)(2)(i) through (xv):

(i) The corresponding AOC number(s) and waste number(s) for the listed waste;

(ii) The shipment number and the total number of shipments under the AOC number;

(iii) Foreign exporter name, address, telephone, fax numbers, and email address;

(iv) Receiving facility name, EPA ID number, address, telephone, fax numbers, email address, technologies employed, and the applicable recovery or disposal operations as defined in Section R315-262-81;

(v) Importer name, if not the owner or operator of the receiving facility, EPA ID number, address, telephone, fax numbers, and email address;

(vi) Description(s) of each hazardous waste, quantity of each hazardous waste in the shipment, applicable RCRA hazardous waste code(s) for each hazardous waste, the applicable OECD waste code for each hazardous waste from the lists incorporated by reference in Section R315-260-11, and the United Nations/U.S. Department of Transportation (DOT) ID number for each hazardous waste;

(vii) Date movement commenced;

(viii) Name, if not the foreign exporter, address, telephone, fax numbers, and email of the foreign company originating the shipment;

(ix) Company name, EPA ID number, address, telephone, fax, and email address of all transporters;

(x) Identification, license, registered name or registration number, of means of transport, including types of packaging;

(xi) Any special precautions to be taken by transporter(s);

(xii) Certification/declaration signed and dated by the foreign exporter that the information in the movement document is complete and correct;

(xiii) Appropriate signatures for each custody transfer, for example, transporter, importer, and owner or operator of the receiving facility;

(xiv) Each person that has physical custody of the waste from the time the movement commences until it arrives at the receiving facility shall sign the movement document, for example, transporter, importer, and owner or operator of the receiving facility; and

(xv) The receiving facility shall send a copy of the signed movement document to confirm receipt within three working days of shipment delivery to the foreign exporter, to the competent authorities of the countries of export and transit, and for shipments received on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system.

(e) Duty to return or export hazardous wastes. When a transboundary movement of hazardous wastes cannot be completed in

accordance with the terms of the contract or the consent(s), the provisions of Subsection R315-262-84(f)(4) apply. If alternative arrangements cannot be made to recover the hazardous waste in an environmentally sound manner in the United States, the hazardous waste shall be returned to the country of export or exported to a third country. The provisions of Subsection R315-262-84(b)(6) apply to any hazardous waste shipments to be exported to a third country. If the return shipment will cross any transit country, the return shipment may only occur after EPA provides notification to and obtains consent from the competent authority of the country of transit, and provides a copy of that consent to the importer.

(f) Import contract requirements.

(1) Imports of hazardous waste shall occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements, when the movement occurs between parties controlled by the same corporate or legal entity. Such contracts or equivalent arrangements shall be executed by the foreign exporter, importer, and the owner or operator of the receiving facility, and shall specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of Section R315-262-84 only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangements.

(2) Contracts or equivalent arrangements shall specify the name and EPA ID number, where available, of Subsections R315-262-84(f)(2)(i) through (iv):

(i) The foreign company from where each import shipment of hazardous waste is initiated;

(ii) Each person who will have physical custody of the hazardous wastes;

(iii) Each person who will have legal control of the hazardous wastes; and

(iv) The receiving facility.

(3) Contracts or equivalent arrangements shall specify the use of a movement document in accordance with Subsection R315-262-84(d).

(4) Contracts or equivalent arrangements shall specify which party to the contract will assume responsibility for alternate management of the hazardous wastes if their disposition cannot be carried out as described in the notification of intent to export submitted by either the foreign exporter or the importer. In such cases, contracts shall specify that:

(i) The transporter or receiving facility having actual possession or physical control over the hazardous wastes will immediately inform the foreign exporter and importer, and the competent authority where the shipment is located of the need to arrange alternate management or return; and

(ii) The person specified in the contract will assume responsibility for the adequate management of the hazardous wastes in compliance with applicable laws and regulations including, if necessary, arranging the return of the hazardous wastes and, as the case may be, shall provide the notification for re-export required in Subsection R315-262-83(b)(7).

(5) Contracts shall specify that the importer or the receiving facility that performed interim recycling operations R12, R13, or

RC16, or interim disposal operations D13 through D15 or DC15 through DC17, as appropriate, will provide the notification required in Subsection R315-262-83(b) (7) prior to the re-export of hazardous wastes. The recovery and disposal operations in Subsection R315-262-84(e) (5) are defined in Section R315-262-81.

(6) Contracts or equivalent arrangements shall include provisions for financial guarantees, if required by the competent authorities of any countries concerned, in accordance with applicable national or international law requirements.

Note to Subsection R315-262-84(f) (6): Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD Member countries or other foreign countries do. It is the responsibility of the importer to ascertain and comply with such requirements; in some cases, persons or facilities located in those countries may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.

(7) Contracts or equivalent arrangements shall contain provisions requiring each contracting party to comply with all applicable requirements of Sections R315-262-80 through 84.

(8) Upon request by EPA, importers or disposal or recovery facilities shall submit to EPA copies of contracts, chain of contracts, or equivalent arrangements, when the movement occurs between parties controlled by the same corporate or legal entity.

(g) Confirmation of recovery or disposal. The receiving facility shall do the following:

(1) Send copies of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the foreign exporter, to the competent authority of the country of export, and for shipments recycled or disposed of on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system.

(2) If the receiving facility performed any of recovery operations R12, R13, or RC16, or disposal operations D13 through D15, or DC17, the receiving facility shall promptly send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11, or RC14 to RC15, or one of disposal operations D1 through D12, or DC15 to DC16, to the competent authority of the country of export, and for confirmations received on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The recovery and disposal operations in Subsection R315-262-84(g) (2) are defined in Section R315-262-81.

(h) Recordkeeping.

(1) The importer shall keep the following records and provide them to EPA or authorized state personnel upon request:

(i) A copy of each notification that the importer sends to EPA under Subsection R315-262-84(b)(1) and each EPA AOC it receives in response for a period of at least three (3) years from the date the hazardous waste was accepted by the initial foreign transporter; and

(ii) A copy of each contract or equivalent arrangement established per Subsection R315-262-84(f) for at least three (3) years from the expiration date of the contract or equivalent arrangement.

(2) The receiving facility shall keep the following records:

(i) A copy of each confirmation of receipt, for example, movement document, that the receiving facility sends to the foreign exporter for at least three (3) years from the date it received the hazardous waste;

(ii) A copy of each confirmation of recovery or disposal that the receiving facility sends to the foreign exporter for at least three (3) years from the date that it completed processing the waste shipment;

(iii) For the receiving facility that performed any of recovery operations R12, R13, or RC16, or disposal operations D13 through D15, or DC17, recovery and disposal operations defined in Section R315-262-81, a copy of each confirmation of recovery or disposal that the final recovery or disposal facility sent to it for at least three (3) years from the date that the final recovery or disposal facility completed processing the waste shipment; and

(iv) A copy of each contract or equivalent arrangement established per Subsection R315-262-84(f) for at least three (3) years from the expiration date of the contract or equivalent arrangement.

(3) Importers and receiving facilities may satisfy these recordkeeping requirements by retaining electronically submitted documents in the importer's or receiving facility's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No importer or receiving facility may be held liable for the inability to produce such documents for inspection under this section if the importer or receiving facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system for which the importer or receiving facility bears no responsibility.

(4) The periods of retention referred to in Section R315-262-84 are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Director.

[R315-262-85. — Contracts.]

~~(a) Transboundary movements of hazardous wastes subject to the Amber control procedures are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements, when the movement occurs between parties controlled by the same corporate or legal entity. Such contracts or equivalent arrangements shall be executed by the exporter and the owner or operator of the recovery facility, and shall specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of Section R315-262-85 only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal~~

status to conduct the operations specified in the contract or equivalent arrangements.

(b) Contracts or equivalent arrangements shall specify the name and EPA ID number, where available, of Subsections R315-262-85(b) (1) through (b) (4):

(1) The generator of each type of waste;

(2) Each person who will have physical custody of the wastes;

(3) Each person who will have legal control of the wastes; and

(4) The recovery facility.

(c) Contracts or equivalent arrangements shall specify which party to the contract will assume responsibility for alternate management of the wastes if their disposition cannot be carried out as described in the notification of intent to export. In such cases, contracts shall specify that:

(1) The person having actual possession or physical control over the wastes will immediately inform the exporter and the competent authorities of the countries of export and import and, if the wastes are located in a country of transit, the competent authorities of that country; and

(2) The person specified in the contract will assume responsibility for the adequate management of the wastes in compliance with applicable laws and regulations including, if necessary, arranging the return of wastes and, as the case may be, shall provide the notification for re-export.

(d) Contracts shall specify that the importer will provide the notification required in Subsection R315-262-82(c) prior to the re-export of controlled wastes to a third country.

(e) Contracts or equivalent arrangements shall include provisions for financial guarantees, if required by the competent authorities of any countries concerned, in accordance with applicable national or international law requirements.

Note to Subsection R315-262-85(e): Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD Member countries do. It is the responsibility of the exporter to ascertain and comply with such requirements; in some cases, transporters or importers may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.

(f) Contracts or equivalent arrangements shall contain provisions requiring each contracting party to comply with all applicable requirements of Sections R315-262-80 through 89.

(g) Upon request by EPA, U.S. exporters, importers, or recovery facilities shall submit to EPA copies of contracts, chain of contracts, or equivalent arrangements, when the movement occurs between parties controlled by the same corporate or legal entity. Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted in accordance with 40 CFR 2.203(b) shall be treated as confidential and shall be disclosed by EPA only as provided in 40 CFR 260.2.

Note to Subsection R315-262-85(g): Although the United States does not require routine submission of contracts at this time, the

OECD Decision allows Member countries to impose such requirements. When other OECD Member countries require submission of partial or complete copies of the contract as a condition to granting consent to proposed movements, EPA shall request the required information; absent submission of such information, some OECD Member countries may deny consent for the proposed movement.

R315-262-86. Provisions Relating to Recognized Traders.

(a) A recognized trader who takes physical custody of a waste and conducts recovery operations, including storage prior to recovery, is acting as the owner or operator of a recovery facility and shall be so authorized in accordance with all applicable Federal laws.

(b) A recognized trader acting as an exporter or importer for transboundary shipments of waste shall comply with all the requirements of Sections R315-262-80 through 89 associated with being an exporter or importer.

R315-262-87. Reporting and Recordkeeping.

(a) Annual reports. For all waste movements subject to Sections R315-262-80 through 89, persons, e.g., exporters, recognized traders, who meet the definition of primary exporter in Section R315-262-51 or who initiate the movement documentation under Section R315-262-84 shall file an annual report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. If the primary exporter or the person who initiates the movement document under Section R315-262-84 is required to file an annual report for waste exports that are not covered under Sections R315-262-80 through 89, he may include all export information in one report provided the following information on exports of waste destined for recovery within the designated OECD Member countries is contained in a separate section. Such reports shall include all of the following Sections R315-262-87(a)(1) through (a)(6) specified as follows:

(1) The EPA identification number, name, and mailing and site address of the exporter filing the report;

(2) The calendar year covered by the report;

(3) The name and site address of each final recovery facility;

(4) By final recovery facility, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number, from Sections R315-261-20 through 24 or R315-262-30 through 35, designation of waste type(s) and applicable waste code(s) from the appropriate OECD waste list incorporated by reference in Subsection R315-262-89(d), DOT hazard class, the name and U.S. EPA identification number, where applicable, for each transporter used, the total amount of hazardous waste shipped pursuant to Sections R315-262-80 through 89, and number of shipments pursuant to each notification;

(5) In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than 100kg but less than 1,000kg in a calendar month, and except for hazardous

waste for which information was already provided pursuant to Section R315-262-41:

— (i) A description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated; and

— (ii) A description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and

— (6) A certification signed by the person acting as primary exporter or initiator of the movement document under Section R315-262-84 that states:

— I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.

— (b) Exception reports. Any person who meets the definition of primary exporter in Section R315-262-51 or who initiates the movement document under Section R315-262-84 shall file an exception report in lieu of the requirements of Section R315-262-42, if applicable, with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, if any of the following occurs:

— (1) He has not received a copy of the RCRA hazardous waste manifest, if applicable, signed by the transporter identifying the point of departure of the waste from the United States, within forty-five days from the date it was accepted by the initial transporter;

— (2) Within ninety days from the date the waste was accepted by the initial transporter, the exporter has not received written confirmation from the recovery facility that the hazardous waste was received;

— (3) The waste is returned to the United States.

— (c) Recordkeeping.

— (1) Persons who meet the definition of primary exporter in Section R315-262-51 or who initiate the movement document under Section R315-262-84 shall keep the following records in Subsections R315-262-87(c)(1)(i) through (c)(1)(iv):

— (i) A copy of each notification of intent to export and all written consents obtained from the competent authorities of countries concerned for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

— (ii) A copy of each annual report for a period of at least three years from the due date of the report;

— (iii) A copy of any exception reports and a copy of each confirmation of delivery, i.e., movement document, sent by the recovery facility to the exporter for at least three years from the date the hazardous waste was accepted by the initial transporter or received by the recovery facility, whichever is applicable; and

— (iv) A copy of each certificate of recovery sent by the recovery facility to the exporter for at least three years from the date that

the recovery facility completed processing the waste shipment.

(2) The periods of retention referred to in Section R315-262-87 are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

R315-262-89. OECD Waste Lists.

(a) General. For the purposes of Sections R315-262-80 through 89, a waste is considered hazardous under U.S. national procedures, and hence subject to Sections R315-262-80 through 89, if the waste:

(1) Meets the Federal definition of hazardous waste in Section R315-261-3; and

(2) Is subject to either Sections R315-262-20 through 25 and 27, the universal waste management standards of Rule R315-273, the export requirements in the spent lead-acid battery management standards of Section R315-266-80.

(b) If a waste is hazardous under Subsection R315-262-89(a), it is subject to the Amber control procedures, regardless of whether it appears in Appendix 4 of the OECD Decision, as defined in Section R315-262-81.

(c) The appropriate control procedures for hazardous wastes and hazardous waste mixtures are addressed in Section R315-262-82.

(d) The OECD waste lists, as set forth in Annex B ("Green List") and Annex C ("Amber List") (collectively "OECD waste lists") of the 2009 "Guidance Manual for the Implementation of Council Decision C(2001)107/FINAL, as Amended, on the Control of Transboundary Movements of Wastes Destined for Recovery Operations," are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is incorporated as it exists on the date of the approval and a notice of any change in these materials shall be published in the Federal Register. The materials are available for inspection at: the U.S. Environmental Protection Agency, Docket Center Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004 (Docket # EPA-HQ-RCRA-2005-0018) or at the National Archives and Records Administration (NARA), and may be obtained from the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue André Pascal, F-75775 Paris Cedex 16, France. For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>. To contact the EPA Docket Center Public Reading Room, call (202) 566-1744. To contact the OECD, call +33 (0) 1 45 24 81 67.]

R315-262-217. Appendix to Rule R315-262 -- Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A and Their Instructions).

U.S. EPA Forms 8700-22 and Manifest Continuation Sheet (EPA Form 8700-22A) found in appendix to 40 CFR 262, 2015 edition, are incorporated and incorporated by reference.

Read all instructions before completing this form.

1. This form has been designed for use on a 12-pitch (elite) typewriter which is also compatible with standard computer printers;

a firm point pen may also be used - press down hard.

2. Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, and disposal facilities to complete this form (FORM 8700-22) and, if necessary, the continuation sheet (FORM 8700-22A) for both inter- and intrastate transportation of hazardous waste.

Manifest 8700-22

The following statement shall be included with each Uniform Hazardous Waste Manifest, either on the form, in the instructions to the form, or accompanying the form:

Public reporting burden for this collection of information is estimated to average: 30 minutes for generators, 10 minutes for transporters, and 25 minutes for owners or operators of treatment, storage, and disposal facilities. This includes time for reviewing instructions, gathering data, completing, reviewing and transmitting the form. Any correspondence regarding the PRA burden statement for the manifest shall be sent to the Director of the Collection Strategies Division in EPA's Office of Information Collection at the following address: U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Do not send the completed form to this address.

I. Instructions for Generators

Manifest 8700-22

The following statement shall be included with each Uniform Hazardous Waste Manifest, either on the form, in the instructions to the form, or accompanying the form:

Public reporting burden for this collection of information is estimated to average: 30 minutes for generators, 10 minutes for transporters, and 25 minutes for owners or operators of treatment, storage, and disposal facilities. This includes time for reviewing instructions, gathering data, completing, reviewing and transmitting the form. Send comments regarding the burden estimate, including suggestions for reducing this burden, to: Chief, Information Policy Branch (2136), U.S. Environmental Protection Agency, Ariel Rios Building; 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Item 1. Generator's U.S. EPA Identification Number

Enter the generator's U.S. EPA twelve digit identification number, or the State generator identification number if the generator site does not have an EPA identification number.

Item 2. Page 1 of _

Enter the total number of pages used to complete this Manifest (i.e., the first page (EPA Form 8700-22) plus the number of Continuation Sheets (EPA Form 8700-22A), if any).

Item 3. Emergency Response Phone Number

Enter a phone number for which emergency response information can be obtained in the event of an incident during transportation.

The emergency response phone number shall:

1. Be the number of the generator or the number of an agency or organization who is capable of and accepts responsibility for providing detailed information about the shipment;

2. Reach a phone that is monitored 24 hours a day at all times the waste is in transportation (including transportation related

storage); and

3. Reach someone who is either knowledgeable of the hazardous waste being shipped and has comprehensive emergency response and spill cleanup/incident mitigation information for the material being shipped or has immediate access to a person who has that knowledge and information about the shipment.

Note: Emergency Response phone number information should only be entered in Item 3 when there is one phone number that applies to all the waste materials described in Item 9b. If a situation (e.g., consolidated shipments) arises where more than one Emergency Response phone number applies to the various wastes listed on the manifest, the phone numbers associated with each specific material should be entered after its description in Item 9b.

Item 4. Manifest Tracking Number

This unique tracking number shall be pre-printed on the manifest by the forms printer.

Item 5. Generator's Mailing Address, Phone Number and Site Address

Enter the name of the generator, the mailing address to which the completed manifest signed by the designated facility should be mailed, and the generator's telephone number. Note, the telephone number (including area code) should be the normal business number for the generator, or the number where the generator or his authorized agent may be reached to provide instructions in the event the designated and/or alternate (if any) facility rejects some or all of the shipment. Also enter the physical site address from which the shipment originates only if this address is different than the mailing address.

Item 6. Transporter 1 Company Name, and U.S. EPA ID Number

Enter the company name and U.S. EPA ID number of the first transporter who will transport the waste. Vehicle or driver information may not be entered here.

Item 7. Transporter 2 Company Name and U.S. EPA ID Number

If applicable, enter the company name and U.S. EPA ID number of the second transporter who will transport the waste. Vehicle or driver information may not be entered here.

If more than two transporters are needed, use a Continuation Sheet(s) (EPA Form 8700-22A).

Item 8. Designated Facility Name, Site Address, and U.S. EPA ID Number

Enter the company name and site address of the facility designated to receive the waste listed on this manifest. Also enter the facility's phone number and the U.S. EPA twelve digit identification number of the facility.

Item 9. U.S. DOT Description (Including Proper Shipping Name, Hazard Class or Division, Identification Number, and Packing Group)

Item 9a. If the wastes identified in Item 9b consist of both hazardous and nonhazardous materials, then identify the hazardous materials by entering an "X" in this Item next to the corresponding hazardous material identified in Item 9b.

If applicable, enter the name of the person accepting the waste on behalf of the second transporter. That person shall acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.

Item 9b. Enter the U.S. DOT Proper Shipping Name, Hazard Class or Division, Identification Number (UN/NA) and Packing Group for each waste as identified in 49 CFR 172. Include technical name(s) and reportable quantity references, if applicable.

Note: If additional space is needed for waste descriptions, enter these additional descriptions in Item 27 on the Continuation Sheet (EPA Form 8700-22A). Also, if more than one Emergency Response phone number applies to the various wastes described in either Item 9b or Item 27, enter applicable Emergency Response phone numbers immediately following the shipping descriptions for those Items.

Item 10. Containers (Number and Type)

Enter the number of containers for each waste and the appropriate abbreviation from Table I (below) for the type of container.

TABLE I

Types of Containers

BA = Burlap, cloth, paper, or plastic bags.
CF = Fiber or plastic boxes, cartons, cases.
CM = Metal boxes, cartons, cases (including roll-offs).
CW = Wooden boxes, cartons, cases.
CY = Cylinders.
DF = Fiberboard or plastic drums, barrels, kegs.
DM = Metal drums, barrels, kegs.
DT = Dump truck.
DW = Wooden drums, barrels, kegs.
HG = Hopper or gondola cars.
TC = Tank cars.
TP = Portable tanks.
TT = Cargo tanks (tank trucks).

Item 11. Total Quantity

Enter, in designated boxes, the total quantity of waste. Round partial units to the nearest whole unit, and do not enter decimals or fractions. To the extent practical, report quantities using appropriate units of measure that will allow you to report quantities with precision. Waste quantities entered should be based on actual measurements or reasonably accurate estimates of actual quantities shipped. Container capacities are not acceptable as estimates.

Item 12. Units of Measure (Weight/Volume)

Enter, in designated boxes, the appropriate abbreviation from Table II (below) for the unit of measure.

TABLE II

Units of Measure

G = Gallons (liquids only).
K = Kilograms.
L = Liters (liquids only).
M = Metric Tons (1000 kilograms).
N = Cubic Meters.
P = Pounds.

T = Tons (2000 pounds).

Y = Cubic Yards.

Note: Tons, Metric Tons, Cubic Meters, and Cubic Yards should only be reported in connection with very large bulk shipments, such as rail cars, tank trucks, or barges.

Item 13. Waste Codes

Enter up to six federal and state waste codes to describe each waste stream identified in Item 9b. State waste codes that are not redundant with federal codes shall be entered here, in addition to the federal waste codes which are most representative of the properties of the waste.

Item 14. Special Handling Instructions and Additional Information.

1. Generators may enter any special handling or shipment-specific information necessary for the proper management or tracking of the materials under the generator's or other handler's business processes, such as waste profile numbers, container codes, bar codes, or response guide numbers. Generators also may use this space to enter additional descriptive information about their shipped materials, such as chemical names, constituent percentages, physical state, or specific gravity of wastes identified with volume units in Item 12.

2. This space may be used to record limited types of federally required information for which there is no specific space provided on the manifest, including any alternate facility designations; the manifest tracking number of the original manifest for rejected wastes and residues that are re-shipped under a second manifest; and the specification of PCB waste descriptions and PCB out-of-service dates required under 40 CFR 761.207. Generators, however, cannot be required to enter information in this space to meet state regulatory requirements.

Item 15. Generator's/Offeror's Certifications

1. The generator shall read, sign, and date the waste minimization certification statement. In signing the waste minimization certification statement, those generators who have not been exempted by statute or regulation from the duty to make a waste minimization certification under section 3002(b) of RCRA are also certifying that they have complied with the waste minimization requirements. The Generator's Certification also contains the required attestation that the shipment has been properly prepared and is in proper condition for transportation (the shipper's certification). The content of the shipper's certification statement is as follows: "I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked, and labeled/placarded, and are in all respects in proper condition for transport by highway according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgment of Consent." When a party other than the generator prepares the shipment for transportation, this party may also sign the shipper's certification statement as the offeror of the shipment.

2. Generator or Offeror personnel may preprint the words, "On behalf of" in the signature block or may hand write this statement in the signature block prior to signing the generator/offeror certification, to indicate that the individual signs as the employee or agent of the named principal.

Note: All of the above information except the handwritten signature required in Item 15 may be pre-printed.

II. Instructions for International Shipment Block

Item 16. International Shipments

For export shipments, the primary exporter shall check the export box, and enter the point of exit (city and state) from the United States. For import shipments, the importer shall check the import box and enter the point of entry (city and state) into the United States.

III. Instructions for Transporters

Item 17. Transporters' Acknowledgments of Receipt

Enter the name of the person accepting the waste on behalf of the first transporter. That person shall acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt. Only one signature per transportation company is required. Signatures are not required to track the movement of wastes in and out of transfer facilities, unless there is a change of custody between transporters.

If applicable, enter the name of the person accepting the waste on behalf of the second transporter. That person shall acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.

Note: Transporters carrying imports, who are acting as importers, may have responsibilities to enter information in the International Shipments Block. Transporters carrying exports may also have responsibilities to enter information in the International Shipments Block. See above instructions for Item 16.

IV. Instructions for Owners and Operators of Treatment, Storage, and Disposal Facilities

Item 18. Discrepancy

Item 18a. Discrepancy Indication Space

1. The authorized representative of the designated (or alternate) facility's owner or operator shall note in this space any discrepancies between the waste described on the Manifest and the waste actually received at the facility. Manifest discrepancies are: significant differences (as defined by Subsections R315-264-72(b) and ~~[40 CFR 265.72(b)]R315-265-72(b)~~, ~~[-which is incorporated by reference in Section R315-265-1,]~~ between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives, rejected wastes, which may be a full or partial shipment of hazardous waste that the TSDF cannot accept, or container residues, which are residues that exceed the quantity limits for "empty" containers set forth in Subsection R315-261-7(b).

2. For rejected loads and residues (Subsections R315-264-72(d), (e), and (f), or ~~[CFR 265.72]R315-265-72(d), (e), or (f)~~, ~~[-which are incorporated by reference in Section R315-265-1,]~~ check the appropriate box if the shipment is a rejected load (i.e., rejected by the designated and/or alternate facility and is sent to an alternate

facility or returned to the generator) or a regulated residue that cannot be removed from a container. Enter the reason for the rejection or the inability to remove the residue and a description of the waste.

Also, reference the manifest tracking number for any additional manifests being used to track the rejected waste or residue shipment on the original manifest. Indicate the original manifest tracking number in Item 14, the Special Handling Block and Additional Information Block of the additional manifests.

3. Owners or operators of facilities located in unauthorized States (i.e., states in which the U.S. EPA administers the hazardous waste management program) who cannot resolve significant differences in quantity or type within 15 days of receiving the waste shall submit to their Regional Administrator a letter with a copy of the Manifest at issue describing the discrepancy and attempts to reconcile it (Subsections R315-264-72(c) and ~~[CFR 265.72]R315-265-72(c)~~ ~~[, which is incorporated by reference in Section R315-265-1]~~).

4. Owners or operators of facilities located in authorized States (i.e., those States that have received authorization from the U.S. EPA to administer the hazardous waste management program) should contact their State agency for information on where to report discrepancies involving "significant differences" to state officials.

Item 18b. Alternate Facility (or Generator) for Receipt of Full Load Rejections

Enter the name, address, phone number, and EPA Identification Number of the Alternate Facility which the rejecting TSDF has designated, after consulting with the generator, to receive a fully rejected waste shipment. In the event that a fully rejected shipment is being returned to the generator, the rejecting TSDF may enter the generator's site information in this space. This field is not to be used to forward partially rejected loads or residue waste shipments.

Item 18c. Alternate Facility (or Generator) Signature

The authorized representative of the alternate facility (or the generator in the event of a returned shipment) shall sign and date this field of the form to acknowledge receipt of the fully rejected wastes or residues identified by the initial TSDF.

Item 19. Hazardous Waste Report Management Method Codes

Enter the most appropriate Hazardous Waste Report Management Method code for each waste listed in Item 9. The Hazardous Waste Report Management Method code is to be entered by the first treatment, storage, or disposal facility (TSDF) that receives the waste and is the code that best describes the way in which the waste is to be managed when received by the TSDF.

Item 20. Designated Facility Owner or Operator Certification of Receipt (Except As Noted in Item 18a)

Enter the name of the person receiving the waste on behalf of the owner or operator of the facility. That person shall acknowledge receipt or rejection of the waste described on the Manifest by signing and entering the date of receipt or rejection where indicated. Since the Facility Certification acknowledges receipt of the waste except as noted in the Discrepancy Space in Item 18a, the certification should be signed for both waste receipt and waste rejection, with the rejection being noted and described in the space provided in Item 18a. Fully rejected wastes may be forwarded or returned using Item 18b after consultation with the generator. Enter the name of the

person accepting the waste on behalf of the owner or operator of the alternate facility or the original generator. That person shall acknowledge receipt or rejection of the waste described on the Manifest by signing and entering the date they received or rejected the waste in Item 18c. Partially rejected wastes and residues shall be re-shipped under a new manifest, to be initiated and signed by the rejecting TSDF as offeror of the shipment.

Instructions -- Continuation Sheet, U.S. EPA Form 8700-22A

Read all instructions before completing this form. This form has been designed for use on a 12-pitch (elite) typewriter; a firm point pen may also be used--press down hard.

This form shall be used as a continuation sheet to U.S. EPA Form 8700-22 if:

More than two transporters are to be used to transport the waste;
or

More space is required for the U.S. DOT descriptions and related information in Item 9 of U.S. EPA Form 8700-22.

Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, or disposal facilities to use the uniform hazardous waste manifest (EPA Form 8700-22) and, if necessary, this continuation sheet (EPA Form 8700-22A) for both interstate and intrastate transportation.

Item 21. Generator's ID Number

Enter the generator's U.S. EPA twelve digit identification number or, the State generator identification number if the generator site does not have an EPA identification number.

Item 22. Page _---

Enter the page number of this Continuation Sheet.

Item 23. Manifest Tracking Number

Enter the Manifest Tracking number from Item 4 of the Manifest form to which this continuation sheet is attached.

Item 24. Generator's Name---

Enter the generator's name as it appears in Item 5 on the first page of the Manifest.

Item 25. Transporter---Company Name

If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 3 Company Name. Also enter the U.S. EPA twelve digit identification number of the transporter described in Item 25.

Item 26. Transporter---Company Name

If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 4 Company Name. Each Continuation Sheet can record the names of two additional transporters. Also enter the U.S. EPA twelve digit identification number of the transporter named in Item 26.

Item 27. U.S. D.O.T. Description Including Proper Shipping Name, Hazardous Class, and ID Number (UN/NA)

For each row enter a sequential number under Item 27b that corresponds to the order of waste codes from one continuation sheet

to the next, to reflect the total number of wastes being shipped. Refer to instructions for Item 9 of the manifest for the information to be entered.

Item 28. Containers (No. And Type)

Refer to the instructions for Item 10 of the manifest for information to be entered.

Item 29. Total Quantity

Refer to the instructions for Item 11 of the manifest form.

Item 30. Units of Measure (Weight/Volume)

Refer to the instructions for Item 12 of the manifest form.

Item 31. Waste Codes

Refer to the instructions for Item 13 of the manifest form.

Item 32. Special Handling Instructions and Additional Information

Refer to the instructions for Item 14 of the manifest form.

Transporters

Item 33. Transporter - Acknowledgment of Receipt of Materials

Enter the same number of the Transporter as identified in Item 25. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 25. That person shall acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

Item 34. Transporter - Acknowledgment of Receipt of Materials

Enter the same number of the Transporter as identified in Item 26. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 26. That person shall acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

Owner and Operators of Treatment, Storage, or Disposal Facilities

Item 35. Discrepancy Indication Space

Refer to Item 18. This space may be used to more fully describe information on discrepancies identified in Item 18a of the manifest form.

Item 36. Hazardous Waste Report Management Method Codes

For each field here, enter the sequential number that corresponds to the waste materials described under Item 27, and enter the appropriate process code that describes how the materials will be processed when received. If additional continuation sheets are attached, continue numbering the waste materials and process code fields sequentially, and enter on each sheet the process codes corresponding to the waste materials identified on that sheet.

KEY: hazardous waste, generators

Date of Enactment or Last Substantive Amendment: April 15, 2019

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-263. Standards Applicable to Transporters of Hazardous Waste and Standards Applicable to Emergency Control of Spills for All Hazardous Waste Handlers.

R315-263-10. Scope.

(a) Sections R315-263-11, 12, 20, 21, 22, 25, and 34 establish standards which apply to persons transporting hazardous waste within Utah if the transportation requires a manifest under Rule R315-262.

(b) Sections R315-263-11, 12, 20, 21, 22, 25, and 34 do not apply to on-site transportation of hazardous waste by generators or by owners or operators of permitted hazardous waste management facilities.

(c) A transporter of hazardous waste shall also comply with Rule R315-262 if he:

(1) Transports hazardous waste into Utah; or

(2) Mixes hazardous wastes of different DOT shipping descriptions by placing them into a single container.

(d) ~~[A transporter of hazardous waste subject to the manifesting requirements of Rule R315-262, or subject to the waste management standards of Rule R315-273, that is being imported from or exported to any of the countries listed in Subsection R315-262-58(a)(1) for purposes of recovery is subject to Sections R315-263-10 through 12 and to all other relevant requirements of Sections R315-262-80 through 89, including, but not limited to, Section R315-262-84 for movement documents]~~A transporter of hazardous waste that is being imported from or exported to any other country for purposes of recovery or disposal is subject to Sections R315-263-10 through 263-12 and to all other relevant requirements of Sections R315-262-80 through 262-84, including, but not limited to, Subsections R315-262-83(d) and 262-84(d) for movement documents.

(e) Reserved

(f) Reserved

(g) Sections R315-263-30, 31, 32, and 33 apply to all handlers of hazardous waste or material that when spilled may become a hazardous waste.

R315-263-20. The Manifest System.

(a)(1) Manifest requirement. A transporter may not accept hazardous waste from a generator unless the transporter is also provided with a manifest form; EPA Form 8700-22, and if necessary, EPA Form 8700-22A; signed in accordance with the requirement of Section R315-262-23, or is provided with an electronic manifest that is obtained, completed, and transmitted in accordance with Subsection R315-262-20(a)(3), and signed with a valid and enforceable electronic signature as described in Section R315-262-25.

(2) Exports. ~~[In the case of exports other than those subject to Sections R315-262-80 through 89, a transporter may not accept such waste from a primary exporter or other person if he knows the shipment does not conform to the EPA Acknowledgment of Consent; and unless, in addition to a manifest signed by the generator in accordance with Section R315-263-20, the transporter shall also be provided with an EPA Acknowledgment of Consent which, except for shipments by rail, is attached to the manifest; or shipping paper for exports by water, bulk shipment. For exports of hazardous waste subject to the requirements of Sections R315-262-80 through 89, a transporter may not accept hazardous waste without a tracking document that includes all information required by Section R315-262-84]~~For exports of hazardous waste subject to the requirements of Sections R315-262-80 through 262-84, a transporter may not accept hazardous waste without

a manifest signed by the generator in accordance with Section R315-263-20, as appropriate, and for exports occurring under the terms of consent issued by EPA on or after December 31, 2016, a movement document that includes all information require by Subsection R315-262-83(d).

(3) Compliance date for form revisions. The revised Manifest form and procedures in Sections R315-260-10, 261-7, 263-20, and 263-21, had an effective date of September 5, 2006.

(4) Use of electronic manifest-legal equivalence to paper forms for participating transporters. Electronic manifests that are obtained, completed, and transmitted in accordance with Subsection R315-262-20(a)(3), and used in accordance with Section R315-263-20 in lieu of EPA Forms 8700-22 and 8700-22A, are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, carry, provide, give, use, or retain a manifest.

(i) Any requirement in these regulations to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of Section R315-262-25.

(ii) Any requirement in these regulations to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person by submission to the system.

(iii) Any requirement in these regulations for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the waste shipment, except that to the extent that the Hazardous Materials regulation on shipping papers for carriage by public highway requires transporters of hazardous materials to carry a paper document to comply with 49 CFR 177.817, a hazardous waste transporter shall carry one printed copy of the electronic manifest on the transport vehicle.

(iv) Any requirement in these regulations for a transporter to keep or retain a copy of a manifest is satisfied by the retention of an electronic manifest in the transporter's account on the e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or Utah inspector.

(v) No transporter may be held liable for the inability to produce an electronic manifest for inspection under Section R315-263-20 if that transporter can demonstrate that the inability to produce the electronic manifest is exclusively due to a technical difficulty with the EPA system for which the transporter bears no responsibility.

(5) A transporter may participate in the electronic manifest system either by accessing the electronic manifest system from the transporter's own electronic equipment, or by accessing the electronic manifest system from the equipment provided by a participating generator, by another transporter, or by a designated facility.

(6) Special procedures when electronic manifest is not available. If after a manifest has been originated electronically and signed electronically by the initial transporter, and the

electronic manifest system should become unavailable for any reason, then:

(i) The transporter in possession of the hazardous waste when the electronic manifest becomes unavailable shall reproduce sufficient copies of the printed manifest that is carried on the transport vehicle pursuant to Subsection R315-263-20(a)(4)(iii)(A), or obtain and complete another paper manifest for this purpose. The transporter shall reproduce sufficient copies to provide the transporter and all subsequent waste handlers with a copy for their files, plus two additional copies that will be delivered to the designated facility with the hazardous waste.

(ii) On each printed copy, the transporter shall include a notation in the Special Handling and Additional Description space, Item 14, that the paper manifest is a replacement manifest for a manifest originated in the electronic manifest system, shall include, if not pre-printed on the replacement manifest, the manifest tracking number of the electronic manifest that is replaced by the paper manifest, and shall also include a brief explanation why the electronic manifest was not available for completing the tracking of the shipment electronically.

(iii) A transporter signing a replacement manifest to acknowledge receipt of the hazardous waste shall ensure that each paper copy is individually signed and that a legible handwritten signature appears on each copy.

(iv) From the point at which the electronic manifest is no longer available for tracking the waste shipment, the paper replacement manifest copies shall be carried, signed, retained as records, and given to a subsequent transporter or to the designated facility, following the instructions, procedures, and requirements that apply to the use of all other paper manifests.

(7) Special procedures for electronic signature methods undergoing tests. If a transporter using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the transporter shall sign the electronic manifest electronically and also sign with an ink signature the transporter acknowledgement of receipt of materials on the printed copy of the manifest that is carried on the vehicle in accordance with Subsection R315-263-20(a)(4)(iii)(A). This printed copy bearing the generator's and transporter's ink signatures shall also be presented by the transporter to the designated facility to sign in ink to indicate the receipt of the waste materials or to indicate discrepancies. After the owner/operator of the designated facility has signed this printed manifest copy with its ink signature, the printed manifest copy shall be delivered to the designated facility with the waste materials.

(8) Imposition of user fee for electronic manifest use. A transporter who is a user of the electronic manifest may be assessed a user fee by EPA for the origination or processing of each electronic manifest. EPA shall maintain and update from time-to-time the current schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to 40 CFR part

262.

(b) Before transporting the hazardous waste, the transporter shall sign and date the manifest acknowledging acceptance of the hazardous waste from the generator. The transporter shall return a signed copy to the generator before leaving the generator's property.

(c) The transporter shall ensure that the manifest accompanies the hazardous waste. In the case of exports [~~, the transporter shall ensure that a copy of the EPA Acknowledgment of Consent also accompanies the hazardous waste~~] occurring under the terms of a consent issued by EPA to the exporter on or after December 31, 2016, the transporter shall ensure that a movement document that includes all information required by Subsection R315-262-83(d) also accompanies the hazardous waste. In the case of imports occurring under the terms of a consent issued by EPA to the country of export or the importer on or after December 31, 2016, the transporter shall ensure that a movement document that includes all information required by Subsection R315-262-84(d) also accompanies the hazardous waste.

(d) A transporter who delivers a hazardous waste to another transporter or to the designated facility shall:

(1) Obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest; and

(2) Retain one copy of the manifest in accordance with Section R315-263-22; and

(3) Give the remaining copies of the manifest to the accepting transporter or designated facility.

(e) The requirements of Subsections R315-263-20(c), (d) and (f) do not apply to water, bulk shipment, transporters if:

(1) The hazardous waste is delivered by water, bulk shipment, to the designated facility; and

(2) A shipping paper containing all the information required on the manifest; excluding the EPA identification numbers, generator certification, and signatures; and, for exports [~~, an EPA Acknowledgment of Consent~~] or imports occurring under the terms of a consent issued by EPA on or after December 31, 2016, a movement document that includes all information required by Subsections R315-262-83(d) or 262-84(d) accompanies the hazardous waste; and

(3) The delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper; and

(4) The person delivering the hazardous waste to the initial water, bulk shipment, transporter obtains the date of delivery and signature of the water, bulk shipment, transporter on the manifest and forwards it to the designated facility; and

(5) A copy of the shipping paper or manifest is retained by each water, bulk shipment, transporter in accordance with Section R315-263-22.

(f) For shipments involving rail transportation, the requirements of Subsections R315-263-20(c), (d) and (e) do not apply and the following requirements do apply:

(1) When accepting hazardous waste from a non-rail transporter, the initial rail transporter shall:

(i) Sign and date the manifest acknowledging acceptance of the hazardous waste;

(ii) Return a signed copy of the manifest to the non-rail transporter;

(iii) Forward at least three copies of the manifest to:

(A) The next non-rail transporter, if any; or

(B) The designated facility, if the shipment is delivered to that facility by rail; or

(C) The last rail transporter designated to handle the waste in the United States;

(iv) Retain one copy of the manifest and rail shipping paper in accordance with Section R315-263-22.

(2) Rail transporters shall ensure that a shipping paper containing all the information required on the manifest; excluding the EPA identification numbers, generator certification, and signatures; and, for exports ~~[an EPA Acknowledgment of Consent accompanies the hazardous waste at all times. Note: Intermediate rail transporters are not required to sign either the manifest or shipping paper]~~ or imports occurring under the terms of a consent issued by EPA on or after December 31, 2016, a movement document that includes all information required by Subsections R315-262-83(d) or 262-84(d) accompanies the hazardous waste at all times.

Note to Subsection R315-263-20(f)(2): Intermediate rail transporters are not required to sign the manifest, movement document, or shipping paper.

(3) When delivering hazardous waste to the designated facility, a rail transporter shall:

(i) Obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or the shipping paper, if the manifest has not been received by the facility; and

(ii) Retain a copy of the manifest or signed shipping paper in accordance with Section R315-263-22.

(4) When delivering hazardous waste to a non-rail transporter a rail transporter shall:

(i) Obtain the date of delivery and the handwritten signature of the next non-rail transporter on the manifest; and

(ii) Retain a copy of the manifest in accordance with Section R315-263-22.

(5) Before accepting hazardous waste from a rail transporter, a non-rail transporter shall sign and date the manifest and provide a copy to the rail transporter.

(g) Transporters who transport hazardous waste out of the United States shall:

(1) Sign and date the manifest in the International Shipments block to indicate the date that the shipment left the United States;

(2) Retain one copy in accordance with Subsection R315-263-22(d);

(3) Return a signed copy of the manifest to the generator; and

(4) ~~[Give a copy of the manifest to a U.S. Customs official at the point of departure from the United States.]~~ For paper manifest only,

(i) Send a copy of the manifest to the e-Manifest system in accordance with the allowable methods specified in Subsection R315-264-71(a)(2)(v); and

(ii) For shipments initiated prior to the AES filing compliance

date, when instructed by the exporter to do so, give a copy of the manifest to a U.S. Customs official at the point of departure from the United States.

(h) A transporter transporting hazardous waste from a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month need not comply with the requirements of Section 315-263-20 or those of Section R315-263-22 provided that:

(1) The waste is being transported pursuant to a reclamation agreement as provided for in Subsection R315-262-20(e);

(2) The transporter records, on a log or shipping paper, the following information for each shipment:

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

(ii) The quantity of waste accepted;

(iii) All DOT-required shipping information;

(iv) The date the waste is accepted; and

(3) The transporter carries this record when transporting waste to the reclamation facility; and

(4) The transporter retains these records for a period of at least three years after termination or expiration of the agreement.

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

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.

R315-264-12. General Facility Standards - Required Notices.

(a) ~~[(1)]~~ The owner or operator of a facility that is arranging or has arranged to receive hazardous waste subject to Sections R315-262-80 through 262-84 from a foreign source shall ~~[notify the Director in writing at least four weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.]~~ submit the following required notices:

(1) As per Subsection R315-262-84(b), for imports where the competent authority of the country of export does not require the foreign exporter to submit to it a notification proposing export and obtain consent from EPA and the competent authorities for the countries of transit, such owner or operator of the facility, if acting as the importer, shall provide notification of the proposed transboundary movement in English to EPA using the allowable methods listed in Subsection R315-262-84(b) (1) at least 60 days before the first shipment is expected to depart the country of export. The notification may cover up to one year of shipments of wastes having similar physical and chemical characteristics, the same United Nations classification, the same RCRA waste codes and OECD waste codes, and being sent from the same foreign exporter.

(2) ~~[The owner or operator of a recovery facility that has~~

~~arranged to receive hazardous waste subject to Sections R315-262-80 through 89 shall provide a copy of the movement document bearing all required signatures to the foreign exporter; to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to the competent authorities of all other countries concerned within three working days of receipt of the shipment. The original of the signed movement document shall be maintained at the facility for at least three years. In addition, such owner or operator shall, as soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following the receipt of the hazardous waste, send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to EPA's Office of Enforcement and Compliance Assurance at the above address by mail, e-mail without a digital signature followed by mail, or fax followed by mail] As per Subsection R315-262-84(d)(2)(xv), a copy of the movement document bearing all required signatures within three working days of receipt of the shipment to the foreign exporter; to the competent authorities of the countries of export and transit that control the shipment as an export and transit shipment of hazardous waste respectively; and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The original of the signed movement document shall be maintained at the facility for at least three years. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or Utah inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under Section R315-264-12 if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system for which the owner or operator of a facility bears no responsibility.~~

(3) As per Subsection R315-262-84(f)(4), if the facility has physical control of the waste and it must be sent to an alternate facility or returned to the country of export, such owner or operator of the facility shall inform EPA, using the allowable methods listed in Subsection R315-262-84(b)(1) of the need to return or arrange alternate management of the shipment.

(4) As per Subsection R315-262-84(g), such owner or operator shall:

(i) Send copies of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than 30 days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the foreign exporter, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and for shipments recycled or disposed of on or after the electronic import-export reporting compliance date, to EPA electronically using

EPA's Waste Import Export Tracking System (WIETS), or its successor system.

(ii) If the facility performed any of recovery operations R12, R13, or RC16, or disposal operations D13 through D15, or DC17, promptly send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11, or RC16, or one of disposal operations D1 through D12, or DC15 to DC16, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The recovery and disposal operations in Section R315-264-12(a)(4)(ii) are defined in Section R315-262-81.

(b) The owner or operator of a facility that receives hazardous waste from an off-site source, except where the owner or operator is also the generator, shall inform the generator in writing that he has the appropriate permit(s) for, and will accept, the waste the generator is shipping. The owner or operator shall keep a copy of this written notice as part of the operating record.

(c) Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator shall notify the new owner or operator in writing of the requirements of Rule R315-264 and Rule R315-270. An owner's or operator's failure to notify the new owner or operator of the requirements of Rule R315-264 in no way relieves the new owner or operator of his obligation to comply with all applicable requirements.

R315-264-71. Manifest System, Recordkeeping, and Reporting -- Use of Manifest System.

(a)(1) If a facility receives hazardous waste accompanied by a manifest, the owner, operator or his/her agent shall sign and date the manifest as indicated in Subsection R315-264-71(a)(2) to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.

(2) If the facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator, or his agent shall:

(i) Sign and date, by hand, each copy of the manifest;

(ii) Note any discrepancies, as defined in Subsection R315-264-72(a), on each copy of the manifest;

(iii) Immediately give the transporter at least one copy of the manifest;

(iv) Within 30 days of delivery, send a copy, Page 3, of the manifest to the generator,

(v) Within 30 days of delivery, send the top copy, Page 1, of the Manifest to the e-Manifest system for purposes of data entry and processing. In lieu of mailing this paper copy to EPA, the owner or operator may transmit to the EPA system an image file of Page 1 of the manifest, or both a data string file and the image file corresponding to Page 1 of the manifest. Any data or image files

transmitted to EPA under Subsection R315-264-71(a) shall be submitted in data file and image file formats that are acceptable to EPA and that are supported by EPA's electronic reporting requirements and by the electronic manifest system.

(vi) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(3) ~~[If a facility receives hazardous waste imported from a foreign source, the receiving facility shall mail a copy of the manifest and documentation confirming EPA's consent to the import of hazardous waste to the following address within thirty days of delivery: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 and Utah Division of Waste Management and Radiation Control, P O Box 144880, Salt Lake City, Utah 84114-4880.]~~ The owner or operator of a facility receiving hazardous waste subject to Sections R315-262-80 through 262-84 from a foreign source shall:

(i) Additionally list the relevant consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest, matched to the relevant list number for the waste from block 9b. If additional space is needed, the owner or operator should use a Continuation Sheet(s), EPA Form 8700-22A; and

(ii) Send a copy of the manifest within 30 days of delivery to EPA using the addresses listed in Subsection R315-262-82(e) until the facility can submit such a copy to the e-Manifest system per Subsection R315-264-71(a) (2) (v) .

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest; excluding the EPA identification numbers, generator's certification, and signatures; the owner or operator, or his agent, shall:

(1) Sign and date each copy of the manifest or shipping paper, if the manifest has not been received, to certify that the hazardous waste covered by the manifest or shipping paper was received;

(2) Note any significant discrepancies, as defined in Subsection R315-264-72(a), in the manifest or shipping paper, if the manifest has not been received, on each copy of the manifest or shipping paper. The Director does not intend that the owner or operator of a facility whose procedures under R315-264-13(c) include waste analysis shall perform that analysis before signing the shipping paper and giving it to the transporter. Subsection R315-264-72(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.

(3) Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper, if the manifest has not been received;

(4) Within 30 days after the delivery, send a copy of the signed and dated manifest or a signed and dated copy of the shipping paper, if the manifest has not been received within 30 days after delivery, to the generator; and

Comment: Subsection R315-262-23(c) requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by rail or water (bulk shipment).

(5) Retain at the facility a copy of the manifest and shipping

paper, if signed in lieu of the manifest at the time of delivery, for at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility shall comply with the requirements of Rule R315-262. The provisions of Sections R315-262-15, R315-262-16, and R315-262-17 are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of Sections R315-262-15, R315-262-16, and R315-262-17 only apply to owners or operators who are shipping hazardous waste which they generated at that facility or operating as a large quantity generator consolidating hazardous waste from very small quantity generators under Subsection R315-262-17(f).

(d) As per Subsection R315-262-84(d)(2)(xv), [Within]within three working days of the receipt of a shipment subject to Sections R315-262-80 through [89]262-84 the owner or operator of a facility shall provide a copy of the movement document bearing all required signatures to the foreign exporter[, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and to competent authorities of all other concerned countries. The original copy of the movement document shall be maintained at the facility for at least three years from the date of signature]; to the competent authorities of the countries of export and transit that control the shipment as an export and transit of hazardous waste respectively; and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The original copy of the movement document shall be maintained at the facility for at least three years from the date of signature. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or Utah inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under Section R315-264-71 if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system, for which the owner or operator of a facility bears no responsibility.

(e) A facility shall determine whether the consignment state for a shipment regulates any additional wastes, beyond those regulated Federally, as hazardous wastes under its state hazardous waste program. Facilities shall also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to these states.

(f) Legal equivalence to paper manifests. Electronic manifests that are obtained, completed, and transmitted in accordance with Subsection R315-262-20(a)(3), and used in accordance with Section R315-264-71 in lieu of the paper manifest form are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

(1) Any requirement in these regulations for the owner or operator of a facility to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of Section R315-262-25.

(2) Any requirement in these regulations to give, provide, send, forward, or to return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person.

(3) Any requirement in these regulations for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the waste shipment.

(4) Any requirement in these regulations for an owner or operator to keep or retain a copy of each manifest is satisfied by the retention of the facility's electronic manifest copies in its account on the e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or Division of Waste Management and Radiation Control inspector.

(5) No owner or operator may be held liable for the inability to produce an electronic manifest for inspection under Section R315-264-71 if the owner or operator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the owner or operator bears no responsibility.

(g) An owner or operator may participate in the electronic manifest system either by accessing the electronic manifest system from the owner's or operator's electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the owner's or operator's site by the transporter who delivers the waste shipment to the facility.

(h) Special procedures applicable to replacement manifests. If a facility receives hazardous waste that is accompanied by a paper replacement manifest for a manifest that was originated electronically, the following procedures apply to the delivery of the hazardous waste by the final transporter:

(1) Upon delivery of the hazardous waste to the designated facility, the owner or operator shall sign and date each copy of the paper replacement manifest by hand in Item 20, Designated Facility Certification of Receipt, and note any discrepancies in Item 18, Discrepancy Indication Space, of the paper replacement manifest,

(2) The owner or operator of the facility shall give back to the final transporter one copy of the paper replacement manifest,

(3) Within 30 days of delivery of the waste to the designated facility, the owner or operator of the facility shall send one signed and dated copy of the paper replacement manifest to the generator, and send an additional signed and dated copy of the paper replacement manifest to the electronic manifest system, and

(4) The owner or operator of the facility shall retain at the facility one copy of the paper replacement manifest for at least three years from the date of delivery.

(i) Special procedures applicable to electronic signature methods undergoing tests. If an owner or operator using an electronic

manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the owner or operator shall also sign with an ink signature the facility's certification of receipt or discrepancies on the printed copy of the manifest provided by the transporter. Upon executing its ink signature on this printed copy, the owner or operator shall retain this original copy among its records for at least 3 years from the date of delivery of the waste.

(j) Imposition of user fee for electronic manifest use. An owner or operator who is a user of the electronic manifest format may be assessed a user fee by EPA for the origination or processing of each electronic manifest. An owner or operator may also be assessed a user fee by EPA for the collection and processing of paper manifest copies that owners or operators shall submit to the electronic manifest system operator under Subsection R315-264-71(a)(2)(v). EPA shall maintain and update from time-to-time the current schedule of electronic manifest system user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to 40 CFR 262.

(k) Electronic manifest signatures. Electronic manifest signatures shall meet the criteria described in Section R315-262-25.

KEY: hazardous waste, TSD facilities

Date of Enactment or Last Substantive Amendment: August 31, 2017

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.

R315-265-1. Incorporation, General - Purpose, Scope, and Applicability.

40 CFR 265.270 through 265.282, 265.300 through 265.316, 265.340 through 265.352, 265.370 through 265.383, 265.400 through 265.406, 265.430, 265.440 through 265.445, 265.1030 through 265.1035, 265.1050 through 265.1064, 265.1080 through 265.1091, 265.1100 through 265.1102, 265.1200 through 265.1202, 265.1300 through 265.1316 and Appendices I and III through VI of 40 CFR 265, 2015 edition, as amended by 81 FR 85827, [is]are adopted and incorporated by reference [with the following exceptions:

— (a) ~~Substitute~~except that "Director" is substituted for all references to "Regional Administrator[+]", and for all references to "EPA" or "Environmental Protection Agency" [

— (b) ~~Substitute "Director" or "Board" for EPA as appropriate]~~ except for references to "EPA identification number" and where EPA is used in reference to actions under Subsection R315-268-42(b) and in Subsection R315-265-71(a)(3). [+

— (c) ~~Substitute "Utah Division of Waste Management and Radiation Control" or "Director" as appropriate for "Environmental Protection Agency;" and~~

— (d) ~~The language that reads "If the facilities covered by the~~

mechanism are in more than one Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions" in 40 CFR 265.143(g) and 256.145(g) is changed to read as follows: If the facilities covered by the mechanism are in more than one State, identical evidence of financial assurance must be submitted to the Director as is submitted to all other states and to all appropriate EPA Regional Administrators.

(e) Add, following December 6, 1990, in 40 CFR 265.440(a), "for all HSWA drip pads or January 31, 1992 for all non-HSWA drip pads."

(f) Add, following December 24, 1992, in 40 CFR 265-440(a), "for all HSWA drip pads or July 30, 1993 for all non-HSWA drip pads."]

(a) The purpose of Rule R315-265 is to establish minimum standards that define the acceptable management of hazardous waste during the period of interim status and until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled.

(b) Except as provided in 40 CFR 265.1080(b), which is adopted and incorporated by reference, the standards of Rule R315-265, and of Sections R315-264-552, R315-264-553, and R315-264-554, apply to owners and operators of facilities that treat, store or dispose of hazardous waste who have fully complied with the requirements for interim status under section 3005(e) of RCRA and Section R315-270-10 until either a permit is issued under Rule R315-270 or until applicable Rule R315-265 closure and post-closure responsibilities are fulfilled, and to those owners and operators of facilities in existence on November 19, 1980 who have failed to provide timely notification as required by section 3010(a) of RCRA, failed to file Part A of the permit application as required by Subsections R315-270-10 (e) and (g), or both. These standards apply to all treatment, storage and disposal of hazardous waste at these facilities after the effective date of these regulations, except as specifically provided otherwise in Rule R315-265 or Rule R315-261.

Comment: As stated in section 3005(a) of RCRA, after the effective date of regulations under that section, i.e., Rules R315-270 and R315-124, the treatment, storage and disposal of hazardous waste is prohibited except in accordance with a permit. Section 3005(e) of RCRA provides for the continued operation of an existing facility that meets certain conditions, until final administrative disposition of the owner's and operator's permit application is made.

(c) The requirements of Rule R315-265 do not apply to:

(1) A person disposing of hazardous waste by means of ocean disposal subject to a permit issued under the Marine Protection, Research, and Sanctuaries Act;

Comment: These Rule R315-265 regulations do apply to the treatment or storage of hazardous waste before it is loaded onto an ocean vessel for incineration or disposal at sea, as provided in Subsection R315-265-1(b).

(2) Reserved

(3) The owner or operator of a POTW which treats, stores, or disposes of hazardous waste;

Comment: The owner or operator of a facility under Subsections R315-265-1(c) (1) through (3) is subject to the requirements of Rule R315-264 to the extent they are included in a permit by rule granted to such a person under 40 CFR 122, or are required by 40 CFR 144.14.

(4) Reserved

(5) The owner or operator of a facility permitted under Rules R315-301 through R315-320 to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under Rule R315-265 by Section R315-262-14;

(6) The owner or operator of a facility managing recyclable materials described in Subsections R315-261-6(a) (2), (3), and (4), except to the extent they are referred to in Rule R315-279 or Sections R315-266-20 through 266-23, R315-266-70, R315-266-80, or R315-266-100 through 266-112.

(7) A generator accumulating waste on site in compliance with applicable conditions for exemption in Sections R315-262-14 through 262-17 and Sections R315-262-200 through 262-216 and R315-262-230 through 262-233, except to the extent the requirements of Rule R315-265 are included in those sections;

(8) A farmer disposing of waste pesticides from his own use in compliance with Section R315-262-70; or

(9) The owner or operator of a totally enclosed treatment facility, as defined in Section R315-260-10.

(10) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in Section R315-260-10, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in Section R315-268-40, Table Treatment Standards for Hazardous Wastes), or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator shall comply with the requirements set out in Subsection R315-265-17(b).

(11) (i) Except as provided in Subsection R315-265-1(c) (11) (ii), a person engaged in treatment or containment activities during immediate response to any of the following situations:

(A) A discharge of a hazardous waste;

(B) An imminent and substantial threat of a discharge of a hazardous waste;

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(ii) An owner or operator of a facility otherwise regulated by this Rule R315-265 shall comply with all applicable requirements of Sections R315-265-30 through 265-37 and Sections R315-265-50 through 265-56.

(iii) Any person who is covered by Subsection R315-265-1(c) (11) (i) and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this Rule R315-265 and Rule R315-124 for those activities.

(12) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of Section R315-262-30 at a transfer facility for a period of ten days or less.

(13) The addition of absorbent material to waste in a container, as defined in Section R315-260-10, or the addition of waste to the absorbent material in a container provided that these actions occur at the time waste is first placed in the containers; and Subsection R315-265-17(b), Sections R315-265-171, and 265-172 are complied with.

(14) Universal waste handlers and universal waste transporters, as defined in Section R315-260-10, handling the wastes listed below. These handlers are subject to regulation under Rule R315-273, when handling the below listed universal wastes.

(i) Batteries as described in Section R315-273-2;

(ii) Pesticides as described in Section R315-273-3;

(iii) Mercury-containing equipment as described in Section R315-273-4; and

(iv) Lamps as described in Section R315-273-5;

(v) Antifreeze as described in Subsection R315-273-6(a); and

(vi) Aerosol cans as described in Subsection R315-273-6(b).

(d) The following hazardous wastes shall not be managed at facilities subject to regulation under Rule R315-265.

(1) EPA Hazardous Waste Nos. FO20, FO21, FO22, FO23, FO26, or FO27 unless:

(i) The wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system;

(ii) The waste is stored in tanks or containers;

(iii) The waste is stored or treated in waste piles that meet the requirements of Subsection R315-264-250(c) as well as all other applicable requirements of Sections R315-265-250 through 265-260;

(iv) The waste is burned in incinerators that are certified pursuant to the standards and procedures in 40 CFR 265.352, which is adopted by reference; or

(v) The waste is burned in facilities that thermally treat the waste in a device other than an incinerator and that are certified pursuant to the standards and procedures in 40 CFR 265.383, which is adopted by reference.

(e) The requirements of Rule R315-265 apply to owners or operators of all facilities which treat, store or dispose of hazardous waste referred to in Rule R315-268, and the Rule R315-268 standards are considered material conditions or requirements of the Rule R315-265 interim status standards.

R315-265-4 General - Imminent Hazard Action.

Notwithstanding any other provisions of these regulations, enforcement actions may be brought pursuant to Section 19-5-115.

R315-265-10 General Facility Standards - Applicability.

The regulations in Section R315-262-10 through 262-19 apply to owners and operators of all hazardous waste facilities, except as Section R315-265-1 provides otherwise.

R315-265-11 General Facility Standards - Identification Number.

Every facility owner or operator shall apply to the Director for an EPA identification number using EPA form 8700-12. Information on obtaining this number can be acquired by contacting the Utah Division of Waste Management and Radiation Control.

R315-265-12 General Facility Standards - Required Notices.

(a) The owner or operator of a facility that is arranging or has arranged to receive hazardous waste subject to Sections R315-262-80 through 262-84 from a foreign source shall submit the following required notices:

(1) As per Subsection R315-262-84(b), for imports where the competent authority of the country of export does not require the foreign exporter to submit to it a notification proposing export and obtain consent from EPA and the competent authorities for the countries of transit, such owner or operator of the facility, if acting as the importer, shall provide notification of the proposed transboundary movement in English to EPA using the allowable methods listed in Subsection R315-262-84(b)(1) at least 60 days before the first shipment is expected to depart the country of export. The notification may cover up to one year of shipments of wastes having similar physical and chemical characteristics, the same United Nations classification, the same RCRA waste codes and OECD waste codes, and being sent from the same foreign exporter.

(2) As per Subsection R315-262-84(d)(2)(xv), a copy of the movement document bearing all required signatures within three (3) working days of receipt of the shipment to the foreign exporter; to the competent authorities of the countries of export and transit that control the shipment as an export and transit shipment of hazardous waste respectively; and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The original of the signed movement document shall be maintained at the facility for at least three (3) years. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or Utah inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system, for which the owner or operator of a facility bears no responsibility.

(3) As per Subsection R315-262-84(f)(4), if the facility has physical control of the waste and it must be sent to an alternate facility or returned to the country of export, such owner or operator of the facility shall inform EPA, using the allowable methods listed in Subsection R315-262-84(b)(1) of the need to return or arrange alternate management of the shipment.

(4) As per Subsection R315-262-84(g), such owner or operator shall:

(i) Send copies of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the foreign exporter, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system.

(ii) If the facility performed any of recovery operations R12, R13, or RC16, or disposal operations D13 through D15, or DC17, promptly send copies of the confirmation of recovery or disposal that it

receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11, or RC16, or one of disposal operations D1 through D12, or DC15 to DC16, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The recovery and disposal operations in Subsection R315-265-12(a)(4)(ii) are defined in Section R315-262-81.

(b) Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator shall notify the new owner or operator in writing of the requirements of Rule R315-265 and Rule R315-270. Also see Section R315-270-72.

Comment: An owner's or operator's failure to notify the new owner or operator of the requirements of Rule R315-265 in no way relieves the new owner or operator of his obligation to comply with all applicable requirements.

R315-265-13 General Facility Standards - General Waste Analysis

(a)(1) Before an owner or operator treats, stores, or disposes of any hazardous wastes, or nonhazardous wastes if applicable under Subsection R315-265-113(d), he shall obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, the analysis shall contain all the information which must be known to treat, store, or dispose of the waste in accordance with Rule R315-265 and Rule R315-268.

(2) The analysis may include data developed under Rule R315-261, and existing published or documented data on the hazardous waste or on waste generated from similar processes.

Comment: For example, the facility's records of analyses performed on the waste before the effective date of these regulations, or studies conducted on hazardous waste generated from processes similar to that which generated the waste to be managed at the facility, may be included in the data base required to comply with Subsection R315-265-13(a)(1). The owner or operator of an off-site facility may arrange for the generator of the hazardous waste to supply part of the information required by Subsection R315-265-13(a)(1), except as otherwise specified in Subsections R315-268-7(b) and (c). If the generator does not supply the information, and the owner or operator chooses to accept a hazardous waste, the owner or operator is responsible for obtaining the information required to comply with Section R315-265-13.

(3) The analysis shall be repeated as necessary to ensure that it is accurate and up to date. At a minimum, the analysis shall be repeated:

(i) When the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous wastes or non-hazardous wastes, if applicable, under Subsection R315-265-113(d) has changed; and

(ii) For off-site facilities, when the results of the inspection required in Subsection R315-265-13(a)(4) indicate that the hazardous waste received at the facility does not match the waste designated

on the accompanying manifest or shipping paper.

(4) The owner or operator of an off-site facility shall inspect and, if necessary, analyze each hazardous waste movement received at the facility to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.

(b) The owner or operator shall develop and follow a written waste analysis plan which describes the procedures which he will carry out to comply with Subsection R315-265-13(a). He shall keep this plan at the facility. At a minimum, the plan shall specify:

(1) The parameters for which each hazardous waste, or non-hazardous waste if applicable under Subsection R315-265-113(d), will be analyzed and the rationale for the selection of these parameters, i.e., how analysis for these parameters will provide sufficient information on the waste's properties to comply with Subsection R315-265-13(a);

(2) The test methods which will be used to test for these parameters;

(3) The sampling method which will be used to obtain a representative sample of the waste to be analyzed. A representative sample may be obtained using either:

(i) One of the sampling methods described in Section R315-261-1090; or

(ii) An equivalent sampling method.

Comment: See Subsection R315-260-20(c) for related discussion.

(4) The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up to date;

(5) For off-site facilities, the waste analyses that hazardous waste generators have agreed to supply; and

(6) Where applicable, the methods that will be used to meet the additional waste analysis requirements for specific waste management methods as specified in Sections R315-265-200, R315-265-225, and R315-265-252, and 40 CFR 265.273, 265.314, 265.341, 265.375, 265.402, 265.1034(d), 265.1063(d), 265.1084, which are adopted and incorporated by reference and Section R315-268-7.

(7) For surface impoundments exempted from land disposal restrictions under Subsection R315-268-4(a), the procedures and schedule for:

(i) The sampling of impoundment contents;

(ii) The analysis of test data; and,

(iii) The annual removal of residues which are not delisted under Section R315-260-22 or which exhibit a characteristic of hazardous waste and either:

(A) Do not meet applicable treatment standards of Sections R315-268-40 through R315-268-49; or

(B) Where no treatment standards have been established;

(I) Such residues are prohibited from land disposal under Section R315-268-32 or RCRA section 3004(d); or

(II) Such residues are prohibited from land disposal under Subsection R315-268-33(f).

(8) For owners and operators seeking an exemption to the air emission standards of 40 CFR 265 Subpart CC, in accordance with 40 CFR 265.1083, which are adopted and incorporated by reference

(i) If direct measurement is used for the waste determination,

the procedures and schedules for waste sampling and analysis, and the results of the analysis of test data to verify the exemption.

(ii) If knowledge of the waste is used for the waste determination, any information prepared by the facility owner or operator or by the generator of the hazardous waste, if the waste is received from off-site, that is used as the basis for knowledge of the waste.

(c) For off-site facilities, the waste analysis plan required in Subsection R315-265-13(b) shall also specify the procedures which will be used to inspect and, if necessary, analyze each movement of hazardous waste received at the facility to ensure that it matches the identity of the waste designated on the accompanying manifest or shipping paper. At a minimum, the plan shall describe:

(1) The procedures which will be used to determine the identity of each movement of waste managed at the facility; and

(2) The sampling method which will be used to obtain a representative sample of the waste to be identified, if the identification method includes sampling.

(3) The procedures that the owner or operator of an off-site landfill receiving containerized hazardous waste will use to determine whether a hazardous waste generator or treater has added a biodegradable sorbent to the waste in the container.

R315-265-14 General Facility Standards - Security

(a) The owner or operator shall prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of his facility, unless:

(1) Physical contact with the waste, structures, or equipment with the active portion of the facility will not injure unknowing or unauthorized persons or livestock which may enter the active portion of a facility, and

(2) Disturbance of the waste or equipment, by the unknowing or unauthorized entry of persons or livestock onto the active portion of a facility, will not cause a violation of the requirements of Rule R315-265.

(b) Unless exempt under Subsections R315-265-14(a) (1) and (2), a facility shall have:

(1) A 24-hour surveillance system, for example, television monitoring or surveillance by guards or facility personnel, which continuously monitors and controls entry onto the active portion of the facility; or

(2) (i) An artificial or natural barrier, for example, a fence in good repair or a fence combined with a cliff, which completely surrounds the active portion of the facility; and

(ii) A means to control entry, at all times, through the gates or other entrances to the active portion of the facility, for example, an attendant, television monitors, locked entrance, or controlled roadway access to the facility.

Comment: The requirements of Subsection R315-265-14(b) are satisfied if the facility or plant within which the active portion is located itself has a surveillance system, or a barrier and a means to control entry, which complies with the requirements of Subsections R315-265-14(b) (1) or (2).

(c) Unless exempt under Subsections R315-265-14(a) (1) and

(a) (2), a sign with the legend, "Danger—Unauthorized Personnel Keep Out," shall be posted at each entrance to the active portion of a facility, and at other locations, in sufficient numbers to be seen from any approach to this active portion. The legend shall be written in English and in any other language predominant in the area surrounding the facility, for example, facilities in counties bordering the Canadian province of Quebec shall post signs in French; facilities in counties bordering Mexico shall post signs in Spanish, and shall be legible from a distance of at least 25 feet. Existing signs with a legend other than "Danger—Unauthorized Personnel Keep Out" may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion can be dangerous.

Comment: See Subsection R315-265-117(b) for discussion of security requirements at disposal facilities during the post-closure care period.

R315-265-15 General Facility Standards - General Inspection Requirements

(a) The owner or operator shall inspect his facility for malfunctions and deterioration, operator errors, and discharges which may be causing, or may lead to: (1) Release of hazardous waste constituents to the environment or (2) a threat to human health. The owner or operator shall conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.

(b) (1) The owner or operator shall develop and follow a written schedule for inspecting all monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment, such as dikes and sump pumps, that are important to preventing, detecting, or responding to environmental or human health hazards.

(2) He shall keep this schedule at the facility.

(3) The schedule shall identify the types of problems, for example, malfunctions or deterioration, which are to be looked for during the inspection, for example, inoperative sump pump, leaking fitting, eroding dike, etc.

(4) The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, shall be inspected daily when in use. At a minimum, the inspection schedule shall include the items and frequencies called for in Sections R315-265-174, R315-265-193, R315-265-195, R315-265-226, and R315-265-260, 40 CFR 265.278, 265.304, 265.347, 265.377, 265.403, 265.1033, 265.1052, 265.1053, 265.1058, and 265.1084 through 265.1090, which are adopted and incorporated by reference, where applicable.

(c) The owner or operator shall remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action shall be taken immediately.

(d) The owner or operator shall record inspections in an

inspection log or summary. He shall keep these records for at least three years from the date of inspection. At a minimum, these records shall include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

R315-265-16 General Facility Standards - Personnel Training

(a) (1) Facility personnel shall successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of Rule R315-265. The owner or operator shall ensure that this program includes all the elements described in the document required under Subsection R315-265-16(d) (3).

(2) This program shall be directed by a person trained in hazardous waste management procedures, and shall include instruction which teaches facility personnel hazardous waste management procedures, including contingency plan implementation, relevant to the positions in which they are employed.

(3) At a minimum, the training program shall be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including where applicable:

(i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;

(ii) Key parameters for automatic waste feed cut-off systems;

(iii) Communications or alarm systems;

(iv) Response to fires or explosions;

(v) Response to ground-water contamination incidents; and

(vi) Shutdown of operations.

(4) For facility employees that receive emergency response training pursuant to Occupational Safety and Health Administration (OSHA) regulations 29 CFR 1910.120(p) (8) and 1910.120(q), the facility is not required to provide separate emergency response training pursuant to Section R315-265-16, provided that the overall facility training meets all the requirements of Section R315-265-16.

(b) Facility personnel shall successfully complete the program required in Subsection R315-265-16(a) within six months after the effective date of these regulations or six months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of these regulations shall not work in unsupervised positions until they have completed the training requirements of Subsection R315-265-16(a).

(c) Facility personnel shall take part in an annual review of the initial training required in Subsection R315-265-16(a).

(d) The owner or operator shall maintain the following documents and records at the facility:

(1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(2) A written job description for each position listed under Subsection R315-265-16(d) (1). This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but shall

include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position;

(3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under Subsection R315-265-16(d) (1);

(4) Records that document that the training or job experience required under Subsections R315-265-16(a), (b), and (c) has been given to, and completed by, facility personnel.

(e) Training records on current personnel shall be kept until closure of the facility. Training records on former employees shall be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

R315-265-17 General Facility Standards - General Requirements for Ignitable, Reactive, or Incompatible Wastes

(a) The owner or operator shall take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste shall be separated and protected from sources of ignition or reaction including but not limited to: Open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks; static, electrical, or mechanical, spontaneous ignition, for example, from heat-producing chemical reactions, and radiant heat. While ignitable or reactive waste is being handled, the owner or operator shall confine smoking and open flame to specially designated locations. "No Smoking" signs shall be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(b) Where specifically required by other sections of Rule R315-265, the treatment, storage, or disposal of ignitable or reactive waste, and the mixture or commingling of incompatible wastes, or incompatible wastes and materials, shall be conducted so that it does not:

(1) Generate extreme heat or pressure, fire or explosion, or violent reaction;

(2) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health;

(3) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;

(4) Damage the structural integrity of the device or facility containing the waste; or

(5) Through other like means threaten human health or the environment.

R315-265-18 General Facility Standards - Location Standards

The placement of any hazardous waste in a salt dome, salt bed formation, underground mine or cave is prohibited, except for the Department of Energy Waste Isolation Pilot Project in New Mexico.

R315-265-19 General Facility Standards - Construction Quality Assurance Program

(a) CQA program. (1) A construction quality assurance (CQA) program is required for all surface impoundment, waste pile, and landfill units that are required to comply with Subsection R315-265-221(a), Section R315-265-254, and 40 CFR 265.301(a), which

is adopted and incorporated by reference. The program shall ensure that the constructed unit meets or exceeds all design criteria and specifications in the permit. The program shall be developed and implemented under the direction of a CQA officer who is a registered professional engineer.

(2) The CQA program shall address the following physical components, where applicable:

- (i) Foundations;
- (ii) Dikes;
- (iii) Low-permeability soil liners;
- (iv) Geomembranes (flexible membrane liners);
- (v) Leachate collection and removal systems and leak detection systems; and
- (vi) Final cover systems.

(b) Written CQA plan. Before construction begins on a unit subject to the CQA program under Subsection R315-265-19(a), the owner or operator shall develop a written CQA plan. The plan shall identify steps that will be used to monitor and document the quality of materials and the condition and manner of their installation. The CQA plan shall include:

(1) Identification of applicable units, and a description of how they will be constructed.

(2) Identification of key personnel in the development and implementation of the CQA plan, and CQA officer qualifications.

(3) A description of inspection and sampling activities for all unit components identified in Subsection R315-265-19(a) (2), including observations and tests that will be used before, during, and after construction to ensure that the construction materials and the installed unit components meet the design specifications. The description shall cover: Sampling size and locations; frequency of testing; data evaluation procedures; acceptance and rejection criteria for construction materials; plans for implementing corrective measures; and data or other information to be recorded and retained in the operating record under Section R315-265-73.

(c) Contents of program. (1) The CQA program shall include observations, inspections, tests, and measurements sufficient to ensure:

(i) Structural stability and integrity of all components of the unit identified in Subsection R315-265-19(a) (2);

(ii) Proper construction of all components of the liners, leachate collection and removal system, leak detection system, and final cover system, according to permit specifications and good engineering practices, and proper installation of all components, for example, pipes, according to design specifications;

(iii) Conformity of all materials used with design and other material specifications under Sections R315-264-221, R315-264-251, and R315-264-301.

(2) The CQA program shall include test fills for compacted soil liners, using the same compaction methods as in the full-scale unit, to ensure that the liners are constructed to meet the hydraulic conductivity requirements of Subsections R315-264-221(c) (1), R315-264-251(c) (1), and R315-264-301(c) (1) in the field. Compliance with the hydraulic conductivity requirements shall be verified by using in-situ testing on the constructed test fill. The test fill

requirement is waived where data are sufficient to show that a constructed soil liner meets the hydraulic conductivity requirements of Subsections R315-264-221(c)(1), R315-264-251(c)(1), and R315-264-301(c)(1) in the field.

(d) Certification. The owner or operator of units subject to Section R315-265-19 shall submit to the Director by certified mail or hand delivery, at least 30 days prior to receiving waste, a certification signed by the CQA officer that the CQA plan has been successfully carried out and that the unit meets the requirements of Subsections R315-265-221(a), Section R315-265-254, or 40 CFR 265.301(a), which is adopted and incorporated by reference. The owner or operator may receive waste in the unit after 30 days from the Director's receipt of the CQA certification unless the Director determines in writing that the construction is not acceptable, or extends the review period for a maximum of 30 more days, or seeks additional information from the owner or operator during this period. Documentation supporting the CQA officer's certification shall be furnished to the Director upon request.

R315-265-30 Preparedness and Prevention - Applicability

The regulations in Section R315-265-30 through 37 apply to owners and operators of all hazardous waste facilities, except as Section R315-265-1 provides otherwise.

R315-265-31 Preparedness and Prevention - Maintenance and Operation of Facility

Facilities shall be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

R315-265-32 Preparedness and Prevention - Required Equipment

All facilities shall be equipped with the following, unless none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below:

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

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

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

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

R315-265-33 Preparedness and Prevention - 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.

R315-265-34 Preparedness and Prevention - Access to Communications or Alarm System

(a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation shall have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required under Section R315-265-32.

(b) 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 Section R315-265-32.

R315-265-35 Preparedness and Prevention - Required Aisle Space

The owner or operator shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

R315-265-37 Preparedness and Prevention - Arrangements with Local Authorities

(a) The owner or operator 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:

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

(2) 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;

(3) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and

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

(b) Where State or local authorities decline to enter into such arrangements, the owner or operator shall document the refusal in the operating record.

R315-265-50 Contingency Plan and Emergency Procedures - Applicability

The regulations in Sections R315-265-50 through 56 apply to

owners and operators of all hazardous waste facilities, except as Section R315-265-1 provides otherwise.

R315-265-51 Contingency Plan and Emergency Procedures - Purpose and Implementation of Contingency Plan

(a) Each owner or operator 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 waste or hazardous waste constituents to air, soil, or surface water.

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

R315-265-52 Contingency Plan and Emergency Procedures - Content of Contingency Plan

(a) The contingency plan shall describe the actions facility personnel shall take to comply with Sections R315-265-51 and R315-265-56 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR 112, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of Rule R315-265. The owner or operator may develop one contingency plan which meets all regulatory requirements. EPA recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan"). When modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.

(c) 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 Section R315-265-37.

(d) The plan shall list names, addresses, and phone numbers, office and home, of all persons qualified to act as emergency coordinator, see Section R315-265-55, and this list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they will assume responsibility as alternates.

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

(f) The plan shall include an evacuation plan for 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.

R315-265-53 Contingency Plan and Emergency Procedures - Copies of Contingency Plan

A copy of the contingency plan and all revisions to the plan shall be:

- (a) Maintained at the facility; and
- (b) 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.

R315-265-54 Contingency Plan and Emergency Procedures -Amendment of Contingency Plan

The contingency plan shall be reviewed, and immediately amended, if necessary, whenever:

- (a) Applicable regulations are revised;
- (b) The plan fails in an emergency;
- (c) The facility changes-in its design, construction, operation, maintenance, or other circumstances-in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency;
- (d) The list of emergency coordinators changes; or
- (e) The list of emergency equipment changes.

R315-265-55 Contingency Plan and Emergency Procedures -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 waste 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.

Comment: The emergency coordinator's responsibilities are more fully spelled out in Section R315-265-56. Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of waste(s) handled by the facility, and type and complexity of the facility.

R315-265-56 Contingency Plan and Emergency Procedures -Emergency Procedures

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

- (1) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and
- (2) Notify appropriate State or local agencies with designated response roles if their help is needed.

(b) Whenever there is a release, fire, or explosion, the emergency

coordinator shall immediately identify the character, exact source, amount, and areal extent of any released materials. He may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.

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

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

(1) If his assessment indicates that evacuation of local areas may be advisable, he shall immediately notify appropriate local authorities. He shall be available to help appropriate officials decide whether local areas should be evacuated; and

(2) He shall immediately notify the Utah Department of Environmental Quality as specified in Section R315-263-30 and either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center, using their 24-hour toll free number 800/424-8802. The report shall include:

(i) Name and telephone number of reporter;

(ii) Name and address of facility;

(iii) Time and type of incident, for example, release, fire;

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

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

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

(e) During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the facility. These measures shall include, where applicable, stopping processes and operations, collecting and containing released waste, and removing or isolating containers.

(f) 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.

(g) Immediately after an emergency, the emergency coordinator shall provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

Comment: Unless the owner or operator 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, R315-263, and R315-265.

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

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

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

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

(1) Name, address, and telephone number of the owner or operator;

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

(3) Date, time, and type of incident, for example, fire, explosion;

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

(5) The extent of injuries, if any;

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

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

R315-265-70 Manifest System, Recordkeeping, and Reporting -Applicability

(a) The regulations in R315-265-70 through R315-265-77 apply to owners and operators of both on-site and off-site facilities, except as Section R315-265-1 provides otherwise. Sections R315-265-71, R315-265-72, and R315-265-76 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources.

R315-265-71 Manifest System, Recordkeeping, and Reporting -Use of Manifest System

(a)(1) If a facility receives hazardous waste accompanied by a manifest, the owner, operator or his/her agent shall sign and date the manifest as indicated in Subsection R315-265-71(a)(2) to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.

(2) If the facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator, or his agent shall:

(i) Sign and date, by hand, each copy of the manifest;

(ii) Note any discrepancies, as defined in Subsection R315-265-72(a), on each copy of the manifest;

(iii) Immediately give the transporter at least one copy of the manifest;

(iv) Within 30 days of delivery, send a copy, Page 2, of the manifest to the generator;

(v) Paper manifest submission requirements are:

(A) Options for compliance on June 30, 2018. Beginning on June 30, 2018, send the top copy, Page 1, of any paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing, or in lieu of submitting the paper copy to EPA, the owner or operator may transmit to the EPA system an image

file of Page 1 of the manifest and any continuation sheet, or both a data file and image file corresponding to Page 1 of the manifest and any continuation sheet, within 30 days of the date of delivery. Submissions of copies to the e-Manifest system shall be made at the mailing address or electronic mail/submission address specified at the e-Manifest program website's directory of services. Beginning on June 30, 2021, EPA will not accept mailed paper manifests from facilities for processing in e-Manifest.

(B) Options for compliance on June 30, 2021. Beginning on June 30, 2021, the requirement to submit the top copy, Page 1, of the paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing may be met by the owner or operator only by transmitting to the EPA system an image file of Page 1 of the manifest and any continuation sheet, or by transmitting to the EPA system both a data file and the image file corresponding to Page 1 of the manifest and any continuation sheet, within 30 days of the date of delivery. Submissions of copies to the e-Manifest system shall be made to the electronic mail/submission address specified at the e-Manifest program website's directory of services; and

(vi) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(3) The owner or operator of a facility that receives hazardous waste subject to Sections R315-262-80 through 265-84 from a foreign source shall:

(i) Additionally list the relevant consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest, matched to the relevant list number for the waste from block 9b. If additional space is needed, the owner or operator should use a Continuation Sheet(s), EPA Form 8700-22A; and

(ii) Send a copy of the manifest to EPA using the addresses listed in Subsection R315-262-82(e) within 30 days of delivery until the facility can submit such a copy to the e-Manifest system per Subsection R315-265-71(a)(2)(v).

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest, excluding the EPA identification numbers, generator's certification, and signatures, the owner or operator, or his agent, shall:

(1) Sign and date each copy of the manifest or shipping paper, if the manifest has not been received, to certify that the hazardous waste covered by the manifest or shipping paper was received;

(2) Note any significant discrepancies, as defined in Subsection R315-265-72(a), in the manifest or shipping paper, if the manifest has not been received, on each copy of the manifest or shipping paper;

Comment: The Director does not intend that the owner or operator of a facility whose procedures under Subsection R315-265-13(c) include waste analysis shall perform that analysis before signing the shipping paper and giving it to the transporter. Subsection R315-265-72(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.

(3) Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper, if the manifest has not been received;

(4) Within 30 days after the delivery, send a copy of the signed

and dated manifest or a signed and dated copy of the shipping paper, if the manifest has not been received within 30 days after delivery, to the generator; and

Comment: Subsection R315-262-23(c) requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by rail or water (bulk shipment).

(5) Retain at the facility a copy of the manifest and shipping paper, if signed in lieu of the manifest at the time of delivery, for at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility shall comply with the requirements of Rule R315-262. The provisions of Sections R315-262-15, R315-262-16, and R315-262-17 are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of Sections R315-262-15, R315-262-16, and R315-262-17 only apply to owners or operators who are shipping hazardous waste which they generated at that facility or operating as a large quantity generator consolidating hazardous waste from very small quantity generators under Subsection R315-262-17(f).

Comment: The provisions of Section R315-262-34 are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of Section R315-262-34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

(d) As per Subsection R315-262-84(d)(2)(xv), within three working days of the receipt of a shipment subject to Sections R315-262-80 through 262-84, the owner or operator of a facility shall provide a copy of the movement document bearing all required signatures to the foreign exporter; to the competent authorities of the countries of export and transit that control the shipment as an export and transit shipment of hazardous waste respectively; and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The original copy of the movement document shall be maintained at the facility for at least three years from the date of signature. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or Utah inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system, for which the owner or operator of a facility bears no responsibility.

(e) A facility shall determine whether the consignment state for a shipment regulates any additional wastes, beyond those regulated Federally, as hazardous wastes under its state hazardous waste program. Facilities shall also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to these states.

(f) Legal equivalence to paper manifests. Electronic manifests

that are obtained, completed, and transmitted in accordance with Subsection R315-262-20(a) (3), and used in accordance with this Section R315-265-71 in lieu of the paper manifest form are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

(1) Any requirement in these regulations for the owner or operator of a facility to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of Section R315-262-25.

(2) Any requirement in these regulations to give, provide, send, forward, or to return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person.

(3) Any requirement in these regulations for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the hazardous waste shipment.

(4) Any requirement in these regulations for an owner or operator to keep or retain a copy of each manifest is satisfied by the retention of the facility's electronic manifest copies in its account on the e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or Utah inspector.

(5) No owner or operator may be held liable for the inability to produce an electronic manifest for inspection under this Section R315-265-71 if the owner or operator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the EPA system for which the owner or operator bears no responsibility.

(g) An owner or operator may participate in the electronic manifest system either by accessing the electronic manifest system from the owner's or operator's electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the owner's or operator's site by the transporter who delivers the waste shipment to the facility

(h) Special procedures applicable to replacement manifests. If a facility receives hazardous waste that is accompanied by a paper replacement manifest for a manifest that was originated electronically, the following procedures apply to the delivery of the hazardous waste by the final transporter:

(1) Upon delivery of the hazardous waste to the designated facility, the owner or operator shall sign and date each copy of the paper replacement manifest by hand in Item 20, Designated Facility Certification of Receipt, and note any discrepancies in Item 18, Discrepancy Indication Space, of the replacement manifest,

(2) The owner or operator of the facility shall give back to the final transporter one copy of the paper replacement manifest,

(3) Within 30 days of delivery of the hazardous waste to the designated facility, the owner or operator of the facility shall send one signed and dated copy of the paper replacement manifest to the generator, and send an additional signed and dated copy of the paper replacement manifest to the EPA e-Manifest system, and

(4) The owner or operator of the facility shall retain at the facility one copy of the paper replacement manifest for at least three years from the date of delivery.

(i) Special procedures applicable to electronic signature methods undergoing tests. If an owner or operator using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the owner or operator shall also sign with an ink signature the facility's certification of receipt or discrepancies on the printed copy of the manifest provided by the transporter. Upon executing its ink signature on this printed copy, the owner or operator shall retain this original copy among its records for at least three years from the date of delivery of the waste.

(j) Imposition of user fee for electronic manifest use. (1) As prescribed in 40 CFR 265.1311, and determined in 40 CFR 265.1312, which are adopted and incorporated by reference, an owner or operator who is a user of the electronic manifest system shall be assessed a user fee by EPA for the submission and processing of each electronic and paper manifest. EPA shall update the schedule of user fees and publish them to the user community, as provided in 40 CFR 265.1313, which is adopted and incorporated by reference.

(2) An owner or operator subject to user fees under Section R315-265-71 shall make user fee payments in accordance with the requirements of 40 CFR 265.1314, subject to the informal fee dispute resolution process of 40 CFR 265.1316, and subject to the sanctions for delinquent payments under 40 CFR 265.1315, which are adopted and incorporated by reference.

(k) Electronic manifest signatures. (1) Electronic manifest signatures shall meet the criteria described in Section R315-262-25.

(1) Post-receipt manifest data corrections. After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person, for example, waste handler, shown on the manifest.

(1) Interested persons shall make all corrections to manifest data by electronic submission, either by directly entering corrected data to the web based service provided in e-Manifest for such corrections, or by an upload of a data file containing data corrections relating to one or more previously submitted manifests.

(2) Each correction submission shall include the following information:

(i) The Manifest Tracking Number and date of receipt by the facility of the original manifest(s) for which data are being corrected;

(ii) The Item Number(s) of the original manifest that is the subject of the submitted correction(s); and

(iii) For each Item Number with corrected data, the data previously entered and the corresponding data as corrected by the correction submission.

(3) Each correction submission shall include a statement that the person submitting the corrections certifies that to the best of his or her knowledge or belief, the corrections that are included in the submission will cause the information reported about the

previously received hazardous wastes to be true, accurate, and complete.

(i) The certification statement shall be executed with a valid electronic signature; and

(ii) A batch upload of data corrections may be submitted under one certification statement.

(4) Upon receipt by the system of any correction submission, other interested persons shown on the manifest will be provided electronic notice of the submitter's corrections.

(5) Other interested persons shown on the manifest may respond to the submitter's corrections with comments to the submitter, or by submitting another correction to the system, certified by the respondent as specified in Subsection R315-265-71(1)(3), and with notice of the corrections to other interested persons shown on the manifest.

R315-265-72 Manifest System, Recordkeeping, and Reporting - Manifest Discrepancies

(a) Manifest discrepancies are:

(1) Significant differences, as defined by Subsection R315-265-72(b), between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives;

(2) Rejected wastes, which may be a full or partial shipment of hazardous waste that the TSDF cannot accept; or

(3) Container residues, which are residues that exceed the quantity limits for "empty" containers set forth in Subsection R315-261-7(b).

(b) Significant differences in quantity are: For bulk waste, variations greater than 10 percent in weight; for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant differences in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(c) Upon discovering a significant difference in quantity or type, the owner or operator shall attempt to reconcile the discrepancy with the waste generator or transporter, for example, with telephone conversations. If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator shall immediately submit to the Director a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

(d) (1) Upon rejecting waste or identifying a container residue that exceeds the quantity limits for "empty" containers set forth in Subsection R315-261-7(b), the facility shall consult with the generator prior to forwarding the waste to another facility that can manage the waste. If it is impossible to locate an alternative facility that can receive the waste, the facility may return the rejected waste or residue to the generator. The facility shall send the waste to the alternative facility or to the generator within 60 days of the rejection or the container residue identification.

(2) While the facility is making arrangements for forwarding rejected wastes or residues to another facility under this Section R315-265-72, it shall ensure that either the delivering transporter

retains custody of the waste, or the facility shall provide for secure, temporary custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under Subsections R315-265-72(e) or (f).

(e) Except as provided in Subsection R315-265-72(e) (7), for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility is required to prepare a new manifest in accordance with Subsection R315-262-20(a) and the following instructions:

(1) Write the generator's U.S. EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space in Item 5.

(2) Write the name of the alternate designated facility and the facility's U.S. EPA ID number in the designated facility block, Item 8, of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest, Item 18a.

(5) Write the DOT description for the rejected load or the residue in Item 9, U.S. DOT Description, of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Offeror's Certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation.

(7) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility shall retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility shall use a new manifest and comply with Subsections R315-265-72(f) (1), (2), (3), (4), (5), (6), and (8).

(8) For full or partial load rejections and container residues contained in non-empty containers that are returned to the generator, the facility shall also comply with the exception reporting requirements in Subsection R315-262-42(a).

(g) If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for "empty" containers set forth in Subsection R315-261-7(b) after it has signed, dated, and returned a copy of the manifest to the delivering transporter or to the generator, the facility shall amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility shall also copy the manifest tracking number from Item 4 of the new manifest to the discrepancy space of the amended manifest, and shall re-sign and date the manifest to certify to the information as amended. The facility shall retain the amended manifest for at least three years from the date of

amendment, and shall within 30 days, send a copy of the amended manifest to the transporter and generator that received copies prior to their being amended.

R315-265-73 Manifest System, Recordkeeping, and Reporting - Operating Record

(a) The owner or operator shall keep a written operating record at his facility.

(b) The following information shall be recorded, as it becomes available, and maintained in the operating record for three years unless noted below:

(1) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as required by Appendix I to 40 CFR part 265, which is adopted and incorporated by reference. This information shall be maintained in the operating record until closure of the facility;

(2) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste shall be recorded on a map or diagram of each cell or disposal area. For all facilities, this information shall include cross-references to manifest document numbers if the waste was accompanied by a manifest. This information shall be maintained in the operating record until closure of the facility;

Comment: See Section R315-265-119, 40 CFR 265.279, and 40 CFR 265.309, which are adopted and incorporated by reference, for related requirements.

(3) Records and results of waste analysis, waste determinations, and trial tests performed as specified in Sections R315-265-13, R315-265-200, R315-265-225, R315-265-252, 40 CFR 265.273, 265.314, 265.341, 265.375, 265.402, 265.1034, 265.1063, 265.1084, which are adopted and incorporated by reference, Subsection R315-268-4(a), and Section R315-268-7.

(4) Summary reports and details of all incidents that require implementing the contingency plan as specified in Subsection R315-265-56(j);

(5) Records and results of inspections as required by Subsection R315-265-15(d), except these data need be kept only three years;

(6) Monitoring, testing or analytical data, and corrective action where required by Sections R315-265-90 through 265-94 and by Sections R315-265-19, R315-265-94, R315-265-191, R315-265-193, R315-265-195, R315-265-224, R315-265-226, R315-265-255, R315-265-260, 40 CFR 265.276, 265.278, 265.280(d) (1), 265.302, 265.304, 265.347, 265.377, 265.1034(c) through 265.1034(f), 265.1035, 265.1063(d) through 265.265.1063(i), 265.1064, and 265.1083 through 265.1090, which are adopted and incorporated by reference. Maintain in the operating record for three years, except for records and results pertaining to ground-water monitoring and cleanup, and response action plans for surface impoundments, waste piles, and landfills, which shall be maintained in the operating record until closure of the facility.

Comment: As required by Section R315-265-94, monitoring data at disposal facilities shall be kept throughout the post-closure period.

(7) All closure cost estimates under Section R315-265-142 and, for disposal facilities, all post-closure cost estimates under Section R315-265-144 shall be maintained in the operating record until closure of the facility.

(8) Records of the quantities, and date of placement, for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to Section R315-268-5, monitoring data required pursuant to a petition under Section R315-268-6, or a certification under Section R315-268-8, and the applicable notice required by a generator under Subsection R315-268-7(a). All of this information shall be maintained in the operating record until closure of the facility.

(9) For an off-site treatment facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator under Sections R315-268-7 or R315-268-8;

(10) For an on-site treatment facility, the information contained in the notice, except the manifest number, and the certification and demonstration if applicable, required by the generator or the owner or operator under Sections R315-268-7 or R315-268-8;

(11) For an off-site land disposal facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under Sections R315-268-7 or R315-268-8;

(12) For an on-site land disposal facility, the information contained in the notice, except the manifest number, and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under Sections R315-268-7 or R315-268-8.

(13) For an off-site storage facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator under Sections R315-268-7 or R315-268-8; and

(14) For an on-site storage facility, the information contained in the notice, except the manifest number, and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under Sections R315-268-7 or R315-268-8.

(15) Monitoring, testing or analytical data, and corrective action where required by Section R315-265-90, Subsections R315-265-93(d) (2), and R315-265-93(d) (5), and the certification as required by Subsection R315-265-196(f) shall be maintained in the operating record until closure of the facility.

R315-265-74 Manifest System, Recordkeeping, and Reporting - Availability, Retention, and Disposition of Records

(a) All records, including plans, required under Rule R315-265 shall be furnished upon request, and made available at all reasonable times for inspection, by any officer, employee, or representative of the Director.

(b) The retention period for all records required under Rule R315-265 is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the

Director.

(c) A copy of records of waste disposal locations and quantities under Subsection R315-265-73(b) (2) shall be submitted to the Director and local land authority upon closure of the facility, see Section R315-265-119.

R315-265-75 Manifest System, Recordkeeping, and Reporting - Biennial Report

The owner or operator shall complete and submit EPA Form 8700-13 A/B to the Director by March 1 of the following even numbered year and shall cover activities during the previous year.

R315-265-76 Manifest System, Recordkeeping, and Reporting - Unmanifested Waste Report

(a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described by Subsection R315-263-20(e), and if the waste is not excluded from the manifest requirement by Rules R315-260 through R315-266, R315-268, R315-270 or R315-273, then the owner or operator shall prepare and submit a letter to the Director within fifteen days after receiving the waste. The unmanifested waste report shall contain the following information:

(1) The EPA identification number, name and address of the facility;

(2) The date the facility received the waste;

(3) The EPA identification number, name and address of the generator and the transporter, if available;

(4) A description and the quantity of each unmanifested hazardous waste the facility received;

(5) The method of treatment, storage, or disposal for each hazardous waste;

(6) The certification signed by the owner or operator of the facility or his authorized representative; and

(7) A brief explanation of why the waste was unmanifested, if known.

R315-265-77 Manifest System, Recordkeeping, and Reporting - Additional Reports

In addition to submitting the biennial report and unmanifested waste reports described in Sections R315-265-75 and 265-76, the owner or operator shall also report to the Director:

(a) Releases, fires, and explosions as specified in Subsection R315-265-56(j);

(b) Ground-water contamination and monitoring data as specified in Sections R315-265-93 and R315-265-94; and

(c) Facility closure as specified in Section R315-265-115.

(d) As otherwise required by 40 CFR 265 Subparts AA, BB, and CC, which are adopted and incorporated by reference.

R315-265-90 Ground-Water Monitoring - Applicability

(a) Within one year after the effective date of these regulations, the owner or operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste shall

implement a ground-water monitoring program capable of determining the facility's impact on the quality of ground water in the uppermost aquifer underlying the facility, except as Section R315-265-1 and Subsection R315-265-90(c) provide otherwise.

(b) Except as Subsections R315-265-90(c) and (d) provide otherwise, the owner or operator shall install, operate, and maintain a ground-water monitoring system which meets the requirements of Section R315-265-91, and shall comply with Sections R315-265-92 through 265-94. This ground-water monitoring program shall be carried out during the active life of the facility, and for disposal facilities, during the post-closure care period as well.

(c) All or part of the ground-water monitoring requirements of Sections R315-265-90 through 265-94 may be waived if the owner or operator can demonstrate that there is a low potential for migration of hazardous waste or hazardous waste constituents from the facility via the uppermost aquifer to water supply wells, domestic, industrial, or agricultural, or to surface water. This demonstration shall be in writing, and shall be kept at the facility. This demonstration shall be certified by a qualified geologist or geotechnical engineer and shall establish the following:

(1) The potential for migration of hazardous waste or hazardous waste constituents from the facility to the uppermost aquifer, by an evaluation of:

(i) A water balance of precipitation, evapotranspiration, runoff, and infiltration; and

(ii) Unsaturated zone characteristics, i.e., geologic materials, physical properties, and depth to ground water; and

(2) The potential for hazardous waste or hazardous waste constituents which enter the uppermost aquifer to migrate to a water supply well or surface water, by an evaluation of:

(i) Saturated zone characteristics, i.e., geologic materials, physical properties, and rate of ground-water flow; and

(ii) The proximity of the facility to water supply wells or surface water.

(d) If an owner or operator assumes, or knows, that ground-water monitoring of indicator parameters in accordance with Sections R315-265-91 and 265-92 would show statistically significant increases, or decreases in the case of pH, when evaluated under Subsection R315-265-93(b), he may install, operate, and maintain an alternate ground-water monitoring system, other than the one described in Sections R315-265-91 and 265-92. If the owner or operator decides to use an alternate ground-water monitoring system he shall:

(1) Within one year after the effective date of these regulations, develop a specific plan, certified by a qualified geologist or geotechnical engineer, which satisfies the requirements of Subsection R315-265-93(d) (3), for an alternate ground-water monitoring system. This plan is to be placed in the facility's operating record and maintained until closure of the facility.

(2) Not later than one year after the effective date of these regulations, initiate the determinations specified in Subsection R315-265-93(d) (4);

(3) Prepare a report in accordance with Subsection R315-265-93(d) (5) and place it in the facility's operating record and maintain until closure of the facility.

(4) Continue to make the determinations specified in Subsection R315-265-93(d)(4) on a quarterly basis until final closure of the facility; and

(5) Comply with the recordkeeping and reporting requirements in Subsection R315-265-94(b).

(e) The ground-water monitoring requirements of this Sections R315-265-90 through 265-94 may be waived with respect to any surface impoundment that (1) Is used to neutralize wastes which are hazardous solely because they exhibit the corrosivity characteristic under Section R315-261-22 or are listed as hazardous wastes in Sections R315-261-30 through 261-35 only for this reason, and (2) contains no other hazardous wastes, if the owner or operator can demonstrate that there is no potential for migration of hazardous wastes from the impoundment. The demonstration shall establish, based upon consideration of the characteristics of the wastes and the impoundment, that the corrosive wastes will be neutralized to the extent that they no longer meet the corrosivity characteristic before they can migrate out of the impoundment. The demonstration shall be in writing and shall be certified by a qualified professional.

(f) The Director may replace all or part of the requirements of Sections R315-265-90 through 265-94 applying to a regulated unit, as defined in Section R315-264-90, with alternative requirements developed for groundwater monitoring set out in an approved closure or post-closure plan or in an enforceable document, as defined in Subsection R315-270-1(c)(7), where the Director determines that:

(1) A regulated unit is situated among solid waste management units, or areas of concern, a release has occurred, and both the regulated unit and one or more solid waste management unit(s), or areas of concern, are likely to have contributed to the release; and

(2) It is not necessary to apply the requirements of Sections R315-265-90 through 265-94 because the alternative requirements will protect human health and the environment. The alternative standards for the regulated unit shall meet the requirements of Subsection R315-264-101(a).

R315-265-91 Ground-Water Monitoring - Ground-Water Monitoring System

(a) A ground-water monitoring system shall be capable of yielding ground-water samples for analysis and shall consist of:

(1) Monitoring wells, at least one, installed hydraulically upgradient, i.e., in the direction of increasing static head, from the limit of the waste management area. Their number, locations, and depths shall be sufficient to yield ground-water samples that are:

(i) Representative of background ground-water quality in the uppermost aquifer near the facility; and

(ii) Not affected by the facility; and

(2) Monitoring wells, at least three, installed hydraulically downgradient, i.e., in the direction of decreasing static head, at the limit of the waste management area. Their number, locations, and depths shall ensure that they immediately detect any statistically significant amounts of hazardous waste or hazardous waste constituents that migrate from the waste management area to the uppermost aquifer.

(3) The facility owner or operator may demonstrate that an alternate hydraulically downgradient monitoring well location will

meet the criteria outlined below. The demonstration shall be in writing and kept at the facility. The demonstration shall be certified by a qualified ground-water scientist and establish that:

(i) An existing physical obstacle prevents monitoring well installation at the hydraulically downgradient limit of the waste management area; and

(ii) The selected alternate downgradient location is as close to the limit of the waste management area as practical; and

(iii) The location ensures detection that, given the alternate location, is as early as possible of any statistically significant amounts of hazardous waste or hazardous waste constituents that migrate from the waste management area to the uppermost aquifer.

(iv) Lateral expansion, new, or replacement units are not eligible for an alternate downgradient location under Section R315-265-91.

(b) Separate monitoring systems for each waste management component of a facility are not required provided that provisions for sampling upgradient and downgradient water quality will detect any discharge from the waste management area.

(1) In the case of a facility consisting of only one surface impoundment, landfill, or land treatment area, the waste management area is described by the waste boundary, perimeter.

(2) In the case of a facility consisting of more than one surface impoundment, landfill, or land treatment area, the waste management area is described by an imaginary boundary line which circumscribes the several waste management components.

(c) All monitoring wells shall be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing shall be screened or perforated, and packed with gravel or sand where necessary, to enable sample collection at depths where appropriate aquifer flow zones exist. The annular space, i.e., the space between the bore hole and well casing, above the sampling depth shall be sealed with a suitable material, for example, cement grout or bentonite slurry, to prevent contamination of samples and the ground water.

R315-265-92 Ground-Water Monitoring - Sampling and Analysis

(a) The owner or operator shall obtain and analyze samples from the installed ground-water monitoring system. The owner or operator shall develop and follow a ground-water sampling and analysis plan. He shall keep this plan at the facility. The plan shall include procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures; and

(4) Chain of custody control.

Comment: See "Procedures Manual For Ground-water Monitoring At Solid Waste Disposal Facilities," EPA-530/SW-611, August 1977 and "Methods for Chemical Analysis of Water and Wastes," EPA-600/4-79-020, March 1979 for discussions of sampling and analysis procedures.

(b) The owner or operator shall determine the concentration or value of the following parameters in ground-water samples in accordance with Subsections R315-265-92(c) and (d):

(1) Parameters characterizing the suitability of the ground water as a drinking water supply, as specified in Appendix III to 40 CFR

265, which is adopted and incorporated by reference.

(2) Parameters establishing ground-water quality:

(i) Chloride

(ii) Iron

(iii) Manganese

(iv) Phenols

(v) Sodium

(vi) Sulfate

Comment: These parameters are to be used as a basis for comparison in the event a ground-water quality assessment is required under Subsection R315-265-93(d).

(3) Parameters used as indicators of ground-water contamination:

(i) pH

(ii) Specific Conductance

(iii) Total Organic Carbon

(iv) Total Organic Halogen

(c) (1) For all monitoring wells, the owner or operator shall establish initial background concentrations or values of all parameters specified in Subsection R315-265-92(b). He shall do this quarterly for one year.

(2) For each of the indicator parameters specified in Subsection R315-265-92(b) (3), at least four replicate measurements shall be obtained for each sample and the initial background arithmetic mean and variance shall be determined by pooling the replicate measurements for the respective parameter concentrations or values in samples obtained from upgradient wells during the first year.

(d) After the first year, all monitoring wells shall be sampled and the samples analyzed with the following frequencies:

(1) Samples collected to establish ground-water quality shall be obtained and analyzed for the parameters specified in Subsection R315-265-92(b) (2) at least annually.

(2) Samples collected to indicate ground-water contamination shall be obtained and analyzed for the parameters specified in Subsection R315-265-92(b) (3) at least semi-annually.

(e) Elevation of the ground-water surface at each monitoring well shall be determined each time a sample is obtained.

R315-265-93 Ground-Water Monitoring - Preparation, Evaluation, and Response

(a) Within one year after the effective date of these regulations, the owner or operator shall prepare an outline of a ground-water quality assessment program. The outline shall describe a more comprehensive ground-water monitoring program, than that described in Sections R315-265-91 and 265-92, capable of determining:

(1) Whether hazardous waste or hazardous waste constituents have entered the ground water;

(2) The rate and extent of migration of hazardous waste or hazardous waste constituents in the ground water; and

(3) The concentrations of hazardous waste or hazardous waste constituents in the ground water.

(b) For each indicator parameter specified in Subsection R315-265-92(b) (3), the owner or operator shall calculate the arithmetic mean and variance, based on at least four replicate measurements on each sample, for each well monitored in accordance

with Subsection R315-265-92(d)(2), and compare these results with its initial background arithmetic mean. The comparison shall consider individually each of the wells in the monitoring system, and shall use the Student's t-test at the 0.01 level of significance, see Appendix IV to 40 CFR 265, which is adopted and incorporated by reference, to determine statistically significant increases, and decreases, in the case of pH, over initial background.

(c)(1) If the comparisons for the upgradient wells made under Subsection R315-265-93(b) show a significant increase, or pH decrease, the owner or operator shall submit this information in accordance with Subsection R315-265-94(a)(2)(ii).

(2) If the comparisons for downgradient wells made under Subsection R315-265-93(b) show a significant increase, or pH decrease, the owner or operator shall then immediately obtain additional ground-water samples from those downgradient wells where a significant difference was detected, split the samples in two, and obtain analyses of all additional samples to determine whether the significant difference was a result of laboratory error.

(d)(1) If the analyses performed under Subsection R315-265-93(c)(2) confirm the significant increase, or pH decrease, the owner or operator shall provide written notice to the Director—within seven days of the date of such confirmation—that the facility may be affecting ground-water quality.

(2) Within 15 days after the notification under Subsection R315-265-93(d)(1), the owner or operator shall develop a specific plan, based on the outline required under Subsection R315-265-93(a) and certified by a qualified geologist or geotechnical engineer, for a ground-water quality assessment at the facility. This plan shall be placed in the facility operating record and be maintained until closure of the facility.

(3) The plan to be submitted under Subsection R315-265-90(d)(1) or Subsection R315-265-93(d)(2) shall specify:

- (i) The number, location, and depth of wells;
- (ii) Sampling and analytical methods for those hazardous wastes or hazardous waste constituents in the facility;
- (iii) Evaluation procedures, including any use of previously-gathered ground-water quality information; and
- (iv) A schedule of implementation.

(4) The owner or operator shall implement the ground-water quality assessment plan which satisfies the requirements of Subsection R315-265-93(d)(3), and, at a minimum, determine:

- (i) The rate and extent of migration of the hazardous waste or hazardous waste constituents in the ground water; and
- (ii) The concentrations of the hazardous waste or hazardous waste constituents in the ground water.

(5) The owner or operator shall make his first determination under Subsection R315-265-93(d)(4), as soon as technically feasible, and prepare a report containing an assessment of ground-water quality. This report shall be placed in the facility operating record and be maintained until closure of the facility.

(6) If the owner or operator determines, based on the results of the first determination under Subsection R315-265-93(d)(4), that no hazardous waste or hazardous waste constituents from the facility have entered the ground water, then he may reinstate the indicator

evaluation program described in Section R315-265-92 and Subsection R315-265-93(b). If the owner or operator reinstates the indicator evaluation program, he shall so notify the Director in the report submitted under Subsection R315-265-93(d) (5).

(7) If the owner or operator determines, based on the first determination under Subsection R315-265-93(d) (4), that hazardous waste or hazardous waste constituents from the facility have entered the ground water, then he:

(i) Shall continue to make the determinations required under Subsection R315-265-93(d) (4) on a quarterly basis until final closure of the facility, if the ground-water quality assessment plan was implemented prior to final closure of the facility; or

(ii) May cease to make the determinations required under Subsection R315-265-93(d) (4), if the ground-water quality assessment plan was implemented during the post-closure care period.

(e) Notwithstanding any other provision of Sections R315-265-90 through R315-265-94, any ground-water quality assessment to satisfy the requirements of Subsection R315-265-93(d) (4) which is initiated prior to final closure of the facility shall be completed and reported in accordance with Subsection R315-265-93(d) (5).

(f) Unless the ground water is monitored to satisfy the requirements of Subsection R315-265-93(d) (4), at least annually the owner or operator shall evaluate the data on ground-water surface elevations obtained under Subsection R315-265-92(e) to determine whether the requirements under Subsection R315-265-91(a) for locating the monitoring wells continues to be satisfied. If the evaluation shows that Subsection R315-265-91(a) is no longer satisfied, the owner or operator shall immediately modify the number, location, or depth of the monitoring wells to bring the ground-water monitoring system into compliance with this requirement.

R315-265-94 Ground-Water Monitoring - Recordkeeping and Reporting

(a) Unless the ground water is monitored to satisfy the requirements of Subsection R315-265-93(d) (4), the owner or operator shall:

(1) Keep records of the analyses required in Subsections R315-265-92(c) and (d), the associated ground-water surface elevations required in Subsection R315-265-92(e), and the evaluations required in Subsection R315-265-93(b) throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well; and

(2) Report the following ground-water monitoring information to the Director:

(i) During the first year when initial background concentrations are being established for the facility: concentrations or values of the parameters listed in Subsection R315-265-92(b) (1) for each ground-water monitoring well within 15 days after completing each quarterly analysis. The owner or operator shall separately identify for each monitoring well any parameters whose concentration or value has been found to exceed the maximum contaminant levels listed in Appendix III to 40 CFR 265, which is adopted and incorporated by reference.

(ii) Annually: Concentrations or values of the parameters listed in Subsection R315-265-92(b) (3) for each ground-water monitoring

well, along with the required evaluations for these parameters under Subsection R315-265-93(b). The owner or operator shall separately identify any significant differences from initial background found in the upgradient wells, in accordance with Subsection R315-265-93(c)(1). During the active life of the facility, this information shall be submitted no later than March 1 following each calendar year.

(iii) No later than March 1 following each calendar year: Results of the evaluations of ground-water surface elevations under Subsection R315-265-93(f), and a description of the response to that evaluation, where applicable.

(b) If the ground water is monitored to satisfy the requirements of Subsection R315-265-93(d)(4), the owner or operator shall:

(1) Keep records of the analyses and evaluations specified in the plan, which satisfies the requirements of Subsection R315-265-93(d)(3), throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well; and

(2) Annually, until final closure of the facility, submit to the Director a report containing the results of his or her ground-water quality assessment program which includes, but is not limited to, the calculated, or measured, rate of migration of hazardous waste or hazardous waste constituents in the ground water during the reporting period. This information shall be submitted no later than March 1 following each calendar year.

R315-265-110 Closure and Post-Closure - Applicability

Except as Section R315-265-1 provides otherwise:

(a) Sections R315-265-111 through 265-115, which concern closure, apply to the owners and operators of all hazardous waste management facilities; and

(b) Sections R315-265-116 through R315-265-120, which concern post-closure care, apply to the owners and operators of:

(1) All hazardous waste disposal facilities;

(2) Waste piles and surface impoundments for which the owner or operator intends to remove the wastes at closure to the extent that these sections are made applicable to such facilities in Sections R315-265-228 or R315-265-258;

(3) Tank systems that are required under Section R315-265-197 to meet requirements for landfills; and

(4) Containment buildings that are required under 40 CFR 265.1102, which is adopted and incorporated by reference, to meet the requirement for landfills.

(c) Section R315-265-121 applies to owners and operators of units that are subject to the requirements of Subsection R315-270-1(c)(7) and are regulated under an enforceable document, as defined in Subsection R315-270-1(c)(7).

(d) The Director may replace all or part of the requirements of Sections R315-265-110 through 265-121, and the unit-specific standards in Subsection R315-265-111(c), applying to a regulated unit, as defined in Section R315-264-90, with alternative requirements for closure set out in an approved closure or post-closure plan, or in an enforceable document, as defined in Subsection R315-270-1(c)(7), where the Director determines that:

(1) A regulated unit is situated among solid waste management units, or areas of concern, a release has occurred, and both the regulated unit and one or more solid waste management unit(s), or areas of concern, are likely to have contributed to the release, and

(2) It is not necessary to apply the closure requirements of Sections R315-265-110 through 265-121, those referenced herein, or both, because the alternative requirements will protect human health and the environment, and will satisfy the closure performance standard of Subsections R315-265-111(a) and (b).

R315-265-111 Closure and Post-Closure - Closure Performance Standard

The owner or operator shall close the facility in a manner that:

(a) Minimizes the need for further maintenance, and

(b) Controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere, and

(c) Complies with the closure requirements of Sections R315-110 through 121, including, but not limited to, the requirements of Sections R315-265-197, R315-265-228, R315-265-258, and 40 CFR 265.280, 265.310, 265.351, 265.381, 265.404, and 265.1102, which are adopted and incorporated by reference.

R315-265-112 Closure and Post-Closure - Closure Plan; Amendment of Plan

a) Written plan. By May 19, 1981, or by six months after the effective date of the rule that first subjects a facility to provisions of Section R315-265-112, the owner or operator of a hazardous waste management facility shall have a written closure plan. Until final closure is completed and certified in accordance with Section R315-265-115, a copy of the most current plan shall be furnished to the Director upon request, including request by mail. In addition, for facilities without approved plans, it shall also be provided during site inspections, on the day of inspection, to any officer, employee, or representative of the Director who is duly designated by the Director.

(b) Content of plan. The plan shall identify steps necessary to perform partial, final, or both, closure of the facility at any point during its active life. The closure plan shall include, at least:

(1) A description of how each hazardous waste management unit at the facility will be closed in accordance with Section R315-265-111; and

(2) A description of how final closure of the facility will be conducted in accordance with Section R315-265-111. The description shall identify the maximum extent of the operation which will be unclosed during the active life of the facility; and

(3) An estimate of the maximum inventory of hazardous wastes ever on-site over the active life of the facility and a detailed description of the methods to be used during partial and final closure, including, but not limited to methods for removing, transporting, treating, storing or disposing of all hazardous waste, identification of and the type(s) of off-site hazardous waste management unit(s) to be used, if applicable; and

(4) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to satisfy the closure performance standard; and

(5) A detailed description of other activities necessary during the partial and final closure periods to ensure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, ground-water monitoring, leachate collection, and run-on and run-off control; and

(6) A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule shall include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure. For example, in the case of a landfill unit, estimates of the time required to treat or dispose of all hazardous waste inventory and of the time required to place a final cover shall be included.; and

(7) An estimate of the expected year of final closure for facilities that use trust funds to demonstrate financial assurance under Sections R315-265-143 or 265-145 and whose remaining operating life is less than twenty years, and for facilities without approved closure plans.

(8) For facilities where the Director has applied alternative requirements at a regulated unit under Subsections R315-265-90(f), R315-265-110(d), R315-265-140(d), or all three, either the alternative requirements applying to the regulated unit, or a reference to the enforceable document containing those alternative requirements.

(c) Amendment of plan. The owner or operator may amend the closure plan at any time prior to the notification of partial or final closure of the facility. An owner or operator with an approved closure plan shall submit a written request to the Director to authorize a change to the approved closure plan. The written request shall include a copy of the amended closure plan for approval by the Director.

(1) The owner or operator shall amend the closure plan whenever:

(i) Changes in operating plans or facility design affect the closure plan, or

(ii) There is a change in the expected year of closure, if applicable, or

(iii) In conducting partial or final closure activities, unexpected events require a modification of the closure plan.

(iv) The owner or operator requests the Director to apply alternative requirements to a regulated unit under Subsections R315-265-90(f), R315-265-110(d), R315-265-140(d), or all three.

(2) The owner or operator shall amend the closure plan at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator shall amend

the closure plan no later than 30 days after the unexpected event. These provisions also apply to owners or operators of surface impoundments and waste piles who intended to remove all hazardous wastes at closure, but are required to close as landfills in accordance with 40 CFR 265.310, which is adopted and incorporated by reference.

(3) An owner or operator with an approved closure plan shall submit the modified plan to the Director at least 60 days prior to the proposed change in facility design or operation, or no more than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event has occurred during the partial or final closure period, the owner or operator shall submit the modified plan no more than 30 days after the unexpected event. These provisions also apply to owners or operators of surface impoundments and waste piles who intended to remove all hazardous wastes at closure but are required to close as landfills in accordance with 40 CFR 265.310, which is adopted and incorporated by reference. If the amendment to the plan is a Class 2 or 3 modification according to the criteria in Section R315-270-42, the modification to the plan will be approved according to the procedures in Subsection R315-265-112(d) (4).

(4) The Director may request modifications to the plan under the conditions described in Subsection R315-265-112(c) (1). An owner or operator with an approved closure plan shall submit the modified plan within 60 days of the request from the Director, or within 30 days if the unexpected event occurs during partial or final closure. If the amendment is considered a Class 2 or 3 modification according to the criteria in Section R315-270-42, the modification to the plan will be approved in accordance with the procedures in Subsection R315-265-112(d) (4).

(d) Notification of partial closure and final closure. (1) The owner or operator shall submit the closure plan to the Director at least 180 days prior to the date on which he expects to begin closure of the first surface impoundment, waste pile, land treatment, or landfill unit, or final closure if it involves such a unit, whichever is earlier. The owner or operator shall submit the closure plan to the Director at least 45 days prior to the date on which he expects to begin partial or final closure of a boiler or industrial furnace. The owner or operator shall submit the closure plan to the Director at least 45 days prior to the date on which he expects to begin final closure of a facility with only tanks, container storage, or incinerator units. Owners or operators with approved closure plans shall notify the Director in writing at least 60 days prior to the date on which he expects to begin closure of a surface impoundment, waste pile, landfill, or land treatment unit, or final closure of a facility involving such a unit. Owners or operators with approved closure plans shall notify the Director in writing at least 45 days prior to the date on which he expects to begin partial or final closure of a boiler or industrial furnace. Owners or operators with approved closure plans shall notify the Director in writing at least 45 days prior to the date on which he expects to begin final closure of a facility with only tanks, container storage, or incinerator units.

(2) The date when he "expects to begin closure" shall be either:

(i) Within 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes,

or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous waste. If the owner or operator of a hazardous waste management unit can demonstrate to the Director that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all interim status requirements, the Director may approve an extension to this one-year limit; or

(ii) For units meeting the requirements of Subsection R315-265-113(d), no later than 30 days after the date on which the hazardous waste management unit receives the known final volume of nonhazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional nonhazardous wastes, no later than one year after the date on which the unit received the most recent volume of nonhazardous wastes. If the owner or operator can demonstrate to the Director that the hazardous waste management unit has the capacity to receive additional nonhazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements, the Director may approve an extension to this one-year limit.

(3) The owner or operator shall submit his closure plan to the Director no later than 15 days after:

(i) Termination of interim status except when a permit is issued simultaneously with termination of interim status; or

(ii) Issuance of a judicial decree or final order under section 3008 of RCRA to cease receiving hazardous wastes or close.

(4) The Director will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications to the plan no later than 30 days from the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a closure plan. The Director will give public notice of the hearing at least 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined. The Director will approve, modify, or disapprove the plan within 90 days of its receipt. If the Director does not approve the plan he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator shall modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The Director will approve or modify this plan in writing within 60 days. If the Director modifies the plan, this modified plan becomes the approved closure plan. The Director shall assure that the approved plan is consistent with Sections R315-265-111 through 265-115 and the applicable requirements of Sections R315-265-90 through 265-94, and Sections R315-265-197, R315-265-228, R315-265-258, and 40 CFR 265.280, 265.310, 265.351, 265.381, 265.404, and 265.1102, which are adopted and incorporated by reference. A copy of the modified plan with a detailed statement of reasons for the modifications shall be mailed to the owner or operator.

(e) Removal of wastes and decontamination or dismantling of equipment. Nothing in Section R315-265-112 shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

R315-265-113 Closure and Post-Closure - Closure; Time Allowed for Closure

(a) Within 90 days after receiving the final volume of hazardous wastes, or the final volume of nonhazardous wastes if the owner or operator complies with all applicable requirements in Subsections R315-265-113(d) and (e), at a hazardous waste management unit or facility, or within 90 days after approval of the closure plan, whichever is later, the owner or operator shall treat, remove from the unit or facility, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The Director may approve a longer period if the owner or operator demonstrates that:

(1)(i) The activities required to comply with this Subsection R315-265-113(a) will, of necessity, take longer than 90 days to complete; or

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or has the capacity to receive non-hazardous wastes if the facility owner or operator complies with Subsections R315-265-113(d) and (e); and

(B) There is a reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

(C) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(2) He has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements.

(b) The owner or operator shall complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes, or the final volume of nonhazardous wastes if the owner or operator complies with all applicable requirements in Subsections R315-265-113(d) and (e), at the hazardous waste management unit or facility, or 180 days after approval of the closure plan, if that is later. The Director may approve an extension to the closure period if the owner or operator demonstrates that:

(1)(i) The partial or final closure activities will, of necessity, take longer than 180 days to complete; or

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or has the capacity to receive non-hazardous wastes if the facility owner or operator complies with Subsections R315-265-113(d) and (e); and

(B) There is reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

(C) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(2) He has taken and will continue to take all steps to prevent

threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including compliance with all applicable interim status requirements.

(c) The demonstrations referred to in Subsections R315-265-113(a) (1) and (b) (1) shall be made as follows:

(1) The demonstrations in Subsection R315-265-113(a) (1) shall be made at least 30 days prior to the expiration of the 90-day period in Subsection R315-265-113(a); and

(2) The demonstration in Subsection R315-265-113(b) (1) shall be made at least 30 days prior to the expiration of the 180-day period in Subsection R315-265-113(b), unless the owner or operator is otherwise subject to the deadlines in Subsection R315-265-113(d).

(d) The Director may allow an owner or operator to receive non-hazardous wastes in a landfill, land treatment, or surface impoundment unit after the final receipt of hazardous wastes at that unit if:

1) The owner or operator submits an amended part B application, or a part B application, if not previously required, and demonstrates that:

(i) The unit has the existing design capacity as indicated on the part A application to receive non-hazardous wastes; and

(ii) There is a reasonable likelihood that the owner or operator or another person will receive non-hazardous wastes in the unit within one year after the final receipt of hazardous wastes; and

(iii) The non-hazardous wastes will not be incompatible with any remaining wastes in the unit or with the facility design and operating requirements of the unit or facility under Rule R315-265; and

(iv) Closure of the hazardous waste management unit would be incompatible with continued operation of the unit or facility; and

(v) The owner or operator is operating and will continue to operate in compliance with all applicable interim status requirements; and

(2) The part B application includes an amended waste analysis plan, ground-water monitoring and response program, human exposure assessment required under RCRA section 3019, and closure and post-closure plans, and updated cost estimates and demonstrations of financial assurance for closure and post-closure care as necessary and appropriate to reflect any changes due to the presence of hazardous constituents in the non-hazardous wastes, and changes in closure activities, including the expected year of closure if applicable under Subsection R315-265-112(b) (7), as a result of the receipt of non-hazardous wastes following the final receipt of hazardous wastes; and

(3) The part B application is amended, as necessary and appropriate, to account for the receipt of non-hazardous wastes following receipt of the final volume of hazardous wastes; and

(4) The part B application and the demonstrations referred to in Subsections R315-265-113(d) (1) and (d) (2) are submitted to the Director no later than 180 days prior to the date on which the owner or operator of the facility receives the known final volume of hazardous wastes, or no later than 90 days after the effective date of Rule R315-265, whichever is later.

(e) In addition to the requirements in Subsection

R315-265-113(d), an owner or operator of a hazardous waste surface impoundment that is not in compliance with the liner and leachate collection system requirements in 42 U.S.C. 3004(o) (1) and 3005(j) (1) or 42 U.S.C. 3004(o) (2) or (3) or 3005(j) (2), (3), (4) or (13) shall:

(1) Submit with the part B application:

(i) A contingent corrective measures plan; and

(ii) A plan for removing hazardous wastes in compliance with Subsection R315-265-113(e) (2); and

(2) Remove all hazardous wastes from the unit by removing all hazardous liquids and removing all hazardous sludges to the extent practicable without impairing the integrity of the liner(s), if any.

(3) Removal of hazardous wastes shall be completed no later than 90 days after the final receipt of hazardous wastes. The Director may approve an extension to this deadline if the owner or operator demonstrates that the removal of hazardous wastes will, of necessity, take longer than the allotted period to complete and that an extension will not pose a threat to human health and the environment.

(4) If a release that is a statistically significant increase, or decrease in the case of pH, in hazardous constituents over background levels is detected in accordance with the requirements in Sections R315-265-90 through 265-94, the owner or operator of the unit:

(i) Shall implement corrective measures in accordance with the approved contingent corrective measures plan required by Subsection R315-265-113(e) (1) no later than one year after detection of the release, or approval of the contingent corrective measures plan, whichever is later;

(ii) May receive wastes at the unit following detection of the release only if the approved corrective measures plan includes a demonstration that continued receipt of wastes will not impede corrective action; and

(iii) May be required by the Director to implement corrective measures in less than one year or to cease receipt of wastes until corrective measures have been implemented if necessary to protect human health and the environment.

(5) During the period of corrective action, the owner or operator shall provide annual reports to the Director describing the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

(6) The Director may require the owner or operator to commence closure of the unit if the owner or operator fails to implement corrective action measures in accordance with the approved contingent corrective measures plan within one year as required in Subsection R315-265-113(e) (4), or fails to make substantial progress in implementing corrective action and achieving the facility's background levels.

(7) If the owner or operator fails to implement corrective measures as required in Subsection R315-265-113(e) (4), or if the Director determines that substantial progress has not been made pursuant to Subsection R315-265-113(e) (6) he shall:

(i) Notify the owner or operator in writing that the owner or operator shall begin closure in accordance with the deadline in Subsections R315-265-113(a) and (b) and provide a detailed statement

of reasons for this determination, and

(ii) Provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the decision no later than 20 days after the date of the notice.

(iii) If the Director receives no written comments, the decision will become final five days after the close of the comment period. The Director will notify the owner or operator that the decision is final, and that a revised closure plan, if necessary, shall be submitted within 15 days of the final notice and that closure shall begin in accordance with the deadlines in Subsections R315-265-113(a) and (b).

(iv) If the Director receives written comments on the decision, he shall make a final decision within 30 days after the end of the comment period, and provide the owner or operator in writing and the public through a newspaper notice, a detailed statement of reasons for the final decision. If the Director determines that substantial progress has not been made, closure shall be initiated in accordance with the deadlines in Subsections R315-265-113(a) and (b).

(v) The final determinations made by the Director under Subsections R315-265-113(e) (7) (iii) and (iv) are not subject to administrative appeal.

R315-265-114 Closure and Post-Closure - Disposal or Decontamination of Equipment, Structures and Soils

During the partial and final closure periods, all contaminated equipment, structures and soil shall be properly disposed of, or decontaminated unless specified otherwise in Sections R315-265-197, 265-228, 265-258, or 40 CFR 265.280, or 265.310, which are adopted and incorporated by reference. By removing all hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and shall handle that hazardous waste in accordance with all applicable requirements of Rule R315-262.

R315-265-115 Closure and Post-Closure - Certification of Closure

Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of completion of final closure, the owner or operator shall submit to the Director, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification shall be signed by the owner or operator and by a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification shall be furnished to the Director upon request until he releases the owner or operator from the financial assurance requirements for closure under Subsection R315-265-143(h).

R315-265-116 Closure and Post-Closure - Survey Plat

No later than the submission of the certification of closure of each hazardous waste disposal unit, an owner or operator shall submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Director, a survey plat indicating the location and dimensions of landfill cells or other

hazardous waste disposal units with respect to permanently surveyed benchmarks. This plat shall be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use shall contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with the applicable regulations in Sections R315-265-110 through 265-121.

R315-265-117 Closure and Post-Closure - Post-Closure Care and Use of Property

(a) (1) Post-closure care for each hazardous waste management unit subject to the requirements of Sections R315-265-117 through 265-120 shall begin after completion of closure of the unit and continue for 30 years after that date. It shall consist of at least the following:

(i) Monitoring and reporting in accordance with the requirements of Sections R315-265-90 through 265-94, R315-265-220 through 265-231, R315-265-250 through 265-260, and subparts M, and N of 40 CFR 265, which are adopted and incorporated by reference; and

(ii) Maintenance and monitoring of waste containment systems in accordance with the requirements of Sections R315-265-90 through 265-94, R315-265-220 through 265-231, R315-265-250 through 265-260, and subparts M, and N of 40 CFR 265, which are adopted and incorporated by reference.

(2) Any time preceding closure of a hazardous waste management unit subject to post-closure care requirements or final closure, or any time during the post-closure period for a particular hazardous waste disposal unit, the Director may:

(i) Shorten the post-closure care period applicable to the hazardous waste management unit, or facility, if all disposal units have been closed, if he finds that the reduced period is sufficient to protect human health and the environment, for example, leachate or ground-water monitoring results, characteristics of the hazardous waste, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the hazardous waste management unit or facility is secure; or

(ii) Extend the post-closure care period applicable to the hazardous waste management unit or facility, if he finds that the extended period is necessary to protect human health and the environment, for example, leachate or ground-water monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment.

(b) The Director may require, at partial and final closure, continuation of any of the security requirements of Section R315-265-14 during part or all of the post-closure period when:

(1) Hazardous wastes may remain exposed after completion of partial or final closure; or

(2) Access by the public or domestic livestock may pose a hazard to human health.

(c) Post-closure use of property on or in which hazardous wastes remain after partial or final closure shall never be allowed to disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the facility's monitoring

systems, unless the Director finds that the disturbance:

(1) Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

(2) Is necessary to reduce a threat to human health or the environment.

(d) All post-closure care activities shall be in accordance with the provisions of the approved post-closure plan as specified in Section R315-265-118.

R315-265-118 Closure and Post-Closure - Post-Closure Plan; Amendment of Plan

(a) Written plan. By May 19, 1981, the owner or operator of a hazardous waste disposal unit shall have a written post-closure plan. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous wastes at closure shall prepare a post-closure plan and submit it to the Director within 90 days of the date that the owner or operator or Director determines that the hazardous waste management unit or facility shall be closed as a landfill, subject to the requirements of Sections R315-265-117 through 265-120.

(b) Until final closure of the facility, a copy of the most current post-closure plan shall be furnished to the Director upon request, including request by mail. In addition, for facilities without approved post-closure plans, it shall also be provided during site inspections, on the day of inspection, to any officer, employee or representative of the Director. After final closure has been certified, the person or office specified in Subsection R315-265-118(c) (3) shall keep the approved post-closure plan during the post-closure period.

(c) For each hazardous waste management unit subject to the requirements of this Section R315-265-118, the post-closure plan shall identify the activities that will be carried on after closure of each disposal unit and the frequency of these activities, and include at least:

(1) A description of the planned monitoring activities and frequencies at which they will be performed to comply with Sections R315-265-90 through 265-94, R315-265-220 through 265-231, R315-265-250 through 265-260, and subparts M, and N of 40 CFR 265, which are adopted and incorporated by reference, during the post-closure care period; and

(2) A description of the planned maintenance activities, and frequencies at which they will be performed, to ensure:

(i) The integrity of the cap and final cover or other containment systems in accordance with the requirements of Sections R315-265-90 through 265-94, R315-265-220 through 265-231, R315-265-250 through 265-260, and subparts M, and N of 40 CFR 265, which are adopted and incorporated by reference; and

(ii) The function of the monitoring equipment in accordance with the requirements of Sections R315-265-90 through 265-94, R315-265-220 through 265-231, R315-265-250 through 265-260, and subparts M, and N of 40 CFR 265, which are adopted and incorporated by reference; and

(3) The name, address, and phone number of the person or office to contact about the hazardous waste disposal unit or facility during

the post-closure care period.

(4) For facilities subject to Section R315-265-121, provisions that satisfy the requirements of Subsections R315-265-121(a) (1) and (3).

(5) For facilities where the Director has applied alternative requirements at a regulated unit under Subsections R315-265-90(f), R315-265-110(d), R315-265-140(d), or all three, either the alternative requirements that apply to the regulated unit, or a reference to the enforceable document containing those requirements.

(d) Amendment of plan. The owner or operator may amend the post-closure plan any time during the active life of the facility or during the post-closure care period. An owner or operator with an approved post-closure plan shall submit a written request to the Director to authorize a change to the approved plan. The written request shall include a copy of the amended post-closure plan for approval by the Director.

(1) The owner or operator shall amend the post-closure plan whenever:

(i) Changes in operating plans or facility design affect the post-closure plan, or

(ii) Events which occur during the active life of the facility, including partial and final closures, affect the post-closure plan.

(iii) The owner or operator requests the Director to apply alternative requirements to a regulated unit under Subsections R315-265.90(f), R315-265.110(d), R315-265.140(d) or all three.

(2) The owner or operator shall amend the post-closure plan at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the post-closure plan.

(3) An owner or operator with an approved post-closure plan shall submit the modified plan to the Director at least 60 days prior to the proposed change in facility design or operation, or no more than 60 days after an unexpected event has occurred which has affected the post-closure plan. If an owner or operator of a surface impoundment or a waste pile who intended to remove all hazardous wastes at closure in accordance with Subsections R315-265-228(b) or R315-265-258(a) is required to close as a landfill in accordance with 40 CFR 265.310, which is adopted and incorporated by reference, the owner or operator shall submit a post-closure plan within 90 days of the determination by the owner or operator or Director that the unit shall be closed as a landfill. If the amendment to the post-closure plan is a Class 2 or 3 modification according to the criteria in Section R315-270-42, the modification to the plan will be approved according to the procedures in Subsection R315-265-118(f).

(4) The Director may request modifications to the plan under the conditions described in Section R315-265-118(d) (1). An owner or operator with an approved post-closure plan shall submit the modified plan no later than 60 days of the request from the Director. If the amendment to the plan is considered a Class 2 or 3 modification according to the criteria in Section R315-270-42, the modifications to the post-closure plan will be approved in accordance with the procedures in Subsection R315-265-118(f). If the Director determines that an owner or operator of a surface impoundment or waste pile who intended to remove all hazardous wastes at closure shall close the

facility as a landfill, the owner or operator shall submit a post-closure plan for approval to the Director within 90 days of the determination.

(e) The owner or operator of a facility with hazardous waste management units subject to these requirements shall submit his post-closure plan to the Director at least 180 days before the date he expects to begin partial or final closure of the first hazardous waste disposal unit. The date he "expects to begin closure" of the first hazardous waste disposal unit shall be either within 30 days after the date on which the hazardous waste management unit receives the known final volume of hazardous waste or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous wastes. The owner or operator shall submit the post-closure plan to the Director no later than 15 days after:

(1) Termination of interim status, except when a permit is issued to the facility simultaneously with termination of interim status; or

(2) Issuance of a judicial decree or final orders under section 3008 of RCRA to cease receiving wastes or close.

(f) The Director will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the post-closure plan and request modifications to the plan no later than 30 days from the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a post-closure plan. The Director will give public notice of the hearing at least 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined. The Director will approve, modify, or disapprove the plan within 90 days of its receipt. If the Director does not approve the plan he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator shall modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The Director will approve or modify this plan in writing within 60 days. If the Director modifies the plan, this modified plan becomes the approved post-closure plan. The Director shall ensure that the approved post-closure plan is consistent with Sections R315-265-117 through 265-120. A copy of the modified plan with a detailed statement of reasons for the modifications shall be mailed to the owner or operator.

(g) The post-closure plan and length of the post-closure care period may be modified any time prior to the end of the post-closure care period in either of the following two ways:

(1) The owner or operator or any member of the public may petition the Director to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility based on cause, or alter the requirements of the post-closure care period based on cause.

(i) The petition shall include evidence demonstrating that:

(A) The secure nature of the hazardous waste management unit or facility makes the post-closure care requirement(s) unnecessary

or supports reduction of the post-closure care period specified in the current post-closure plan, for example, leachate or ground-water monitoring results, characteristics of the wastes, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the facility is secure, or

(B) The requested extension in the post-closure care period or alteration of post-closure care requirements is necessary to prevent threats to human health and the environment, e.g., leachate or ground-water monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment.

(ii) These petitions will be considered by the Director only when they present new and relevant information not previously considered by the Director. Whenever the Director is considering a petition, he will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the post-closure plan. The Director will give the public notice of the hearing at least 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments, and the two notices may be combined. After considering the comments, he will issue a final determination, based upon the criteria set forth in Subsection R315-265-118(g) (1).

(iii) If the Director denies the petition, he will send the petitioner a brief written response giving a reason for the denial.

(2) The Director may tentatively decide to modify the post-closure plan if he deems it necessary to prevent threats to human health and the environment. He may propose to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility based on cause or alter the requirements of the post-closure care period based on cause.

(i) The Director will provide the owner or operator and the affected public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice and the opportunity for a public hearing as in Subsection R315-265-118(g) (1) (ii). After considering the comments, he will issue a final determination.

(ii) The Director will base his final determination upon the same criteria as required for petitions under Subsection R315-265-118(g) (1) (i). A modification of the post-closure plan may include, where appropriate, the temporary suspension rather than permanent deletion of one or more post-closure care requirements. At the end of the specified period of suspension, the Director would then determine whether the requirement(s) should be permanently discontinued or reinstated to prevent threats to human health and the environment.

R315-265-119 Closure and Post-Closure - Post-Closure Notices

a) No later than 60 days after certification of closure of each hazardous waste disposal unit, the owner or operator shall submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Director, a record of the type,

location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator shall identify the type, location and quantity of the hazardous wastes to the best of his knowledge and in accordance with any records he has kept.

(b) Within 60 days of certification of closure of the first hazardous waste disposal unit and within 60 days of certification of closure of the last hazardous waste disposal unit, the owner or operator shall:

(1) Record, in accordance with Utah law, a notation on the deed to the facility property—or on some other instrument which is normally examined during title search—that will in perpetuity notify any potential purchaser of the property that:

(i) The land has been used to manage hazardous wastes; and

(ii) Its use is restricted under regulations in Sections R315-265-110 through 265-121; and

(iii) The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by Section R315-265-116 and Subsection R315-265-119(a) have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the Director; and

(2) Submit a certification signed by the owner or operator that he has recorded the notation specified in Subsection R315-265-119(b) (1) and a copy of the document in which the notation has been placed, to the Director.

(c) If the owner or operator or any subsequent owner of the land upon which a hazardous waste disposal unit was located wishes to remove hazardous wastes and hazardous waste residues, the liner, if any, and all contaminated structures, equipment, and soils, he shall request a modification to the approved post-closure plan in accordance with the requirements of Subsection R315-265-118(g). The owner or operator shall demonstrate that the removal of hazardous wastes will satisfy the criteria of Subsection R315-265-117(c). By removing hazardous waste, the owner or operator may become a generator of hazardous waste and shall manage it in accordance with all applicable requirements of Rules R315-260 through 266, R315-268, R315-270 and R315-273. If the owner or operator is granted approval to conduct the removal activities, the owner or operator may request that the Director approve either:

(1) The removal of the notation on the deed to the facility property or other instrument normally examined during title search, or

(2) The addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

R315-265-120 Closure and Post-Closure - Certification of Completion of Post-Closure Care

No later than 60 days after the completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator shall submit to the Director, by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the

specifications in the approved post-closure plan. The certification shall be signed by the owner or operator and a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification shall be furnished to the Director upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under Subsection R315-265-145(h).

R315-265-121 Closure and Post-Closure - Post-Closure Requirements for Facilities that Obtain Enforceable Documents in Lieu of Post-Closure Permits

(a) Owners and operators who are subject to the requirement to obtain a post-closure permit under Subsection R315-270-1(c), but who obtain enforceable documents in lieu of post-closure permits, as provided under Subsection R315-270-1(c)(7), shall comply with the following requirements:

(1) The requirements to submit information about the facility in Section R315-270-28;

(2) The requirements for facility-wide corrective action in Section R315-264-101;

(3) The requirements of Sections R315-264-91 through 264-100.

(b)(1) The Director, in issuing enforceable documents under Section R315-265-121 in lieu of permits, will assure a meaningful opportunity for public involvement which, at a minimum, includes public notice and opportunity for public comment:

(i) When the Director becomes involved in a remediation at the facility as a regulatory or enforcement matter;

(ii) On the proposed preferred remedy and the assumptions upon which the remedy is based, in particular those related to land use and site characterization; and

(iii) At the time of a proposed decision that remedial action is complete at the facility. These requirements shall be met before the Director may consider that the facility has met the requirements of Subsection R315-270-1(c)(7), unless the facility qualifies for a modification to these public involvement procedures under Subsections R315-265-121(b)(2) or (3).

(2) If the Director determines that even a short delay in the implementation of a remedy would adversely affect human health or the environment, the Director may delay compliance with the requirements of Subsection R315-265-121(b)(1) and implement the remedy immediately. However, the Director shall assure involvement of the public at the earliest opportunity, and, in all cases, upon making the decision that additional remedial action is not needed at the facility.

(3) The Director may allow a remediation initiated prior to October 22, 1998 to substitute for corrective action required under a post-closure permit even if the public involvement requirements of Subsection R315-265-121(b)(1) have not been met so long as the Director assures that notice and comment on the decision that no further remediation is necessary to protect human health and the environment takes place at the earliest reasonable opportunity after October 22, 1998.

R315-265-140 Financial Requirements - Applicability

(a) The requirements of Sections R315-265-142, R315-265-143,

R315-265-147 and R315-265-148 apply to owners or operators of all hazardous waste facilities, except as provided otherwise in this Section R315-265-140 or in Section R315-265-1.

(b) The requirements of Sections R315-265-144 and R315-265-145 apply only to owners and operators of:

(1) Disposal facilities;

(2) Tank systems that are required under Section R315-265-197 to meet the requirements for landfills; and

(3) Containment buildings that are required under 40 CFR 265.1102, which is adopted and incorporated by reference, to meet the requirements for landfills.

(c) States and the Federal government are exempt from the requirements of Sections R315-265-140 through 265-148.

(d) The Director may replace all or part of the requirements of Sections R315-265-140 through 265-148 applying to a regulated unit with alternative requirements for financial assurance set out in the permit or in an enforceable document, as defined in Subsection R315-270-1(c) (7), where the Director:

(1) Prescribes alternative requirements for the regulated unit under Subsection R315-265-90(f), Subsection R315-265-110(d), or both, and

(2) Determines that it is not necessary to apply the requirements of Sections R315-265-140 through 265-148 because the alternative financial assurance requirements will protect human health and the environment.

R315-265-141 Financial Requirements - Definitions of Terms as Used in Sections R315-265-140 through R315-265-148

(a) Closure plan means the plan for closure prepared in accordance with the requirements of Section R315-265-112.

(b) Current closure cost estimate means the most recent of the estimates prepared in accordance with Subsections R315-265-142(a), (b), and (c).

(c) Current post-closure cost estimate means the most recent of the estimates prepared in accordance with Subsections R315-265-144(a), (b), and (c).

(d) Parent corporation means a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(e) Post-closure plan means the plan for post-closure care prepared in accordance with the requirements of Sections R315-265-117 through 265-120.

(f) The following terms are used in the specifications for the financial tests for closure, post-closure care, and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.

Assets means all existing and all probable future economic benefits obtained or controlled by a particular entity.

Current assets means cash or other assets or resources commonly

identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

Current liabilities means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

Current plugging and abandonment cost estimate means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a), (b), and (c).

Independently audited refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

Liabilities means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

Net working capital means current assets minus current liabilities.

Net worth means total assets minus total liabilities and is equivalent to owner's equity.

Tangible net worth means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

(g) In the liability insurance requirements the terms bodily injury and property damage shall have the meanings given these terms by applicable Utah law. However, these terms do not include those liabilities which, consistent with standard industry practice, are excluded from coverage in liability policies for bodily injury and property damage. The Director intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

Accidental occurrence means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

Legal defense costs means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

Nonsudden accidental occurrence means an occurrence which takes place over time and involves continuous or repeated exposure.

Sudden accidental occurrence means an occurrence which is not continuous or repeated in nature.

(h) Substantial business relationship means the extent of a business relationship necessary under applicable Utah law to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the Director.

R315-265-142 Financial Requirements - Cost Estimate for Closure

(a) The owner or operator shall have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in Sections R315-265-111 through R315-265-115 and applicable closure requirements in Sections R315-265-197, R315-265-228, R315-265-258, and 40 CFR 265.280, 265.310, 265.351, 265.381, 265.404, and 265.1102, which are adopted and incorporated by reference.

(1) The estimate shall equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan, see Subsection R315-265-112(b); and

(2) The closure cost estimate shall be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. See definition of parent corporation in Subsection R315-265-141(d). The owner or operator may use costs for on-site disposal if he can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

(3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes if applicable under Subsection R315-265-113(d), facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(4) The owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes if applicable under Subsection R315-265-113(d), that might have economic value.

(b) During the active life of the facility, the owner or operator shall adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with Section R315-265-143. For owners and operators using the financial test or corporate guarantee, the closure cost estimate shall be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Director as specified in Subsection R315-265-143(e) (3). The adjustment may be made by recalculating the closure cost estimate in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified in Subsections R315-265-142(b) (1) and (2). The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator shall revise the closure cost estimate no later than 30 days after a revision has been made to the closure plan which increases the cost of closure. If the owner or operator has an approved closure plan, the closure cost estimate shall be revised no later than 30 days after the Director has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate shall be adjusted for inflation as specified in Subsection R315-265-142(b).

(d) The owner or operator shall keep the following at the facility during the operating life of the facility: The latest closure cost estimate prepared in accordance with Subsections R315-265-142(a) and (c) and, when this estimate has been adjusted in accordance with Subsection R315-265-142(b), the latest adjusted closure cost estimate.

R315-265-143 Financial Requirements - Financial Assurance for Closure

By the effective date of these regulations, an owner or operator of each facility shall establish financial assurance for closure of the facility. He shall choose from the options as specified in Subsections R315-265-143(a) through (e).

(a) Closure trust fund.

(1) An owner or operator may satisfy the requirements of Section R315-265-143 by establishing a closure trust fund which conforms to the requirements of Subsection R315-265-143(a) and submitting an originally signed duplicate of the trust agreement to the Director. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or Utah agency.

(2) The wording of the trust agreement shall be identical to the wording specified in Subsection R315-264-151(a)(1), and the trust agreement shall be accompanied by a formal certification of acknowledgment, for example, see Subsection R315-264-151(a)(2). Schedule A of the trust agreement shall be updated within 60 days after a change in the amount of the current closure cost estimate covered by the agreement.

(3) Payments into the trust fund shall be made annually by the owner or operator over the 20 years beginning with the effective date of these regulations or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period." The payments into the closure trust fund shall be made as follows:

(i) The first payment shall be made by the effective date of these regulations, except as provided in Subsection R315-265-143(a)(5). The first payment shall be at least equal to the current closure cost estimate, except as provided in Subsection R315-265-143(f), divided by the number of years in the pay-in period.

(ii) Subsequent payments shall be made no later than 30 days

after each anniversary date of the first payment. The amount of each subsequent payment shall be determined by this formula:

$$\text{Next payment} = (\text{CE} - \text{CV}) / \text{Y}$$

where CE is the current closure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the current closure cost estimate at the time the fund is established. However, he shall maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in Subsection R315-265-143(a) (3).

(5) If the owner or operator establishes a closure trust fund after having used one or more alternate mechanisms specified in Section R315-265-143, his first payment shall be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made as specified in Subsection R315-265-143(a) (3).

(6) After the pay-in period is completed, whenever the current closure cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in Section R315-265-143 to cover the difference.

(7) If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the Director for release of the amount in excess of the current closure cost estimate.

(8) If an owner or operator substitutes other financial assurance as specified in Section R315-265-143 for all or part of the trust fund, he may submit a written request to the Director for release of the amount in excess of the current closure cost estimate covered by the trust fund.

(9) Within 60 days after receiving a request from the owner or operator for release of funds as specified in Subsections R315-265-143(a) (7) or (8), the Director will instruct the trustee to release to the owner or operator such funds as the Director specifies in writing.

(10) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Director. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. No later than 60 days after receiving bills for partial or final closure activities, the Director will instruct the trustee to make reimbursements in those amounts as the Director specifies in writing,

if the Director determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Director has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with Subsection R315-265-143(h) that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Director does not instruct the trustee to make such reimbursements, he will provide to the owner or operator a detailed written statement of reasons.

(11) The Director will agree to termination of the trust when:

(i) An owner or operator substitutes alternate financial assurance as specified in Section R315-265-143; or

(ii) The Director releases the owner or operator from the requirements of Section R315-265-143 in accordance with Subsection R315-265-143(h).

(b) Surety bond guaranteeing payment into a closure trust fund.

(1) An owner or operator may satisfy the requirements of Section R315-265-143 by obtaining a surety bond which conforms to the requirements of this paragraph and submitting the bond to the Director. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond shall be identical to the wording specified in Subsection R315-264-151(b).

(3) The owner or operator who uses a surety bond to satisfy the requirements of Section R315-265-143 shall also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Director. This standby trust fund shall meet the requirements specified in Subsection R315-265-143(a), except that:

(i) An originally signed duplicate of the trust agreement shall be submitted to the Director with the surety bond; and

(ii) Until the standby trust fund is funded pursuant to the requirements of Section R315-265-143, the following are not required by these regulations:

(A) Payments into the trust fund as specified in Subsection R315-265-143(a);

(B) Updating of Schedule A of the trust agreement, see Subsection R315-264-151(a), to show current closure cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The bond shall guarantee that the owner or operator will:

(i) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Director becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

(iii) Provide alternate financial assurance as specified in

Section R315-265-143, and obtain the Director's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Director of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond shall be in an amount at least equal to the current closure cost estimate, except as provided in Subsection R315-265-143(f).

(7) Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, shall either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Director, or obtain other financial assurance as specified in Section R315-265-143 to cover the increase. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the Director.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Director, as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the Director has given prior written consent based on his receipt of evidence of alternate financial assurance as specified in Section R315-265-143.

(c) Closure letter of credit.

(1) An owner or operator may satisfy the requirements of Section R315-265-143 by obtaining an irrevocable standby letter of credit which conforms to the requirements of Subsection R315-265-143(c) and submitting the letter to the Director. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or Utah agency.

(2) The wording of the letter of credit shall be identical to the wording specified in Subsection R315-264-151(d).

(3) An owner or operator who uses a letter of credit to satisfy the requirements of Section R315-265-143 shall also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Director will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Director. This standby trust fund shall meet the requirements of the trust fund specified in Subsection R315-265-143(a), except that:

(i) An originally signed duplicate of the trust agreement shall be submitted to the Director with the letter of credit; and

(ii) Unless the standby trust fund is funded pursuant to the requirements of Section R315-265-143, the following are not required by these regulations:

(A) Payments into the trust fund as specified in Subsection R315-265-143(a);

(B) Updating of Schedule A of the trust agreement, see Subsection

R315-264-151(a), to show current closure cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The letter of credit shall be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: The EPA Identification Number, name, and address of the facility, and the amount of funds assured for closure of the facility by the letter of credit.

(5) The letter of credit shall be irrevocable and issued for a period of at least 1 year. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least 1 year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Director by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Director have received the notice, as evidenced by the return receipts.

(6) The letter of credit shall be issued in an amount at least equal to the current closure cost estimate, except as provided in Subsection R315-265-143(f).

(7) Whenever the current closure cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 60 days after the increase, shall either cause the amount of the credit to be increased so that it at least equals the current closure cost estimate and submit evidence of such increase to the Director, or obtain other financial assurance as specified in Section R315-265-143 to cover the increase. Whenever the current closure cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure cost estimate following written approval by the Director.

(8) Following a final administrative determination that the owner or operator has failed to perform final closure in accordance with the approved closure plan when required to do so, the Director may draw on the letter of credit.

(9) If the owner or operator does not establish alternate financial assurance as specified in Section R315-265-143 and obtain written approval of such alternate assurance from the Director within 90 days after receipt by both the owner or operator and the Director of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Director will draw on the letter of credit. The Director may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Director will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in Section R315-265-143 and obtain written approval of such assurance from the Director.

(10) The Director will return the letter of credit to the issuing institution for termination when:

(i) An owner or operator substitutes alternate financial assurance as specified in Section R315-265-143; or

(ii) The Director releases the owner or operator from the requirements of Section R315-265-143 in accordance with Subsection

R315-265-143(h).

(d) Closure insurance.

(1) An owner or operator may satisfy the requirements of Section R315-265-143 by obtaining closure insurance which conforms to the requirements of Subsection R315-265-143(d) and submitting a certificate of such insurance to the Director. By the effective date of these regulations the owner or operator shall submit to the Director a letter from an insurer stating that the insurer is considering issuance of closure insurance conforming to the requirements of this paragraph to the owner or operator. Within 90 days after the effective date of these regulations, the owner or operator shall submit the certificate of insurance to the Director or establish other financial assurance as specified in Section R315-265-143. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(2) The wording of the certificate of insurance shall be identical to the wording specified in Subsection R315-264-151(e).

(3) The closure insurance policy shall be issued for a face amount at least equal to the current closure cost estimate, except as provided in Subsection R315-265-143(f). The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) The closure insurance policy shall guarantee that funds will be available to close the facility whenever final closure occurs. The policy shall also guarantee that once final closure begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Director, to such party or parties as the Director specifies.

(5) After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursements for closure expenditures by submitting itemized bills to the Director. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure activities, the Director will instruct the insurer to make reimbursements in such amounts as the Director specifies in writing if the Director determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the Director has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with Subsection R315-265-143(h), that the owner or operator is no longer required to maintain financial assurance for final closure of the particular facility. If the Director does not instruct the insurer to make such reimbursements, he will provide to the owner or operator a detailed written statement of reasons.

(6) The owner or operator shall maintain the policy in full force and effect until the Director consents to termination of the policy by the owner or operator as specified in Subsection

R315-265-143(d) (10). Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, will constitute a significant violation of these regulations, warranting such remedy as the Director deems necessary. Such violation will be deemed to begin upon receipt by the Director of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(7) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(8) The policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Director. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Director and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

- (i) The Director deems the facility abandoned; or
- (ii) Interim status is terminated or revoked; or
- (iii) Closure is ordered by the Director or a U.S. district court or other court of competent jurisdiction; or
- (iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or
- (v) The premium due is paid.

(9) Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, shall either cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Director, or obtain other financial assurance as specified in Section R315-265-143 to cover the increase. Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the Director.

(10) The Director will give written consent to the owner or operator that he may terminate the insurance policy when:

- i) An owner or operator substitutes alternate financial assurance as specified in Section R315-265-143; or
 - (ii) The Director releases the owner or operator from the requirements of Section R315-265-143 in accordance with Subsection R315-265-143(h).
- (e) Financial test and corporate guarantee for closure.

(1) An owner or operator may satisfy the requirements of Section R315-265-143 by demonstrating that he passes a financial test as specified in Subsection R315-265-143(e). To pass this test the owner or operator shall meet the criteria of either Subsection

R315-265-143(e) (1) (i) or (ii):

(i) The owner or operator shall have:

(A) Two of the following three ratios: A ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(B) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

(C) Tangible net worth of at least \$10 million; and

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(ii) The owner or operator shall have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

(C) Tangible net worth of at least \$10 million; and

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and post-closure cost estimates" as used in Subsection R315-265-143(e) (1) refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer, for example see Subsection R315-264-151(f). The phrase "current plugging and abandonment cost estimates" as used in Subsection R315-265-143(e) (1) refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer, for example see 40 CFR 144.70(f).

(3) To demonstrate that he meets this test, the owner or operator shall submit the following items to the Director:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in Subsection R314-264-151(f); and

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(A) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(4) The owner or operator may obtain an extension of the time

allowed for submission of the documents specified in Subsection R315-265-143(e) (3) if the fiscal year of the owner or operator ends during the 90 days prior to the effective date of these regulations and if the year-end financial statements for that fiscal year will be audited by an independent certified public accountant. The extension will end no later than 90 days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer shall send, by the effective date of these regulations, a letter to the Director. This letter from the chief financial officer shall:

- (i) Request the extension;
- (ii) Certify that he has grounds to believe that the owner or operator meets the criteria of the financial test;
- (iii) Specify for each facility to be covered by the test the EPA Identification Number, name, address, and current closure and post-closure cost estimates to be covered by the test;
- (iv) Specify the date ending the owner's or operator's last complete fiscal year before the effective date of these regulations;
- (v) Specify the date, no later than 90 days after the end of such fiscal year, when he will submit the documents specified in Subsection R315-265-143(e) (3); and
- (vi) Certify that the year-end financial statements of the owner or operator for such fiscal year will be audited by an independent certified public accountant.

(5) After the initial submission of items specified in Subsection R315-265-143(e) (3), the owner or operator shall send updated information to the Director within 90 days after the close of each succeeding fiscal year. This information shall consist of all three items specified in Subsection R315-265-143(e) (3).

(6) If the owner or operator no longer meets the requirements of Subsection R315-265-143(e) (1), he shall send notice to the Director of intent to establish alternate financial assurance as specified in this section. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within 120 days after the end of such fiscal year.

(7) The Director may, based on a reasonable belief that the owner or operator may no longer meet the requirements of Subsection R315-265-143(e) (1), require reports of financial condition at any time from the owner or operator in addition to those specified in Subsection R315-265-143(e) (3). If the Director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of Subsection R315-265-143(e) (1), the owner or operator shall provide alternate financial assurance as specified in Section R315-265-143 within 30 days after notification of such a finding.

(8) The Director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements, see Subsection R315-265-143(e) (3) (ii). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Director will evaluate other qualifications on an individual basis. The owner or operator shall

provide alternate financial assurance as specified in this section within 30 days after notification of the disallowance.

(9) The owner or operator is no longer required to submit the items specified in Subsection R315-265-143(e) (3) when:

(i) An owner or operator substitutes alternate financial assurance as specified in Section R315-265-143; or

(ii) The Director releases the owner or operator from the requirements of Section R315-265-143 in accordance with Subsection R315-265-143(h).

(10) An owner or operator may meet the requirements of Section R315-265-143 by obtaining a written guarantee. The guarantor shall be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor shall meet the requirements for owners or operators in Subsections R315-265-143(e) (1) through (8) and shall comply with the terms of the guarantee. The wording of the guarantee shall be identical to the wording specified in Subsection R315-264-151(h). A certified copy of the guarantee shall accompany the items sent to the Director as specified in Subsection R315-265-143(e) (3). One of these items shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter shall describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee shall provide that:

(i) If the owner or operator fails to perform final closure of a facility covered by the corporate guarantee in accordance with the closure plan and other interim status requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in Subsection R315-265-143(a) in the name of the owner or operator.

(ii) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Director, as evidenced by the return receipts.

(iii) If the owner or operator fails to provide alternate financial assurance as specified in Section R315-265-143 and obtain the written approval of such alternate assurance from the Director within 90 days after receipt by both the owner or operator and the Director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

(f) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of Section R315-265-143 by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit, and insurance. The mechanisms shall be as specified in Subsections R315-265-143(a) through (d), respectively, except that it is the combination of mechanisms, rather than the single mechanism, which shall provide

financial assurance for an amount at least equal to the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Director may use any or all of the mechanisms to provide for closure of the facility.

(g) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in Section R315-265-143 to meet the requirements of Section R315-265-143 for more than one facility. Evidence of financial assurance submitted to the Director shall include a list showing, for each facility, the EPA Identification Number, name, address, and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanism shall be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure of any of the facilities covered by the mechanism, the Director may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(h) Release of the owner or operator from the requirements of Section R315-265-143. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Director will notify the owner or operator in writing that he is no longer required by Section R315-265-143 to maintain financial assurance for final closure of the facility, unless the Director has reason to believe that final closure has not been in accordance with the approved closure plan. The Director shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

R315-265-144 Financial Requirements - Cost Estimate for Post-Closure Care

(a) The owner or operator of a hazardous waste disposal unit shall have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in Sections R315-265-117 through R315-265-120, R315-265-228, R315-265-258, and 40 CFR 265.280 and 265.310, which are adopted and incorporated by reference.

(1) The post-closure cost estimate shall be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is a party who is neither a parent nor subsidiary of the owner or operator. See definition of parent corporation in Subsection R315-265-141(d).

(2) The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under Section R315-265-117.

(b) During the active life of the facility, the owner or operator shall adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the

financial instrument(s) used to comply with Section R315-265-145. For owners or operators using the financial test or corporate guarantee, the post-closure care cost estimate shall be updated for inflation no later than 30 days after the close of the firm's fiscal year and before submission of updated information to the Director as specified in Subsection R315-265-145(d)(5). The adjustment may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business as specified in Subsections R315-265-145(b)(1) and (2). The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator shall revise the post-closure cost estimate no later than 30 days after a revision to the post-closure plan which increases the cost of post-closure care. If the owner or operator has an approved post-closure plan, the post-closure cost estimate shall be revised no later than 30 days after the Director has approved the request to modify the plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate shall be adjusted for inflation as specified in Subsection R315-265-144(b).

(d) The owner or operator shall keep the following at the facility during the operating life of the facility: the latest post-closure cost estimate prepared in accordance with Subsections R315-265-144(a) and (c) and, when this estimate has been adjusted in accordance with Subsection R315-265-144(b), the latest adjusted post-closure cost estimate.

R315-265-145 Financial Requirements - Financial Assurance for Post-Closure Care

By the effective date of these regulations, an owner or operator of a facility with a hazardous waste disposal unit must establish financial assurance for post-closure care of the disposal unit(s).

(a) Post-closure trust fund.

(1) An owner or operator may satisfy the requirements of Section R315-265-145 by establishing a post-closure trust fund which conforms to the requirements of Subsection R315-265-145(a) and submitting an originally signed duplicate of the trust agreement to the Director. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or Utah agency.

(2) The wording of the trust agreement shall be identical to the wording specified in Subsection R315-264-151(a)(1), and the trust agreement shall be accompanied by a formal certification of acknowledgment, for example see Subsection R315-264-151(a)(2). Schedule A of the trust agreement shall be updated within 60 days after a change in the amount of the current post-closure cost estimate

covered by the agreement.

(3) Payments into the trust fund shall be made annually by the owner or operator over the 20 years beginning with the effective date of these regulations or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period." The payments into the post-closure trust fund shall be made as follows:

(i) The first payment shall be made by the effective date of these regulations, except as provided in Subsection R315-265-145(a) (5). The first payment shall be at least equal to the current post-closure cost estimate, except as provided in Subsection R315-265-145(f), divided by the number of years in the pay-in period.

(ii) Subsequent payments shall be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula:

$$\text{Next payment} = (\text{CE} - \text{CV}) / \text{Y}$$

where CE is the current post-closure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the current post-closure cost estimate at the time the fund is established. However, he shall maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in Subsection R315-265-145(a) (3).

(5) If the owner or operator establishes a post-closure trust fund after having used one or more alternate mechanisms specified in this section, his first payment shall be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made as specified in Subsection R315-265-145 (a) (3).

(6) After the pay-in period is completed, whenever the current post-closure cost estimate changes during the operating life of the facility, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate, or obtain other financial assurance as specified in Section R315-265-145 to cover the difference.

(7) During the operating life of the facility, if the value of the trust fund is greater than the total amount of the current post-closure cost estimate, the owner or operator may submit a written request to the Director for release of the amount in excess of the current post-closure cost estimate.

(8) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, he may submit a written request to the Director for release of the amount in excess of the current post-closure cost estimate covered by the trust fund.

(9) Within 60 days after receiving a request from the owner or

operator for release of funds as specified in Subsections R315-265-145(a) (7) or (8), the Director will instruct the trustee to release to the owner or operator such funds as the Director specifies in writing.

(10) During the period of post-closure care, the Director may approve a release of funds if the owner or operator demonstrates to the Director that the value of the trust fund exceeds the remaining cost of post-closure care.

(11) An owner or operator or any other person authorized to conduct post-closure care may request reimbursements for post-closure expenditures by submitting itemized bills to the Director. Within 60 days after receiving bills for post-closure care activities, the Director will instruct the trustee to make reimbursements in those amounts as the Director specifies in writing, if the Director determines that the post-closure expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Director does not instruct the trustee to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

(12) The Director will agree to termination of the trust when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The Director releases the owner or operator from the requirements of Section R315-265-145 in accordance with Subsection R315-265-145(h).

(b) Surety bond guaranteeing payment into a post-closure trust fund.

(1) An owner or operator may satisfy the requirements of Section R315-265-145 by obtaining a surety bond which conforms to the requirements of Subsection R315-265-145(b) and submitting the bond to the Director. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond must be identical to the wording specified in Subsection R315-264-151(b).

3) The owner or operator who uses a surety bond to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Director. This standby trust fund shall meet the requirements specified in Subsection R315-265-145(a), except that:

(i) An originally signed duplicate of the trust agreement shall be submitted to the Director with the surety bond; and

(ii) Until the standby trust fund is funded pursuant to the requirements of Section R315-265-145, the following are not required by these regulations:

(A) Payments into the trust fund as specified in Subsection R315-265-145(a);

(B) Updating of Schedule A of the trust agreement, see Subsection R315-264-151(a), to show current post-closure cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The bond shall guarantee that the owner or operator will:

(i) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Director becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

(iii) Provide alternate financial assurance as specified in Section R315-265-145, and obtain the Director's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Director of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond shall be in an amount at least equal to the current post-closure cost estimate, except as provided in Subsection R315-265-145(f).

(7) Whenever the current post-closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, shall either cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Director, or obtain other financial assurance as specified in Section R315-265-145 to cover the increase. Whenever the current post-closure cost estimate decreases, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the Director.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Director, as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the Director has given prior written consent based on his receipt of evidence of alternate financial assurance as specified in Section R315-265-145.

(c) Post-closure letter of credit.

(1) An owner or operator may satisfy the requirements of Section R315-265-145 by obtaining an irrevocable standby letter of credit which conforms to the requirements of Subsection R315-265-145(c) and submitting the letter to the Director. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or Utah agency.

(2) The wording of the letter of credit shall be identical to the wording specified in Subsection R315-264-151(d).

(3) An owner or operator who uses a letter of credit to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Director will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Director. This standby trust fund must meet the requirements

of the trust fund specified in Subsection R315-265-145(a), except that:

(i) An originally signed duplicate of the trust agreement shall be submitted to the Director with the letter of credit; and

(ii) Unless the standby trust fund is funded pursuant to the requirements of Section R315-265-145, the following are not required by these regulations:

(A) Payments into the trust fund as specified in Subsection R315-265-145(a);

(B) Updating of Schedule A of the trust agreement, see Subsection R315-264-151(a), to show current post-closure cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

4) The letter of credit shall be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: The EPA Identification Number, name, and address of the facility, and the amount of funds assured for post-closure care of the facility by the letter of credit.

(5) The letter of credit shall be irrevocable and issued for a period of at least one year. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Director by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Director have received the notice, as evidenced by the return receipts.

(6) The letter of credit shall be issued in an amount at least equal to the current post-closure cost estimate, except as provided in Subsection R315-265-145(f).

(7) Whenever the current post-closure cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility, the owner or operator, within 60 days after the increase, shall either cause the amount of the credit to be increased so that it at least equals the current post-closure cost estimate and submit evidence of such increase to the Director, or obtain other financial assurance as specified in Section R315-265-145 to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the amount of the credit may be reduced to the amount of the current post-closure cost estimate following written approval by the Director.

(8) During the period of post-closure care, the Director may approve a decrease in the amount of the letter of credit if the owner or operator demonstrates to the Director that the amount exceeds the remaining cost of post-closure care.

(9) Following a final administrative determination that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan and other permit requirements, the Director may draw on the letter of credit.

(10) If the owner or operator does not establish alternate financial assurance as specified in Section R315-265-145 and obtain written approval of such alternate assurance from the Director within

90 days after receipt by both the owner or operator and the Director of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Director will draw on the letter of credit. The Director may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Director will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in Section R315-265-145 and obtain written approval of such assurance from the Director.

(11) The Director will return the letter of credit to the issuing institution for termination when:

(i) An owner or operator substitutes alternate financial assurance as specified in Section R315-265-145; or

(ii) The Director releases the owner or operator from the requirements of Section R315-265-145 in accordance with Subsection R315-265-145 (h) .

(d) Post-closure insurance.

(1) An owner or operator may satisfy the requirements of Section R315-265-145 by obtaining post-closure insurance which conforms to the requirements of Subsection R315-265-145(d) and submitting a certificate of such insurance to the Director. By the effective date of these regulations the owner or operator shall submit to the Director a letter from an insurer stating that the insurer is considering issuance of post-closure insurance conforming to the requirements of Subsection R315-265-145(d) to the owner or operator. Within 90 days after the effective date of these regulations, the owner or operator shall submit the certificate of insurance to the Director or establish other financial assurance as specified in Section R315-265-145. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(2) The wording of the certificate of insurance shall be identical to the wording specified in Subsection R315-264-151(e) .

(3) The post-closure insurance policy shall be issued for a face amount at least equal to the current post-closure cost estimate, except as provided in Subsection R315-265-145(f) . The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) The post-closure insurance policy shall guarantee that funds will be available to provide post-closure care of the facility whenever the post-closure period begins. The policy shall also guarantee that once post-closure care begins the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Director, to such party or parties as the Director specifies.

(5) An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure care expenditures by submitting itemized bills to the Director. Within 60 days after receiving bills for post-closure care activities, the Director will instruct the insurer to make reimbursements in those amounts as the Director specifies in writing, if the Director

determines that the post-closure expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Director does not instruct the insurer to make such reimbursements, he will provide a detailed written statement of reasons.

(6) The owner or operator shall maintain the policy in full force and effect until the Director consents to termination of the policy by the owner or operator as specified in Subsection R315-265-145(d) (11). Failure to pay the premium, without substitution of alternate financial assurance as specified in the section, will constitute a significant violation of these regulations, warranting such remedy as the Director deems necessary. Such violation will be deemed to begin upon receipt by the Director of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(7) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(8) The policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Director. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Director and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

- (i) The Director deems the facility abandoned; or
- (ii) Interim status is terminated or revoked; or
- (iii) Closure is ordered by the Director or a U.S. district court or other court of competent jurisdiction; or
- (iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or
- (v) The premium due is paid.

(9) Whenever the current post-closure cost estimate increases to an amount greater than the face amount of the policy during the operating life of the facility, the owner or operator, within 60 days after the increase, shall either cause the face amount to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Director, or obtain other financial assurance as specified in Section R315-265-145 to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current post-closure cost estimate following written approval by the Director.

(10) Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase shall be equivalent to the face amounts of the policy, less any payments made,

multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.

(11) The Director will give written consent to the owner or operator that he may terminate the insurance policy when:

(i) An owner or operator substitutes alternate financial assurance as specified in Section R315-265-145; or

(ii) The Director releases the owner or operator from the requirements of Section R315-265-145 in accordance with Subsection R315-265-145(h).

(e) Financial test and corporate guarantee for post-closure care.

(1) An owner or operator may satisfy the requirements of Section R315-265-145 by demonstrating that he passes a financial test as specified in Subsection R315-265-145(e). To pass this test the owner or operator shall meet the criteria either of Subsections R315-265-145(e)(1)(i) or (ii):

(i) The owner or operator shall have:

(A) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(B) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

(C) Tangible net worth of at least \$10 million; and

(D) Assets in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(ii) The owner or operator shall have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

(C) Tangible net worth of at least \$10 million; and

(D) Assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and post-closure cost estimates" as used in Subsection R315-265-145(e)(1) refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer, for example see Subsection R315-264-151(f). The phrase "current plugging and abandonment cost estimates" as used in Subsection R315-265-145(e)(1) refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer, for example see 40 CFR 144.70(f).

(3) To demonstrate that he meets this test, the owner or operator shall submit the following items to the Director:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in Subsection R315-264-151(f); and

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(A) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(4) The owner or operator may obtain an extension of the time allowed for submission of the documents specified in Subsection R315-265-145(e) (3) if the fiscal year of the owner or operator ends during the 90 days prior to the effective date of these regulations and if the year-end financial statements for that fiscal year will be audited by an independent certified public accountant. The extension will end no later than 90 days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer shall send, by the effective date of these regulations, a letter to the Director. This letter from the chief financial officer shall:

(i) Request the extension;

(ii) Certify that he has grounds to believe that the owner or operator meets the criteria of the financial test;

(iii) Specify for each facility to be covered by the test the EPA Identification Number, name, address, and the current closure and post-closure cost estimates to be covered by the test;

(iv) Specify the date ending the owner's or operator's latest complete fiscal year before the effective date of these regulations;

(v) Specify the date, no later than 90 days after the end of such fiscal year, when he will submit the documents specified in Subsection R315-265-145(e) (3); and

(vi) Certify that the year-end financial statements of the owner or operator for such fiscal year will be audited by an independent certified public accountant.

(5) After the initial submission of items specified in Subsection R315-265-145(e) (3), the owner or operator shall send updated information to the Director within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in Subsection R315-265-145(e) (3).

(6) If the owner or operator no longer meets the requirements of Subsection R315-265-145 (e) (1), he shall send notice to the Director of intent to establish alternate financial assurance as specified in Section R315-265-145. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within 120 days after the end of such fiscal year.

(7) The Director may, based on a reasonable belief that the owner or operator may no longer meet the requirements of Subsection

R315-265-145(e) (1), require reports of financial condition at any time from the owner or operator in addition to those specified in Subsection R315-265-145(e) (3). If the Director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of Subsection R315-265-145(e) (1), the owner or operator shall provide alternate financial assurance as specified in Section R315-265-145 within 30 days after notification of such a finding.

(8) The Director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements, see Subsection R315-265-145(e) (3) (ii). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Director will evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in Section R315-265-145 within 30 days after notification of the disallowance.

(9) During the period of post-closure care, the Director may approve a decrease in the current post-closure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the Director that the amount of the cost estimate exceeds the remaining cost of post-closure care.

(10) The owner or operator is no longer required to submit the items specified in Subsection R315-265-145(e) (3) when:

(i) An owner or operator substitutes alternate financial assurance as specified in Section R315-265-145; or

(ii) The Director releases the owner or operator from the requirements of Section R315-265-145 in accordance with Subsection R315-265-145(h).

(11) An owner or operator may meet the requirements of Section R315-265-145 by obtaining a written guarantee. The guarantor shall be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor shall meet the requirements for owners or operators in Subsections R315-265-145(e) (1) through (9) and shall comply with the terms of the guarantee. The wording of the guarantee shall be identical to the wording specified in Subsection R315-264-151(h). A certified copy of the guarantee shall accompany the items sent to the Director as specified in Subsection R315-265-145(e) (3). One of these items shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter shall describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

(i) If the owner or operator fails to perform post-closure care of a facility covered by the corporate guarantee in accordance with the post-closure plan and other interim status requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in Subsection R315-265-145(a) in the name of the owner

or operator.

(ii) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Director, as evidenced by the return receipts.

(iii) If the owner or operator fails to provide alternate financial assurance as specified in Section R315-265-145 and obtain the written approval of such alternate assurance from the Director within 90 days after receipt by both the owner or operator and the Director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

(f) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of Section R315-265-145 by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit, and insurance. The mechanisms must be as specified in Subsections R315-265-145(a) through (d), respectively, of this section, except that it is the combination of mechanisms, rather than the single mechanism, which shall provide financial assurance for an amount at least equal to the current post-closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Director may use any or all of the mechanisms to provide for post-closure care of the facility.

(g) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in Section R315-265-145 to meet the requirements of Section R315-265-145 for more than one facility. Evidence of financial assurance submitted to the Director shall include a list showing, for each facility, the EPA Identification Number, name, address, and the amount of funds for post-closure care assured by the mechanism. The amount of funds available through the mechanism shall be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for post-closure care of any of the facilities covered by the mechanism, the Director may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(h) Release of the owner or operator from the requirements of Section R315-265-145. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that the post-closure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the Director will notify the owner or operator in writing that he is no longer required to maintain financial assurance for post-closure care of that unit, unless the Director has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The Director shall provide the owner or operator a detailed written statement of any such reason to believe that post-closure care has

not been in accordance with the approved post-closure plan.

R315-265-146 Financial Requirements - Use of a Mechanism for Financial Assurance of Both Closure and Post-Closure Care

An owner or operator may satisfy the requirements for financial assurance for both closure and post-closure care for one or more facilities by using a trust fund, surety bond, letter of credit, insurance, financial test, or corporate guarantee that meets the specifications for the mechanism in both Sections R315-265-143 and R315-265-145. The amount of funds available through the mechanism shall be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for financial assurance of closure and of post-closure care.

R315-265-147 Financial Requirements - Liability Requirements

(a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in Subsections R315-265-147(a) (1), (2), (3), (4), (5), or (6):

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in Subsection R315-265-147(a) (1).

(i) Each insurance policy shall be amended by attachment of the Hazardous Waste Facility Liability Endorsement, or evidenced by a Certificate of Liability Insurance. The wording of the endorsement shall be identical to the wording specified in Subsection R315-264-151(i). The wording of the certificate of insurance shall be identical to the wording specified in Subsection R315-264-151(j). The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of insurance to the Director. If requested by the Director, the owner or operator shall provide a signed duplicate original of the insurance policy.

(ii) Each insurance policy shall be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(2) An owner or operator may meet the requirements of Section R315-265-147 by passing a financial test or using the guarantee for liability coverage as specified in Subsections R315-265-147(f) and (g).

(3) An owner or operator may meet the requirements of Section R315-265-147 by obtaining a letter of credit for liability coverage as specified in Subsection R315-265-147(h).

(4) An owner or operator may meet the requirements of Section R315-265-147 by obtaining a surety bond for liability coverage as specified in Subsection R315-265-147(i).

(5) An owner or operator may meet the requirements of Section

R315-265-147 by obtaining a trust fund for liability coverage as specified in Subsection R315-265-147(j).

(6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated shall total at least the minimum amounts required by Section R315-265-147. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under Subsection R315-265-147(a)(6), the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

(7) An owner or operator shall notify the Director in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in Subsections R315-265-147(a)(1) through (a)(6); or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under Subsections R315-265-147(a)(1) through (a)(6); or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under Subsections R315-265-147(a)(1) through (a)(6).

(b) Coverage for nonsudden accidental occurrences. An owner or operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste, or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least \$3 million per occurrence with an annual aggregate of at least \$6 million, exclusive of legal defense costs. An owner or operator who must meet the requirements of Section R315-265-147 may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences shall maintain liability coverage in the amount of at least \$4 million per occurrence and \$8 million annual aggregate. This liability coverage may be demonstrated as specified in Subsections R315-265-147(b)(1), (2), (3), (4), (5), or (6):

(1) An owner or operator may demonstrate the required liability

coverage by having liability insurance as specified in Subsection R315-265-147(b) (1).

(i) Each insurance policy shall be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement shall be identical to the wording specified in Subsection R315-264-151(i). The wording of the certificate of insurance shall be identical to the wording specified in Subsection R315-264-151(j). The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of insurance to the Director. If requested by the Director, the owner or operator must provide a signed duplicate original of the insurance policy.

(ii) Each insurance policy shall be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(2) An owner or operator may meet the requirements of Section R315-265-147 by passing a financial test or using the guarantee for liability coverage as specified in Subsections R315-265-147(f) and (g).

(3) An owner or operator may meet the requirements of Section R315-265-147 by obtaining a letter of credit for liability coverage as specified in Subsection R315-265-147(h).

(4) An owner or operator may meet the requirements of Section R315-265-147 by obtaining a surety bond for liability coverage as specified in Subsection R315-265-147(i).

(5) An owner or operator may meet the requirements of Section R315-265-147 by obtaining a trust fund for liability coverage as specified in Subsection R315-265-147(j).

(6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated shall total at least the minimum amounts required by Section R315-265-147. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under Subsection R315-265-147(b), the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

(7) An owner or operator shall notify the Director in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in Subsections R315-265-147(b) (1) through (b) (6); or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under Subsections R315-265-147(b) (1) through (b) (6); or

(iii) A final court order establishing a judgment for bodily

injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under Subsections R315-265-147(b) (1) through (b) (6).

(c) Request for an exception. If an owner or operator can demonstrate to the satisfaction of the Director that the levels of financial responsibility required by Subsections R315-265-147(a) or (b) are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the owner or operator may obtain an exception from the Director. The request for an exception must be submitted in writing to the Director. If granted, the exception will take the form of an adjusted level of required liability coverage, such level to be based on the Director's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The Director may require an owner or operator who requests an exception to provide such technical and engineering information as is deemed necessary by the Director to determine a level of financial responsibility other than that required by Subsections R315-265-147(a) or (b). The Director will process an exception request as if it were a permit modification request under Subsection R315-270-41(a) (5) and subject to the procedures of Section R315-124-5. Notwithstanding any other provision, the Director may hold a public hearing at his discretion or whenever he finds, on the basis of requests for a public hearing, a significant degree of public interest in a tentative decision to grant an exception.

(d) Adjustments by the Director. If the Director determines that the levels of financial responsibility required by Subsections R315-265-147(a) or (b) are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the Director may adjust the level of financial responsibility required under Subsection R315-265-147(a) or (b) as may be necessary to protect human health and the environment. This adjusted level will be based on the Director's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the Director determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, landfill, or land treatment facility, he may require that an owner or operator of the facility comply with Subsection R315-265-147(b). An owner or operator shall furnish to the Director, within a reasonable time, any information which the Director requests to determine whether cause exists for such adjustments of level or type of coverage. The Director will process an adjustment of the level of required coverage as if it were a permit modification under Subsection R315-270-41(a) (5) and subject to the procedures of Section R315-124-5. Notwithstanding any other provision, the Director may hold a public hearing at his discretion or whenever he finds, on the basis of requests for a public hearing, a significant degree of public interest in a tentative decision to adjust the level or type of required coverage.

(e) Period of coverage. Within 60 days after receiving certifications from the owner or operator and a qualified Professional

Engineer that final closure has been completed in accordance with the approved closure plan, the Director will notify the owner or operator in writing that he is no longer required by Section R315-265-147 to maintain liability coverage for that facility, unless the Director has reason to believe that closure has not been in accordance with the approved closure plan.

(f) Financial test for liability coverage.

(1) An owner or operator may satisfy the requirements of Section R315-265-147 by demonstrating that he passes a financial test as specified in this Subsection R315-265-147(f). To pass this test the owner or operator shall meet the criteria of Subsections R315-265-147(f) (1) (i) or (ii):

(i) The owner or operator shall have:

(A) Net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test; and

(B) Tangible net worth of at least \$10 million; and

(C) Assets in the United States amounting to either: (1) At least 90 percent of his total assets; or (2) at least six times the amount of liability coverage to be demonstrated by this test.

(ii) The owner or operator shall have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth of at least \$10 million; and

(C) Tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

(D) Assets in the United States amounting to either: (1) At least 90 percent of his total assets; or (2) at least six times the amount of liability coverage to be demonstrated by this test.

(2) The phrase "amount of liability coverage" as used in Subsection R315-265-147(f) (1) refers to the annual aggregate amounts for which coverage is required under Subsections R315-265-147(a) and (b).

(3) To demonstrate that he meets this test, the owner or operator shall submit the following three items to the Director:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in Subsection R315-264-151(g). If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure care, as specified by Subsections R315-264-143(f), R315-264-145(f), R315-265-143(e), and R315-265-145(e), and liability coverage, he shall submit the letter specified in Subsection R315-264-151(g) to cover both forms of financial responsibility; a separate letter as specified in Subsection R315-264-151(f) is not required.

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(A) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(4) The owner or operator may obtain a one-time extension of the time allowed for submission of the documents specified in Subsection R315-265-147(f) (3) if the fiscal year of the owner or operator ends during the 90 days prior to the effective date of these regulations and if the year-end financial statements for that fiscal year will be audited by an independent certified public accountant. The extension will end no later than 90 days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer shall send, by the effective date of these regulations, a letter to the Director. This letter from the chief financial officer shall:

(i) Request the extension;

(ii) Certify that he has grounds to believe that the owner or operator meets the criteria of the financial test;

(iii) Specify for each facility to be covered by the test the EPA Identification Number, name, address, the amount of liability coverage and, when applicable, current closure and post-closure cost estimates to be covered by the test;

(iv) Specify the date ending the owner's or operator's last complete fiscal year before the effective date of these regulations;

(v) Specify the date, no later than 90 days after the end of such fiscal year, when he will submit the documents specified in Subsection R315-265-147(f) (3); and

(vi) Certify that the year-end financial statements of the owner or operator for such fiscal year will be audited by an independent certified public accountant.

(5) After the initial submission of items specified in Subsection R315-265-147(f) (3), the owner or operator shall send updated information to the Director within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in Subsection R315-265-147(f) (3).

(6) If the owner or operator no longer meets the requirements of Subsection R315-265-147(f) (1), he shall obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in Section R315-265-147. Evidence of liability coverage must be submitted to the Director within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

(7) The Director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements, see Subsection R315-265-147(f) (3) (ii). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Director will evaluate other qualifications on an individual basis. The owner or operator shall provide evidence of insurance for the entire amount of required liability coverage as specified in Section R315-265-147 within 30 days after notification of disallowance.

(g) Guarantee for liability coverage.

(1) Subject to Subsection R315-265-147(g) (2), an owner or

operator may meet the requirements of Section R315-265-147 by obtaining a written guarantee, hereinafter referred to as "guarantee." The guarantor shall be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor shall meet the requirements for owners or operators in Subsections R315-265-147(f) (1) through (f) (6). The wording of the guarantee must be identical to the wording specified in Subsection R315-264-151(h) (2). A certified copy of the guarantee shall accompany the items sent to the Director as specified in Subsection R315-265-147(f) (3). One of these items shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter shall describe this "substantial business relationship" and the value received in consideration of the guarantee.

(i) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences, or both as the case may be, arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage.

(2) (i) In the case of corporations incorporated in the United States, a guarantee may be used to satisfy the requirements of Section R315-265-147 only if the Attorneys General or Insurance Commissioners of (A) the State in which the guarantor is incorporated, and (B) Utah have submitted a written statement to the Director that a guarantee executed as described in Section R315-265-147 and Subsection R315-264-151(h) (2) is a legally valid and enforceable obligation in Utah.

(ii) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of Section R315-265-147 only if (A) the non-U.S. corporation has identified a registered agent for service of process in each Utah and in the State in which it has its principal place of business, and if (B) the Attorney General or Insurance Commissioner of each Utah and the State in which the guarantor corporation has its principal place of business, has submitted a written statement to the Director that a guarantee executed as described in Section R315-265-147 and Subsection R315-264-151(h) (2) is a legally valid and enforceable obligation in that Utah.

(h) Letter of credit for liability coverage.

(1) An owner or operator may satisfy the requirements of Section R315-265-147 by obtaining an irrevocable standby letter of credit that conforms to the requirements of Subsection R315-265-147(h) and submitting a copy of the letter of credit to the Director.

(2) The financial institution issuing the letter of credit shall be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or Utah agency.

(3) The wording of the letter of credit must be identical to the wording specified in Subsection R315-264-151(k).

(4) An owner or operator who uses a letter of credit to satisfy the requirements of Section R315-265-147 may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust will be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or Utah agency.

(5) The wording of the standby trust fund shall be identical to the wording specified in Subsection R315-264-151(n).

(i) Surety bond for liability coverage.

(1) An owner or operator may satisfy the requirements of Section R315-265-147 by obtaining a surety bond that conforms to the requirements of Subsection R315-265-147(i) and submitting a copy of the bond to the Director.

(2) The surety company issuing the bond must be among those listed as acceptable sureties on Federal bonds in the most recent Circular 570 of the U.S. Department of the Treasury.

(3) The wording of the surety bond must be identical to the wording specified in Subsection R315-264-151(l).

(4) A surety bond may be used to satisfy the requirements of Section R315-265-147 only if the Attorneys General or Insurance Commissioners of (i) the State in which the surety is incorporated, and (ii) Utah have submitted a written statement to the Director that a surety bond executed as described in Section R315-265-147 and Subsection R315-264-151(l) is a legally valid and enforceable obligation in Utah.

(j) Trust fund for liability coverage.

(1) An owner or operator may satisfy the requirements of Section R315-265-147 by establishing a trust fund that conforms to the requirements of Subsection R315-265-147(j) and submitting an originally signed duplicate of the trust agreement to the Director.

(2) The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or Utah agency.

(3) The trust fund for liability coverage shall be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of Section R315-265-147. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the Fund, shall either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in Section R315-265-147 to cover the difference. For purposes of Subsection R315-265-147(j), "the full amount of the liability coverage to be provided" means the amount of coverage for sudden occurrences, nonsudden occurrences, or both required to be provided by the owner or operator by Section R315-265-147, less the amount of financial assurance for liability coverage that is being provided by other financial assurance

mechanisms being used to demonstrate financial assurance by the owner or operator.

(4) The wording of the trust fund must be identical to the wording specified in Subsection R315-264-151(m).

R315-265-148 Financial Requirements - Incapacity of Owners or Operators, Guarantors, or Financial Institutions

(a) An owner or operator shall notify the Director by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11, Bankruptcy, U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in Subsections R315-265-143(e) and R315-265-145(e) shall make such a notification if he is named as debtor, as required under the terms of the corporate guarantee, see Subsection R315-264-151(h).

(b) An owner or operator who fulfills the requirements of Sections R315-265-143, R315-265-145, or R315-265-147 by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator shall establish other financial assurance or liability coverage within 60 days after such an event.

R315-265-170 Use and Management of Containers - Applicability

The regulations in this Sections R315-265-170 through 265-178 apply to owners and operators of all hazardous waste facilities that store containers of hazardous waste, except as Section R315-265-1 provides otherwise.

R315-265-171 Use and Management of Containers - Condition of Containers

If a container holding hazardous waste is not in good condition, or if it begins to leak, the owner or operator shall transfer the hazardous waste from this container to a container that is in good condition, or manage the waste in some other way that complies with the requirements of Rule R315-265.

R315-265-172 Use and Management of Containers - Compatibility of Waste with Container

The owner or operator shall use a container made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired.

R315-265-173 Use and Management of Containers - Management of Containers

(a) A container holding hazardous waste shall always be closed during storage, except when it is necessary to add or remove waste.

(b) A container holding hazardous waste shall not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

Comment: Re-use of containers in transportation is governed by U.S. Department of Transportation regulations, including those set forth in 49 CFR 173.28.

R315-265-174 Use and Management of Containers - Inspections

At least weekly, the owner or operator shall inspect areas where containers are stored. The owner or operator shall look for leaking containers and for deterioration of containers caused by corrosion or other factors. See Section R315-265-171 for remedial action required if deterioration or leaks are detected.

R315-265-176 Use and Management of Containers - Special Requirements for Ignitable or Reactive Waste

Containers holding ignitable or reactive waste shall be located at least 15 meters, 50 feet, from the facility's property line.

Comment: See Subsection R315-265-17(a) for additional requirements.

R315-265-177 Use and Management of Containers - Special Requirements for Incompatible Wastes

(a) Incompatible wastes, or incompatible wastes and materials, see 40 CFR 265 appendix V which is adopted and incorporated by reference for examples, shall not be placed in the same container, unless Subsection R315-265-17(b) is complied with.

(b) Hazardous waste shall not be placed in an unwashed container that previously held an incompatible waste or material, see 40 CFR 265 appendix V which is adopted and incorporated by reference for examples, unless Subsection R315-265-17(b) is complied with.

(c) A storage container holding a hazardous waste that is incompatible with any waste or other materials stored nearby in other containers, piles, open tanks, or surface impoundments shall be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

Comment: The purpose of this is to prevent fires, explosions, gaseous emissions, leaching, or other discharge of hazardous waste or hazardous waste constituents which could result from the mixing of incompatible wastes or materials if containers break or leak.

R315-265-178 Use and Management of Containers - Air Emission Standards

The owner or operator shall manage all hazardous waste placed in a container in accordance with the applicable requirements of subparts AA, BB, and CC of 40 CFR 265 which is adopted and incorporated by reference.

R315-265-190 Tank Systems - Applicability

The requirements of Sections R315-265-190 through 265-202 apply to owners and operators of facilities that use tank systems for storing or treating hazardous waste except as otherwise provided in Subsections R315-265-190(a), (b), and (c) or in Section R315-265-1.

(a) Tank systems that are used to store or treat hazardous waste which contains no free liquids and are situated inside a building with an impermeable floor are exempted from the requirements in Section R315-265-193. To demonstrate the absence or presence of free liquids

in the stored/treated waste, the following test must be used: Method 9095B, Paint Filter Liquids Test, as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in Section R315-260-11.

(b) Tank systems, including sumps, as defined in Section R315-260-10, that serve as part of a secondary containment system to collect or contain releases of hazardous wastes are exempted from the requirements in Subsection R315-265-193(a).

(c) Tanks, sumps, and other collection devices used in conjunction with drip pads, as defined in Section R315-260-10 and regulated under 40 CFR part 265 subpart W, which is adopted and incorporated by reference, must meet the requirements of Sections R315-265-190 through 265-202.

R315-265-191 Tank Systems - Assessment of Existing Tank System's Integrity

(a) For each existing tank system that does not have secondary containment meeting the requirements of Section R315-265-193, the owner or operator shall determine that the tank system is not leaking or is unfit for use. Except as provided in Subsection R315-265-191(c), the owner or operator shall obtain and keep on file at the facility a written assessment reviewed and certified by a qualified Professional Engineer in accordance with Subsection R315-270-11(d), that attests to the tank system's integrity by January 12, 1988.

(b) This assessment shall determine that the tank system is adequately designed and has sufficient structural strength and compatibility with the waste(s) to be stored or treated to ensure that it will not collapse, rupture, or fail. At a minimum, this assessment must consider the following:

(1) Design standard(s), if available, according to which the tank and ancillary equipment were constructed;

(2) Hazardous characteristics of the waste(s) that have been or will be handled;

(3) Existing corrosion protection measures;

(4) Documented age of the tank system, if available, otherwise, an estimate of the age; and

(5) Results of a leak test, internal inspection, or other tank integrity examination such that:

(i) For non-enterable underground tanks, this assessment shall consist of a leak test that is capable of taking into account the effects of temperature variations, tank end deflection, vapor pockets, and high water table effects,

(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment shall be either a leak test, as described above, or an internal inspection, or other tank integrity examination, or a combination of assessment mechanisms, certified by a qualified Professional Engineer in accordance with Subsection R315-270-11(d) that addresses cracks, leaks, corrosion, and erosion.

Note: The practices described in the American Petroleum Institute (API) Publication, Guide for Inspection of Refinery Equipment, Chapter XIII, "Atmospheric and Low-Pressure Storage Tanks," 4th edition, 1981, may be used, where applicable, as guidelines in conducting the integrity examination of an other than non-enterable underground tank system.

(c) Tank systems that store or treat materials that become hazardous wastes subsequent to July 14, 1986 shall conduct this assessment within 12 months after the date that the waste becomes a hazardous waste.

(d) If, as a result of the assessment conducted in accordance with Subsection R315-265-191(a), a tank system is found to be leaking or unfit for use, the owner or operator shall comply with the requirements of Section R315-265-196.

R315-265-192 Tank Systems - Design and Installation of New Tank Systems or Components

(a) Owners or operators of new tank systems or components shall ensure that the foundation, structural support, seams, connections, and pressure controls, if applicable, are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection so that it will not collapse, rupture, or fail. The owner or operator shall obtain a written assessment reviewed and certified by a qualified Professional Engineer in accordance with Subsection R315-270-11(d) attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment shall include the following information:

(1) Design standard(s) according to which the tank(s) and ancillary equipment is or will be constructed.

(2) Hazardous characteristics of the waste(s) to be handled.

(3) For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system is or will be in contact with the soil or with water, a determination by a corrosion expert of:

(i) Factors affecting the potential for corrosion, including but not limited to:

(A) Soil moisture content;

(B) Soil pH;

(C) Soil sulfides level;

(D) Soil resistivity;

(E) Structure to soil potential;

(F) Influence of nearby underground metal structures, for example, piping;

(G) Stray electric current; and,

(H) Existing corrosion-protection measures, for example, coating, cathodic protection, and

(ii) The type and degree of external corrosion protection that are needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one or more of the following:

(A) Corrosion-resistant materials of construction such as special alloys or fiberglass-reinforced plastic;

(B) Corrosion-resistant coating, such as epoxy or fiberglass, with cathodic protection, for example, impressed current or sacrificial anodes; and

(C) Electrical isolation devices such as insulating joints and flanges.

Note: The practices described in the National Association of Corrosion Engineers (NACE) standard, "Recommended Practice

(RP-02-85)–Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems,” and the American Petroleum Institute (API) Publication 1632, “Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems,” may be used, where applicable, as guidelines in providing corrosion protection for tank systems.

4) For underground tank system components that are likely to be affected by vehicular traffic, a determination of design or operational measures that will protect the tank system against potential damage; and

(5) Design considerations to ensure that:

(i) Tank foundations will maintain the load of a full tank;

(ii) Tank systems will be anchored to prevent flotation or dislodgement where the tank system is placed in a saturated zone, or is located within a seismic fault zone; and

(iii) Tank systems will withstand the effects of frost heave.

(b) The owner or operator of a new tank system shall ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified installation inspector or a qualified Professional Engineer, either of whom is trained and experienced in the proper installation of tank systems, shall inspect the system or component for the presence of any of the following items:

(1) Weld breaks;

(2) Punctures;

(3) Scrapes of protective coatings;

(4) Cracks;

(5) Corrosion;

(6) Other structural damage or inadequate construction or installation.

All discrepancies shall be remedied before the tank system is covered, enclosed, or placed in use.

(c) New tank systems or components and piping that are placed underground and that are backfilled shall be provided with a backfill material that is a noncorrosive, porous, homogeneous substance and that is carefully installed so that the backfill is placed completely around the tank and compacted to ensure that the tank and piping are fully and uniformly supported.

(d) All new tanks and ancillary equipment shall be tested for tightness prior to being covered, enclosed or placed in use. If a tank system is found not to be tight, all repairs necessary to remedy the leak(s) in the system shall be performed prior to the tank system being covered, enclosed, or placed in use.

(e) Ancillary equipment shall be supported and protected against physical damage and excessive stress due to settlement, vibration, expansion or contraction.

Note: The piping system installation procedures described in American Petroleum Institute (API) Publication 1615 (November 1979), “Installation of Underground Petroleum Storage Systems,” or ANSI Standard B31.3, “Petroleum Refinery System,” may be used, where applicable, as guidelines for proper installation of piping systems.

(f) The owner or operator shall provide the type and degree of corrosion protection necessary, based on the information provided

under Subsection R315-265-192(a)(3), to ensure the integrity of the tank system during use of the tank system. The installation of a corrosion protection system that is field fabricated shall be supervised by an independent corrosion expert to ensure proper installation.

(g) The owner or operator shall obtain and keep on file at the facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements of Subsections R315-265-192(b) through (f) to attest that the tank system was properly designed and installed and that repairs, pursuant to Subsections R315-265-192(b) and (d) were performed. These written statements shall also include the certification statement as required in Subsection R315-270-11(d).

R315-265-193 Tank Systems - Containment and Detection of Releases

(a) In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of Section R315-265-193 shall be provided, except as provided in Subsections R315-265-193(f) and (g):

(1) For all new and existing tank systems or components, prior to their being put into service.

(2) For tank systems that store or treat materials that become hazardous wastes, within 2 years of the hazardous waste listing, or when the tank system has reached 15 years of age, whichever comes later.

(b) Secondary containment systems shall be:

(1) Designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, ground water, or surface water at any time during the use of the tank system; and

(2) Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

(c) To meet the requirements of Subsection R315-265-193(b), secondary containment systems shall be at a minimum:

(1) Constructed of or lined with materials that are compatible with the waste(s) to be placed in the tank system and shall have sufficient strength and thickness to prevent failure due to pressure gradients, including static head and external hydrological forces, physical contact with the waste to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation, including stresses from nearby vehicular traffic;

(2) Placed on a foundation or base capable of providing support to the secondary containment system and resistance to pressure gradients above and below the system and capable of preventing failure due to settlement, compression, or uplift;

(3) Provided with a leak detection system that is designed and operated so that it will detect the failure of either the primary and secondary containment structure or any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours, or at the earliest practicable time if the existing detection technology or site conditions will not allow detection of a release within 24 hours;

(4) Sloped or otherwise designed or operated to drain and remove

liquids resulting from leaks, spills, or precipitation. Spilled or leaked waste and accumulated precipitation shall be removed from the secondary containment system within 24 hours, or in as timely a manner as is possible to prevent harm to human health or the environment, if removal of the released waste or accumulated precipitation cannot be accomplished within 24 hours.

Note: If the collected material is a hazardous waste under Rule R315-261, it is subject to management as a hazardous waste in accordance with all applicable requirements of Rules R315-262 through R315-265. If the collected material is discharged through a point source to waters of the United States, it is subject to the requirements of sections 301, 304, and 402 of the Clean Water Act, as amended. If discharged to Publicly Owned Treatment Works (POTWs), it is subject to the requirements of section 307 of the Clear Water Act, as amended. If the collected material is released to the environment, it may be subject to the reporting requirements of 40 CFR part 302.

(d) Secondary containment for tanks shall include one or more of the following devices:

- (1) A liner, external to the tank;
- (2) A vault;
- (3) A double-walled tank; or
- (4) An equivalent device as approved by the Director.

(e) In addition to the requirements of Subsections R315-265-193(b), (c), and (d), secondary containment systems shall satisfy the following requirements:

(1) External liner systems must be:

(i) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

(ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity shall be sufficient to contain precipitation from a 25-year, 24-hour rainfall event;

(iii) Free of cracks or gaps; and

(iv) Designed and installed to completely surround the tank and to cover all surrounding earth likely to come into contact with the waste if released from the tank(s), for example, capable of preventing lateral as well as vertical migration of the waste.

(2) Vault systems shall be:

(i) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

(ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event;

(iii) Constructed with chemical-resistant water stops in place at all joints, if any;

(iv) Provided with an impermeable interior coating or lining that is compatible with the stored waste and that will prevent migration of waste into the concrete;

(v) Provided with a means to protect against the formation of and ignition of vapors within the vault, if the waste being stored

or treated:

(A) Meets the definition of ignitable waste under Section R315-261-21, or

(B) Meets the definition of reactive waste under Section R315-261-23 and may form an ignitable or explosive vapor; and

(vi) Provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

(3) Double-walled tanks shall be:

(i) Designed as an integral structure, for example, an inner tank within an outer shell, so that any release from the inner tank is contained by the outer shell;

(ii) Protected, if constructed of metal, from both corrosion of the primary tank interior and the external surface of the outer shell; and

(iii) Provided with a built-in, continuous leak detection system capable of detecting a release within 24 hours or at the earliest practicable time, if the owner or operator can demonstrate to the Director, and the Director concurs, that the existing leak detection technology or site conditions will not allow detection of a release within 24 hours.

Note: The provisions outlined in the Steel Tank Institute's (STI) "Standard for Dual Wall Underground Steel Storage Tank" may be used as guidelines for aspects of the design of underground steel double-walled tanks.

(f) Ancillary equipment shall be provided with full secondary containment, for example, trench, jacketing, double-walled piping, that meets the requirements of Subsections R315-265-193(b) and (c) except for:

(1) Aboveground piping, exclusive of flanges, joints, valves, and connections, that are visually inspected for leaks on a daily basis;

(2) Welded flanges, welded joints, and welded connections that are visually inspected for leaks on a daily basis;

(3) Sealless or magnetic coupling pumps and sealless valves, that are visually inspected for leaks on a daily basis; and

(4) Pressurized aboveground piping systems with automatic shut-off devices, for example, excess flow check valves, flow metering shutdown devices, loss of pressure actuated shut-off devices, that are visually inspected for leaks on a daily basis.

(g) The owner or operator may obtain an exception from the requirements of Section R315-265-193 if the Director finds, as a result of a demonstration by the owner or operator, either: that alternative design and operating practices, together with location characteristics, will prevent the migration of hazardous waste or hazardous constituents into the ground water or surface water at least as effectively as secondary containment during the active life of the tank system or that in the event of a release that does migrate to ground water or surface water, no substantial present or potential hazard will be posed to human health or the environment. New underground tank systems may not, per a demonstration in accordance with Subsection R315-265-193(g) (2), be exempted from the secondary containment requirements of Section R315-265-193. Application for

an exception as allowed in Subsection R315-265-193(g) does not waive compliance with the requirements of Sections R315-265-190 through R315-265-202 for new tank systems.

(1) In deciding whether to grant an exception based on a demonstration of equivalent protection of ground water and surface water, the Director will consider:

- (i) The nature and quantity of the waste;
- (ii) The proposed alternate design and operation;
- (iii) The hydrogeologic setting of the facility, including the thickness of soils between the tank system and ground water; and
- (iv) All other factors that would influence the quality and mobility of the hazardous constituents and the potential for them to migrate to ground water or surface water.

(2) In deciding whether to grant an exception, based on a demonstration of no substantial present or potential hazard, the Director will consider:

- (i) The potential adverse effects on ground water, surface water, and land quality taking into account:
 - (A) The physical and chemical characteristics of the waste in the tank system, including its potential for migration,
 - (B) The hydrogeological characteristics of the facility and surrounding land,
 - (C) The potential for health risks caused by human exposure to waste constituents,
 - (D) The potential for damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents, and
 - (E) The persistence and permanence of the potential adverse effects;
- (ii) The potential adverse effects of a release on ground-water quality, taking into account:
 - (A) The quantity and quality of ground water and the direction of ground-water flow,
 - (B) The proximity and withdrawal rates of water in the area,
 - (C) The current and future uses of ground water in the area, and
 - (D) The existing quality of ground water, including other sources of contamination and their cumulative impact on the ground-water quality;
- (iii) The potential adverse effects of a release on surface water quality, taking into account:
 - (A) The quantity and quality of ground water and the direction of ground-water flow,
 - (B) The patterns of rainfall in the region,
 - (C) The proximity of the tank system to surface waters,
 - (D) The current and future uses of surface waters in the area and any water quality standards established for those surface waters, and
 - (E) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface-water quality; and
- (iv) The potential adverse effects of a release on the land surrounding the tank system, taking into account:
 - (A) The patterns of rainfall in the region, and

(B) The current and future uses of the surrounding land.

(3) The owner or operator of a tank system, for which an exception from secondary containment had been granted in accordance with the requirements of Subsection R315-265-193(g) (1), at which a release of hazardous waste has occurred from the primary tank system but has not migrated beyond the zone of engineering control, as established in the exception, shall:

(i) Comply with the requirements of Section R315-265-196, except Subsection R315-265-196(d); and

(ii) Decontaminate or remove contaminated soil to the extent necessary to:

(A) Enable the tank system, for which the exception was granted, to resume operation with the capability for the detection of and response to releases at least equivalent to the capability it had prior to the release, and

(B) Prevent the migration of hazardous waste or hazardous constituents to ground water or surface water; and

(iii) If contaminated soil cannot be removed or decontaminated in accordance with Subsection R315-265-193(g) (3) (ii), comply with the requirements of Subsection R315-265-197(b);

(4) The owner or operator of a tank system, for which an exception from secondary containment had been granted in accordance with the requirements of Subsection R315-265-193(g) (1), at which a release of hazardous waste has occurred from the primary tank system and has migrated beyond the zone of engineering control, as established in the exception, shall:

(i) Comply with the requirements of Subsections R315-265-196(a), (b), (c), and (d); and

(ii) Prevent the migration of hazardous waste or hazardous constituents to ground water or surface water, if possible, and decontaminate or remove contaminated soil. If contaminated soil cannot be decontaminated or removed, or if ground water has been contaminated, the owner or operator shall comply with the requirements of Subsection R315-265-197(b);

(iii) If repairing, replacing, or reinstalling the tank system, provide secondary containment in accordance with the requirements of Subsections R315-265-193(a) through (f) or reapply for an exception from secondary containment and meet the requirements for new tank systems in Section R315-265-192 if the tank system is replaced. The owner or operator shall comply with these requirements even if contaminated soil can be decontaminated or removed, and ground water or surface water has not been contaminated.

(h) The following procedures shall be followed in order to request an exception from secondary containment:

(1) The Director shall be notified in writing by the owner or operator that he intends to conduct and submit a demonstration for an exception from secondary containment as allowed in paragraph (g) of this section according to the following schedule:

(i) For existing tank systems, at least 24 months prior to the date that secondary containment shall be provided in accordance with Subsection R315-265-193(a); and

(ii) For new tank systems, at least 30 days prior to entering into a contract for installation of the tank system.

(2) As part of the notification, the owner or operator shall

also submit to the Director a description of the steps necessary to conduct the demonstration and a timetable for completing each of the steps. The demonstration shall address each of the factors listed in Subsection R315-265-193(g) (1) or Subsection R315-265-193(g) (2).

(3) The demonstration for an exception shall be completed and submitted to the Director within 180 days after notifying the Director of intent to conduct the demonstration.

(4) The Director will inform the public, through a newspaper notice, of the availability of the demonstration for an exception. The notice shall be placed in a daily or weekly major local newspaper of general circulation and shall provide at least 30 days from the date of the notice for the public to review and comment on the demonstration for an exception. The Director also will hold a public hearing, in response to a request or at his own discretion, whenever such a hearing might clarify one or more issues concerning the demonstration for an exception. Public notice of the hearing will be given at least 30 days prior to the date of the hearing and may be given at the same time as notice of the opportunity for the public to review and comment on the demonstration. These two notices may be combined.

(5) The Director will approve or disapprove the request for an exception within 90 days of receipt of the demonstration from the owner or operator and will notify in writing the owner or operator and each person who submitted written comments or requested notice of the exception decision. If the demonstration for an exception is incomplete or does not include sufficient information, the 90-day time period will begin when the Director receives a complete demonstration, including all information necessary to make a final determination. If the public comment period in Subsection R315-265-193(h) (4) is extended, the 90-day time period will be similarly extended.

(i) All tank systems, until such time as secondary containment meeting the requirements of Section R315-265-193 is provided, shall comply with the following:

(1) For non-enterable underground tanks, a leak test that meets the requirements of Subsection R315-265-191(b) (5) shall be conducted at least annually;

(2) For other than non-enterable underground tanks, and for all ancillary equipment, the owner or operator shall either conduct a leak test as in Subsection R315-265-193(i)(1) or an internal inspection or other tank integrity examination by a qualified Professional Engineer that addresses cracks, leaks, and corrosion or erosion at least annually. The owner or operator shall remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed.

Note: The practices described in the American Petroleum Institute (API) Publication Guide for Inspection of Refining Equipment, Chapter XIII, "Atmospheric and Low Pressure Storage Tanks," 4th edition, 1981, may be used, when applicable, as guidelines for assessing the overall condition of the tank system.

(3) The owner or operator shall maintain on file at the facility a record of the results of the assessments conducted in accordance with Subsections R315-265-193(i) (1) through (i) (3).

(4) If a tank system or component is found to be leaking or unfit-for-use as a result of the leak test or assessment in Subsections R315-265-193(i) (1) through (i) (3), the owner or operator shall comply with the requirements of Subsection R315-265-196.

R315-265-194 Tank Systems - General Operating Requirements

(a) Hazardous wastes or treatment reagents shall not be placed in a tank system if they could cause the tank, its ancillary equipment, or the secondary containment system to rupture, leak, corrode, or otherwise fail.

(b) The owner or operator shall use appropriate controls and practices to prevent spills and overflows from tank or secondary containment systems. These include at a minimum:

(1) Spill prevention controls, for example, check valves, dry disconnect couplings;

(2) Overfill prevention controls, for example, level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank; and

(3) Maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

(c) The owner or operator must comply with the requirements of Section R315-265-196 if a leak or spill occurs in the tank system.

R315-265-195 Tank Systems - Inspections

(a) The owner or operator shall inspect, where present, at least once each operating day, data gathered from monitoring and leak detection equipment, for example, pressure or temperature gauges, monitoring wells, to ensure that the tank system is being operated according to its design.

Note: Subsection R315-265-15(c) requires the owner or operator to remedy any deterioration or malfunction he finds. Section R315-265-196 requires the owner or operator to notify the Director within 24 hours of confirming a release. Also, 40 CFR part 302 may require the owner or operator to notify the National Response Center of a release.

(b) Except as noted under Subsection R315-265-195(c), the owner or operator shall inspect at least once each operating day:

(1) Overfill/spill control equipment, for example, waste-feed cutoff systems, bypass systems, and drainage systems, to ensure that it is in good working order;

(2) Above ground portions of the tank system, if any, to detect corrosion or releases of waste; and

(3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system, for example, dikes, to detect erosion or signs of releases of hazardous waste, for example, wet spots, dead vegetation.

(c) Owners or operators of tank systems that either use leak detection equipment to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, shall inspect at least weekly those areas described in Subsections R315-265-195(b) (1) through (3). Use of the alternate inspection schedule shall be documented in the facility's operating record. This documentation shall include a description of the

established workplace practices at the facility.

(d) [Reserved]

(e) Ancillary equipment that is not provided with secondary containment, as described in Subsections R315-265-193(f) (1) through (4), shall be inspected at least once each operating day.

(f) The owner or operator shall inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(1) The proper operation of the cathodic protection system shall be confirmed within six months after initial installation, and annually thereafter; and

(2) All sources of impressed current shall be inspected and/or tested, as appropriate, at least bimonthly, for example, every other month.

Note: The practices described in the National Association of Corrosion Engineers (NACE) standard, "Recommended Practice (RP-02-85)-Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and the American Petroleum Institute (API) Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems," may be used, where applicable, as guidelines in maintaining and inspecting cathodic protection systems.

(g) The owner or operator shall document in the operating record of the facility an inspection of those items in Subsections R315-265-195(a) and (b).

R315-265-196 Tank Systems - Response to Leaks or Spills and Disposition of Leaking or Unfit-For-Use Tank Systems

A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, shall be removed from service immediately, and the owner or operator shall satisfy the following requirements:

(a) Cessation of use; prevent flow or addition of wastes. The owner or operator shall immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.

b) Removal of waste from tank system or secondary containment system.

(1) If the release was from the tank system, the owner or operator shall, within 24 hours after detection of the leak or, if the owner or operator demonstrates that that is not possible, at the earliest practicable time remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed.

(2) If the release was to a secondary containment system, all released materials shall be removed within 24 hours or in as timely a manner as is possible to prevent harm to human health and the environment.

c) Containment of visible releases to the environment. The owner or operator shall immediately conduct a visual inspection of the release and, based upon that inspection:

(1) Prevent further migration of the leak or spill to soils or surface water; and

(2) Remove, and properly dispose of, any visible contamination of the soil or surface water.

(d) Notifications, reports.

(1) Any release to the environment, except as provided in Subsection R315-265-196(d) (2), shall be reported to the Director within 24 hours of detection. If the release has been reported pursuant to 40 CFR part 302, that report will satisfy this requirement.

(2) A leak or spill of hazardous waste that is:

(i) Less than or equal to a quantity of one pound, and

(ii) Immediately contained and cleaned-up is exempted from the requirements of Subsection R315-265-196(d).

(3) Within 30 days of detection of a release to the environment, a report containing the following information shall be submitted to the Director:

(i) Likely route of migration of the release;

(ii) Characteristics of the surrounding soil, soil composition, geology, hydrogeology, climate;

(iii) Results of any monitoring or sampling conducted in connection with the release, if available. If sampling or monitoring data relating to the release are not available within 30 days, these data shall be submitted to the Director as soon as they become available;

(iv) Proximity to downgradient drinking water, surface water, and population areas; and

(v) Description of response actions taken or planned.

(e) Provision of secondary containment, repair, or closure.

(1) Unless the owner or operator satisfies the requirements of Subsections R315-265-196(e) (2) through (4), the tank system shall be closed in accordance with Section R315-265-197.

(2) If the cause of the release was a spill that has not damaged the integrity of the system, the owner or operator may return the system to service as soon as the released waste is removed and repairs, if necessary, are made.

(3) If the cause of the release was a leak from the primary tank system into the secondary containment system, the system shall be repaired prior to returning the tank system to service.

(4) If the source of the release was a leak to the environment from a component of a tank system without secondary containment, the owner or operator shall provide the component of the system from which the leak occurred with secondary containment that satisfies the requirements of Section R315-265-193 before it can be returned to service, unless the source of the leak is an aboveground portion of a tank system. If the source is an aboveground component that can be inspected visually, the component shall be repaired and may be returned to service without secondary containment as long as the requirements of Subsection R315-265-196(f) are satisfied. If a component is replaced to comply with the requirements of Subsection R315-265-196(e) (4), that component shall satisfy the requirements for new tank systems or components in Sections R315-265-192 and R315-265-193. Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection, for example, the bottom of an inground or onground tank, the entire component shall be provided with secondary containment in accordance with Section R315-265-193 prior to being returned to

use.

(f) Certification of major repairs. If the owner or operator has repaired a tank system in accordance with Subsection R315-265-196(e), and the repair has been extensive, for example, installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel, the tank system shall not be returned to service unless the owner or operator has obtained a certification by a qualified Professional Engineer in accordance with Subsection R315-270-11(d) that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification is to be placed in the operating record and maintained until closure of the facility.

Note: The Director may, on the basis of any information received that there is or has been a release of hazardous waste or hazardous constituents into the environment, issue an order under Sections 19-6-101 through 125 requiring corrective action or such other response as deemed necessary to protect human health or the environment.

Note: See Subsection R315-265-15(c) for the requirements necessary to remedy a failure. Also, 40 CFR Part 302 requires the owner or operator to notify the National Response Center of a release of any "reportable quantity."

R315-265-197 Tank Systems - Closure and Post-Closure Care

(a) At closure of a tank system, the owner or operator shall remove or decontaminate all waste residues, contaminated containment system components, for example, liners, contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste, unless Subsection R315-261-3(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems shall meet all of the requirements specified in Sections R315-265-110 through 265-121 and Sections R315-265-140 through 265-147.

(b) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in Subsection R315-265-197(a), then the owner or operator shall close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills, 40 CFR 265.310. In addition, for the purposes of closure, post-closure, and financial responsibility, such a tank system is then considered to be a landfill, and the owner or operator shall meet all of the requirements for landfills specified in Sections R315-265-110 through 265-121 and Sections R315-265-140 through 265-147.

(c) If an owner or operator has a tank system which does not have secondary containment that meets the requirements of Subsections R315-265-193(b) through (f) and which is not exempt from the secondary containment requirements in accordance with Subsection R315-265-193(g), then,

(1) The closure plan for the tank system shall include both a plan for complying with Subsection R315-265-197(a) and a contingent plan for complying with Subsection R315-265-197(b).

(2) A contingent post-closure plan for complying with Subsection R315-265-197(b) shall be prepared and submitted as part of the permit application.

(3) The cost estimates calculated for closure and post-closure care shall reflect the costs of complying with the contingent closure plan and the contingent post-closure plan, if these costs are greater than the costs of complying with the closure plan prepared for the expected closure under Subsection R315-265-197(a).

(4) Financial assurance must be based on the cost estimates in Subsection R315-265-197(c) (3).

(5) For the purposes of the contingent closure and post-closure plans, such a tank system is considered to be a landfill, and the contingent plans shall meet all of the closure, post-closure, and financial responsibility requirements for landfills under Sections R315-265-110 through 265-121 and Sections R315-265-140 through 265-147.

R315-265-198 Tank Systems - Special Requirements for Ignitable or Reactive Wastes

(a) Ignitable or reactive waste shall not be placed in a tank system, unless:

(1) The waste is treated, rendered, or mixed before or immediately after placement in the tank system so that:

(i) The resulting waste, mixture, or dissolved material no longer meets the definition of ignitable or reactive waste under Sections R315-261-21 or R315-261-23; and

(ii) Subsection R315-265-17(b) is complied with; or

(2) The waste is stored or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(3) The tank system is used solely for emergencies.

(b) The owner or operator of a facility where ignitable or reactive waste is stored or treated in tanks shall comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code," 1977 or 1981, incorporated by reference, see Section R315-260-11.

R315-265-199 Tank Systems - Special Requirements for Incompatible Wastes

(a) Incompatible wastes, or incompatible waste and materials, shall not be placed in the same tank system, unless Subsection R315-265-17(b) is complied with.

(b) Hazardous waste shall not be placed in a tank system that has not been decontaminated and that previously held an incompatible waste or material, unless Subsection R315-265-17(b) is complied with.

R315-265-200 Tank Systems - Waste Analysis and Trial Tests

In addition to performing the waste analysis required by Section R315-265-13, the owner or operator shall, whenever a tank system is to be used to treat chemically or to store a hazardous waste that is substantially different from waste previously treated or stored

in that tank system; or treat chemically a hazardous waste with a substantially different process than any previously used in that tank system:

(a) Conduct waste analyses and trial treatment or storage tests, for example, bench-scale or pilot-plant scale tests; or

(b) Obtain written, documented information on similar waste under similar operating conditions to show that the proposed treatment or storage will meet the requirements of Subsection R315-265-194(a).

Note: Section R315-265-13 requires the waste analysis plan to include analyses needed to comply with Sections R315-265-198 and 265-199. Section R315-265-73 requires the owner or operator to place the results from each waste analysis and trial test, or the documented information, in the operating record of the facility.

R315-265-202 Tank Systems - Air Emission Standards

The owner or operator shall manage all hazardous waste placed in a tank in accordance with the applicable requirements of 40 CFR 265 subparts AA, BB, and CC.

R315-265-220 Surface Impoundments - Applicability

The regulations in Sections R315-265-220 through 265-231 apply to owners and operators of facilities that use surface impoundments to treat, store, or dispose of hazardous waste, except as Section R315-265-1 provides otherwise.

R315-265-221 Surface Impoundments - Design and Operating Requirements

(a) The owner or operator of each new surface impoundment unit, each lateral expansion of a surface impoundment unit, and each replacement of an existing surface impoundment unit shall install two or more liners, and a leachate collection and removal system between the liners, and operate the leachate collection and removal system, in accordance with Subsection R315-264-221(c), unless exempted under Subsections R315-264-221(d), (e), or (f).

(b) The owner or operator of each unit referred to in Subsection R315-265-221(a) shall notify the Director at least sixty days prior to receiving waste. The owner or operator of each facility submitting notice shall file a part B application within six months of the receipt of such notice.

(c) The owner or operator of any replacement surface impoundment unit is exempt from Subsection R315-265-221(a) if:

(1) The existing unit was constructed in compliance with the design standards of §3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act; and

(2) There is no reason to believe that the liner is not functioning as designed.

(d) The double liner requirement set forth in Subsection R315-265-221(a) may be waived by the Director for any monofill, if:

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the Toxicity Characteristic in Section R315-261-24, with EPA Hazardous Waste Numbers D004 through

D017; an

(2) (i) (A) The monofill has at least one liner for which there is no evidence that such liner is leaking. For the purposes of Subsection R315-265-221(d) the term "liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility. In the case of any surface impoundment which has been exempted from the requirements of Subsection R315-265-221(a) on the basis of a liner designed, constructed, installed, and operated to prevent hazardous waste from passing beyond the liner, at the closure of such impoundment the owner or operator shall remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator of such impoundment shall comply with appropriate post-closure requirements, including but not limited to ground-water monitoring and corrective action;

(B) The monofill is located more than one-quarter mile from an "underground source of drinking water", as that term is defined in Section R315-270-2; and

(C) The monofill is in compliance with generally applicable ground-water monitoring requirements for facilities with permits under RCRA section 3005(c); or

(ii) The owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there will be no migration of any hazardous constituent into ground water or surface water at any future time.

(e) In the case of any unit in which the liner and leachate collection system has been installed pursuant to the requirements of Subsection R315-265-221(a) and in good faith compliance with Subsection R315-265-221(a) and with guidance documents governing liners and leachate collection systems under Subsection R315-265-221(a), no liner or leachate collection system which is different from that which was so installed pursuant to Subsection R315-265-221(a) will be required for such unit by the Director when issuing the first permit to such facility, except that the Director will not be precluded from requiring installation of a new liner when the Director has reason to believe that any liner installed pursuant to the requirements of Subsection R315-265-221(a) is leaking.

(f) A surface impoundment shall maintain enough freeboard to prevent any overtopping of the dike by overflowing, wave action, or a storm. Except as provided in Subsection R315-265-221(b), there shall be at least 60 centimeters, two feet, of freeboard.

(g) A freeboard level less than 60 centimeters, two feet, may be maintained if the owner or operator obtains certification by a qualified engineer that alternate design features or operating plans will, to the best of his knowledge and opinion, prevent overtopping of the dike. The certification, along with a written identification of alternate design features or operating plans preventing overtopping, shall be maintained at the facility.

h) Surface impoundments that are newly subject to RCRA section

3005(j)(1) due to the promulgation of additional listings or characteristics for the identification of hazardous waste shall be in compliance with Subsections R315-265-221(a), (c) and (d) not later than 48 months after the promulgation of the additional listing or characteristic. This compliance period shall not be cut short as the result of the promulgation of land disposal prohibitions under Rule R315-268 or the granting of an extension to the effective date of a prohibition pursuant to Section R315-268-5, within this 48-month period.

R315-265-222 Surface Impoundments - Action Leakage Rate

(a) The owner or operator of surface impoundment units subject to Subsection R315-265-221(a) shall submit a proposed action leakage rate to the Director when submitting the notice required under Subsection R315-265-221(b). Within 60 days of receipt of the notification, the Director will: Establish an action leakage rate, either as proposed by the owner or operator or modified using the criteria in Section R315-265-222; or extend the review period for up to 30 days. If no action is taken by the Director before the original 60 or extended 90 day review periods, the action leakage rate will be approved as proposed by the owner or operator.

(b) The Director shall approve an action leakage rate for surface impoundment units subject to Subsection R315-265-221(a). The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding 1 foot. The action leakage rate shall include an adequate safety margin to allow for uncertainties in the design, for example, slope, hydraulic conductivity, and thickness of drainage material, construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions, for example, the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.

(c) To determine if the action leakage rate has been exceeded, the owner or operator shall convert the weekly or monthly flow rate from the monitoring data obtained under Subsection R315-265-226(b), to an average daily flow rate, gallons per acre per day, for each sump. Unless the Director approves a different calculation, the average daily flow rate for each sump shall be calculated weekly during the active life and closure period, and if the unit closes in accordance with Subsection R315-265-228(a)(2), monthly during the post-closure care period when monthly monitoring is required under Subsection R315-265-226(b).

R315-265-223 Surface Impoundments - Containment System

All earthen dikes shall have a protective cover, such as grass, shale, or rock, to minimize wind and water erosion and to preserve their structural integrity.

R315-265-224 Surface Impoundments - Response Actions

(a) The owner or operator of surface impoundment units subject to Subsection R315-265-221(a) shall develop and keep on site until closure of the facility a response action plan. The response action

plan shall set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan shall describe the actions specified in Subsection R315-265-224(b).

b) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator shall:

(1) Notify the Director in writing of the exceedance within 7 days of the determination;

(2) Submit a preliminary written assessment to the Director within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

(3) Determine to the extent practicable the location, size, and cause of any leak;

(4) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

(6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Director the results of the analyses specified in Subsections R315-265-224(b)(3), (4), and (5), the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator must submit to the Director a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak, remediation or both determinations in Subsections R315-265-224(b)(3), (4), and (5), the owner or operator shall:

(1)(i) Assess the source of liquids and amounts of liquids by source,

(ii) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(iii) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

R315-265-225 Surface Impoundments - Waste Analysis and Trial Tests

(a) In addition to the waste analyses required by Section R315-265-13, whenever a surface impoundment is to be used to:

(1) Chemically treat a hazardous waste which is substantially different from waste previously treated in that impoundment; or

(2) Chemically treat hazardous waste with a substantially different process than any previously used in that impoundment; the owner or operator shall, before treating the different waste or using the different process:

(i) Conduct waste analyses and trial treatment tests, for example, bench scale or pilot plant scale tests; or

(ii) Obtain written, documented information on similar treatment of similar waste under similar operating conditions; to show that this treatment will comply with Subsection R315-265-17(b).

Comment: As required by Section R315-265-13, the waste analysis

plan shall include analyses needed to comply with Sections R315-265-229 and 265-230. As required by Section R315-265-73, the owner or operator shall place the results from each waste analysis and trial test, or the documented information, in the operating record of the facility.

R315-265-226 Surface Impoundments - Monitoring and Inspection

(a) The owner or operator shall inspect:

(1) The freeboard level at least once each operating day to ensure compliance with Section R315-265-222, and

(2) The surface impoundment, including dikes and vegetation surrounding the dike, at least once a week to detect any leaks, deterioration, or failures in the impoundment.

(b) (1) An owner or operator required to have a leak detection system under Subsection R315-265-221(a) shall record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

(2) After the final cover is installed, the amount of liquids removed from each leak detection system sump shall be recorded at least monthly. If the liquid level in the sump stays below the pump operating level for two consecutive months, the amount of liquids in the sumps shall be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two consecutive quarters, the amount of liquids in the sumps shall be recorded at least semi-annually. If at any time during the post-closure care period the pump operating level is exceeded at units on quarterly or semi-annual recording schedules, the owner or operator shall return to monthly recording of amounts of liquids removed from each sump until the liquid level again stays below the pump operating level for two consecutive months.

(3) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the Director based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump. The timing for submission and approval of the proposed "pump operating level" will be in accordance with Subsection R315-265-222(a).

Comment: As required by Subsection R315-265-15(c), the owner or operator shall remedy any deterioration or malfunction he finds.

R315-265-228 Surface Impoundments - Closure and Post-Closure Care

(a) At closure, the owner or operator shall:

(1) Remove or decontaminate all waste residues, contaminated containment system components, liners, etc., contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless Subsection R315-261-3(d) applies; or

(2) Close the impoundment and provide post-closure care for a landfill under Sections R315-265-110 through 265-121 and 40 CFR 265.310, which is adopted and incorporated by reference, including the following:

(i) Eliminate free liquids by removing liquid wastes or solidifying the remaining wastes and waste residues;

(ii) Stabilize remaining wastes to a bearing capacity sufficient to support the final cover; and

(iii) Cover the surface impoundment with a final cover designed and constructed to:

(A) Provide long-term minimization of the migration of liquids through the closed impoundment;

(B) Function with minimum maintenance;

(C) Promote drainage and minimize erosion or abrasion of the cover;

(D) Accommodate settling and subsidence so that the cover's integrity is maintained; and

(E) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(b) In addition to the requirements of Sections R315-265-110 through R315-265-121, and 40 CFR 265.310, which is adopted and incorporated by reference, during the post-closure care period, the owner or operator of a surface impoundment in which wastes, waste residues, or contaminated materials remain after closure in accordance with the provisions of Subsection R315-265-228(a)(2) shall:

(1) Maintain the integrity and effectiveness of the final cover, including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion, or other events;

(2) Maintain and monitor the leak detection system in accordance with Subsections R315-264-221(c)(2)(iv) and (3) and Subsection R315-265-226(b) and comply with all other applicable leak detection system requirements of Rule R315-265;

(3) Maintain and monitor the ground-water monitoring system and comply with all other applicable requirements of Sections R315-265-90 through 265-94; and

(4) Prevent run-on and run-off from eroding or otherwise damaging the final cover.

R315-265-229 Surface Impoundments - Special Requirements for Ignitable or Reactive Waste

Ignitable or reactive waste shall not be placed in a surface impoundment, unless the waste and impoundment satisfy all applicable requirements of Rule R315-268, and:

(a) The waste is treated, rendered, or mixed before or immediately after placement in the impoundment so that:

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under Sections R315-261-21 or R315-261-23; and

(2) Subsection R315-265-17(b) is complied with; or

(b) (1) The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react; and

(2) The owner or operator obtains a certification from a qualified chemist or engineer that, to the best of his knowledge and opinion, the design features or operating plans of the facility will prevent ignition or reaction; and

(3) The certification and the basis for it are maintained at the facility; or

(c) The surface impoundment is used solely for emergencies.

R315-265-230 Surface Impoundments - Special Requirements for Incompatible Wastes

Incompatible wastes, or incompatible wastes and materials, see 40 CFR 265 appendix V, which is adopted and incorporated by reference for examples, shall not be placed in the same surface impoundment, unless Subsection R315-265-17(b) is complied with.

R315-265-231 Surface Impoundments - Air Emission Standards

The owner or operator shall manage all hazardous waste placed in a surface impoundment in accordance with the applicable requirements of 40 CFR 265 subparts BB and CC, which are adopted and incorporated by reference.

R315-265-250 Waste Piles- Applicability

The regulations in Sections R315-265-250 through R315-265-260 apply to owners and operators of facilities that treat or store hazardous waste in piles, except as Section R315-265-1 provides otherwise. Alternatively, a pile of hazardous waste may be managed as a landfill under 40 CFR subpart N.

R315-265-251 Waste Piles- Protection from Wind

The owner or operator of a pile containing hazardous waste which could be subject to dispersal by wind shall cover or otherwise manage the pile so that wind dispersal is controlled.

R315-265-252 Waste Piles- Waste Analysis

In addition to the waste analyses required by Section R315-265-13, the owner or operator shall analyze a representative sample of waste from each incoming movement before adding the waste to any existing pile, unless (1) The only wastes the facility receives which are amenable to piling are compatible with each other, or (2) the waste received is compatible with the waste in the pile to which it is to be added. The analysis conducted shall be capable of differentiating between the types of hazardous waste the owner or operator places in piles, so that mixing of incompatible waste does not inadvertently occur. The analysis shall include a visual comparison of color and texture.

Comment: As required by Section R315-265-13, the waste analysis plan shall include analyses needed to comply with Sections R315-265-256 and 265-257. As required by Section R315-265-73, the owner or operator shall place the results of this analysis in the operating record of the facility.

R315-265-253 Waste Piles- Containment

If leachate or run-off from a pile is a hazardous waste, then either:

(a) (1) The pile shall be placed on an impermeable base that is compatible with the waste under the conditions of treatment or storage;

(2) The owner or operator shall design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the pile during peak discharge from at least a 25-year storm;

(3) The owner or operator shall design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm; and

(4) Collection and holding facilities, for example, tanks or

basins, associated with run-on and run-off control systems shall be emptied or otherwise managed expeditiously to maintain design capacity of the system; or

(b) (1) The pile shall be protected from precipitation and run-on by some other means; and

(2) No liquids or wastes containing free liquids may be placed in the pile.

Comment: If collected leachate or run-off is discharged through a point source to waters of the United States, it is subject to the requirements of section 402 of the Clean Water Act, as amended.

R315-265-254 Waste Piles- Design and Operating Requirements

The owner or operator of each new waste pile on which construction commences after January 29, 1992, each lateral expansion of a waste pile unit on which construction commences after July 29, 1992, and each such replacement of an existing waste pile unit that is to commence reuse after July 29, 1992 shall install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal systems, in accordance with Subsection R315-264-251(c), unless exempted under Subsections R315-264-251(d), (e), or (f); and shall comply with the procedures of Subsection R315-265-221(b). "Construction commences" is as defined in Section R315-260-10 under "existing facility".

R315-265-255 Waste Piles- Action Leakage Rates

(a) The owner or operator of waste pile units subject to Section R315-265-254 shall submit a proposed action leakage rate to the Director when submitting the notice required under Section R315-265-254. Within 60 days of receipt of the notification, the Director will: Establish an action leakage rate, either as proposed by the owner or operator or modified using the criteria in this Section R315-265-255; or extend the review period for up to 30 days. If no action is taken by the Director before the original 60 or extended 90 day review periods, the action leakage rate will be approved as proposed by the owner or operator.

(b) The Director shall approve an action leakage rate for waste pile units subject to Section R315-265-254. The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding 1 foot. The action leakage rate shall include an adequate safety margin to allow for uncertainties in the design, for example, slope, hydraulic conductivity, thickness of drainage material, construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions, for example, the action leakage rate shall consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.

(c) To determine if the action leakage rate has been exceeded, the owner or operator shall convert the weekly flow rate from the monitoring data obtained under Section R315-265-260, to an average daily flow rate, gallons per acre per day, for each sump. Unless the Director approves a different calculation, the average daily flow

rate for each sump shall be calculated weekly during the active life and closure period.

R315-265-256 Waste Piles- Special Requirements for Ignitable or Reactive Waste

(a) Ignitable or reactive waste shall not be placed in a pile unless the waste and pile satisfy all applicable requirements of Rule R315-268, and:

(1) Addition of the waste to an existing pile (i) results in the waste or mixture no longer meeting the definition of ignitable or reactive waste under Sections R315-261-21 or R315-261-23, and (ii) complies with Subsection R315-265-17(b); or

(2) The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react.

R315-265-257 Waste Piles- Special Requirements for Incompatible Wastes

(a) Incompatible wastes, or incompatible wastes and materials, see 40 CFR 265 appendix V, which is adopted and incorporated by reference, for examples, shall not be placed in the same pile, unless Subsection R315-265-17(b) is complied with.

(b) A pile of hazardous waste that is incompatible with any waste or other material stored nearby in other containers, piles, open tanks, or surface impoundments shall be separated from the other materials, or protected from them by means of a dike, berm, wall, or other device.

Comment: The purpose of this is to prevent fires, explosions, gaseous emissions, leaching, or other discharge of hazardous waste or hazardous waste constituents which could result from the contact or mixing of incompatible wastes or materials.

(c) Hazardous waste shall not be piled on the same area where incompatible wastes or materials were previously piled, unless that area has been decontaminated sufficiently to ensure compliance with Subsection R315-265-17(b).

R315-265-258 Waste Piles- Closure and Post-Closure Care

(a) At closure, the owner or operator shall remove or decontaminate all waste residues, contaminated containment system components, liners, etc., contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless Subsection R315-261-3(d) applies; or

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in Subsection R315-265-258(a), the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he shall close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills, see 40 CFR 265.310.

R315-265-259 Waste Piles- Response Actions

(a) The owner or operator of waste pile units subject to Section R315-265-254 shall develop and keep on-site until closure of the facility a response action plan. The response action plan shall set forth the actions to be taken if the action leakage rate has been

exceeded. At a minimum, the response action plan shall describe the actions specified in Subsection R315-265-259(b).

(b) If the flow rate into the leak determination system exceeds the action leakage rate for any sump, the owner or operator shall:

(1) Notify the Director in writing of the exceedance within seven days of the determination;

(2) Submit a preliminary written assessment to the Director within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

(3) Determine to the extent practicable the location, size, and cause of any leak;

(4) Determine whether waste receipts should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

(6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Director the results of the analyses specified in Subsections R315-265-259(b) (3), (4), and (5), the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator shall submit to the Director a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the either the leak or remediation or both determinations in Subsections R315-265-259(b) (3), (4), and (5), the owner or operator shall:

(1) (i) Assess the source of liquids and amounts of liquids by source,

(ii) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(iii) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

R315-265-260 Waste Piles- Monitoring and Inspection

An owner or operator required to have a leak detection system under Section R315-265-254 shall record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

KEY: hazardous waste, TSD facilities, interim status

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R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-266. Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities.

R315-266-70. Recyclable Materials Utilized for Precious Metal Recovery -- Applicability and Requirements.

(a) The regulations of Section R315-266-70 apply to recyclable materials that are reclaimed to recover economically significant amounts of gold, silver, platinum, palladium, iridium, osmium, rhodium, ruthenium, or any combination of these.

(b) Persons who generate, transport, or store recyclable materials that are regulated under Section R315-266-70 are subject to the following requirements:

(1) Notification requirements under section 3010 of RCRA;

(2) Sections R315-262-20 through 262-27, for generators [7], Sections R315-263-20 and 263-21, for transporters; and [40 CFR 265.71 and 72, which are adopted by reference] Sections R315-265-71 and 265-72, for persons who store; and

(3) For precious metals exported to or imported from [designated OECD member] other countries for recovery, Sections R315-262-80 through [89] 262-84 and [40 CFR 265.12(a)(2), which is adopted by reference. For precious metals exported to or imported from non-OECD countries for recovery, Sections R315-262-50 through 58 and 60] Section R315-265-12.

(c) Persons who store recycled materials that are regulated under Section R315-266-70 shall keep the following records to document that they are not accumulating these materials speculatively, as defined in Subsection R315-261-1(c);

(1) Records showing the volume of these materials stored at the beginning of the calendar year;

(2) The amount of these materials generated or received during the calendar year; and

(3) The amount of materials remaining at the end of the calendar year.

(d) Recyclable materials that are regulated under Section R315-266-70 that are accumulated speculatively, as defined in Subsection R315-261-1(c), are subject to all applicable provisions of Rules R315-262 through 265, 270, and 124.

R315-266-80. Spent Lead-Acid Batteries Being Reclaimed -- Applicability and Requirements.

(a) Are spent lead-acid batteries exempt from hazardous waste management requirements? If you generate, collect, transport, store, or regenerate lead-acid batteries for reclamation purposes, you may be exempt from certain hazardous waste management requirements. Use Subsections R315-266-80(a)(1) through (7) to determine which requirements apply to you. Alternatively, you may choose to manage your spent lead-acid batteries under the "Universal Waste" rule in Rule R315-273.

(1) If your batteries will be reclaimed through regeneration, such as by electrolyte replacement, then you are exempt from Rules R315-262, except for Section R315-262-11; 263; 264; 265; 266; 268; 270; and 124, and the notification requirements at section 3010 of RCRA and you are subject to Rule R315-261 and Section R315-262-11.

(2) If your batteries will be reclaimed other than through regeneration and if you generate, collect, and/or transport these batteries then you are exempt from Rule R315-262, except for Section

R315-262-11; 263; 264; 265; 266; 270; and 124, and the notification requirements at section 3010 of RCRA and you are subject to Rule R315-261 and Section R315-262-11, and applicable provisions under Rule R315-268.

(3) If your batteries will be reclaimed other than through regeneration and if you store these batteries but you aren't the reclaimer then you are exempt from Rule R315-262, except for Section R315-262-11; 263; 264; 265; 266; 270; and 124, and the notification requirements at section 3010 of RCRA and you are subject to Rule R315-261 and Section R315-262-11, and applicable provisions under Rule R315-268.

(4) If your batteries will be reclaimed other than through regeneration and if you store these batteries before you reclaim them then you shall comply with Subsection R315-266-80(b) and as appropriate other regulatory provisions described in Subsection R315-266-80(b) and you are subject to Rule R315-261 and Section R315-262-11, and applicable provisions under Rule R315-268.

(5) If your batteries will be reclaimed other than through regeneration and if you don't store these batteries before you reclaim them then you are exempt from Rule R315-262, except for Section R315-262-11; 263; 264; 265; 266; 270; and 124, and the notification requirements at section 3010 of RCRA and you are subject to Rule R315-261 and Section R315-262-11, and applicable provisions under Rule R315-268.

(6) If your batteries will be reclaimed through regeneration or any other means and if you export these batteries for reclamation in a foreign country then you are exempt from Rules R315-262, [4] except for Sections R315-262-11, R315-262-18, and R315-262-80 through R315-262[6]-84[7], R315-263, R315-264, R315-265, R315-266, R315-268, R315-270, R315-124, and the notification requirements at section 3010 of RCRA and you are subject to Rule R315-261, Sections R315-262-11 and R315-262-18, and Sections R315-262-80 through R315-262-84.

(7) If your batteries will be reclaimed through regeneration or any other means and if you transport these batteries in the U.S. to export them for reclamation in a foreign country then you are exempt from Rules R315-263, 264, 265, 266, 268, 270, 124, and the notification requirements at section 3010 of RCRA and you shall comply with applicable requirements in Sections R315-262-80 through R315-262-84[7, if shipping to one of the OECD countries specified in Subsection R315-262-58(a)(1), or shall comply with the following:

— (i) you may not accept a shipment if you know the shipment does not conform to the EPA Acknowledgment of Consent;

— (ii) you shall ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment; and

— (iii) you shall ensure that the shipment is delivered to the facility designated by the person initiating the shipment].

(8) If your batteries will be reclaimed other than through regeneration and if you import these batteries from foreign country and store these batteries but you aren't the reclaimer then you are exempt from Rules R315-262, except for Sections R315-262-11, 262-18 and 262-80 through 262-84, Rules R315-263, R315-264, R315-265, R315-266, R315-270, R315-124, and the notification requirements at section 3010 of RCRA and you are subject to Rule R315-261, Sections R315-262-11, 262-18, and 262-80 through 262-84, and applicable

provisions under Rule R315-268.

(9) If your batteries will be reclaimed other than through regeneration and if you import these batteries from foreign country and store these batteries before you reclaim them then you shall comply with Subsection R315-266-80(b) and as appropriate other regulatory provisions described in Subsection R315-266-80(b) and you are subject to Rule R315-261, Sections R315-262-11, 262-18, and 262-80 through 262-84, and applicable provisions under Rule R315-268.

(10) If your batteries will be reclaimed other than through regeneration and if you import these batteries from foreign country and don't store these batteries before you reclaim them then you are exempt from Rules R315-262, except for Sections 262-11, 262-18 and 262-80 through 262-84, Rules R315-263, R315-264, R315-265, R315-266, R315-270, and R315-124, and the notification requirements at section 3010 of RCRA and you are subject to Rule R315-261, Sections R315-262-11, 262-18, and 262-80 through 262-84, and applicable provisions under Rule R315-268.

(b) If I store spent lead-acid batteries before I reclaim them but not through regeneration, which requirements apply? The requirements of Subsection R315-266-80(b) apply to you if you store spent lead-acid batteries before you reclaim them, but you don't reclaim them through regeneration. The requirements are slightly different depending on your permit status.

(1) For Interim Status Facilities, you shall comply with:

(i) Notification requirements under section 3010 of RCRA.

(ii) All applicable provisions in ~~[40 CFR 265.1 through 265.4, which are adopted by reference in Section R315-265-1]~~ Sections R315-265-1 through 265-4.

(iii) All applicable provisions in ~~[40 CFR 265.10 through 265.19, which are adopted by reference in Section R315-265-1]~~ Sections R315-265-10 through 265-19, except Section R315-265[-]-13, waste analysis.

(iv) All applicable provisions in ~~[40 CFR 265.30 through 265.56, which are adopted by reference in Section R315-265-1]~~ Sections R315-265-30 through 265-56.

(v) All applicable provisions in ~~[40 CFR 265.70 through 77, which are adopted by reference]~~ Sections R315-265-70 through 265-77, except Sections R315-265[-]-71 and 265[-]-72, dealing with the use of the manifest and manifest discrepancies.

(vi) All applicable provisions in ~~[40 CFR 265.90 through 265.260, which are adopted by reference in Section R315-265-1]~~ Sections R315-265-90 through 265-260.

(vii) All applicable provisions in Rules R315-270 and 124.

(2) For Permitted Facilities:

(i) Notification requirements under section 3010 of RCRA.

(ii) All applicable provisions in Sections R315-264-1 through 4.

(iii) All applicable provisions in Sections R315-264-10 through 19, but not Section R315-264-13, waste analysis.

(iv) All applicable provisions in Sections R315-264-30 through 56.

(v) All applicable provisions in Sections R315-264-70 through 77, but not Sections R315-264-71 or 72, dealing with the use of the manifest and manifest discrepancies.

- (vi) All applicable provisions in Sections R315-264-90 through 259.
- (vii) All applicable provisions in Rules R315-270 and 124.

KEY: hazardous waste

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R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-273. Standards for Universal Waste Management.

R315-273-20. Standards for Universal Waste Management, Standards for Small Quantity Handlers of Universal Waste -- Exports.

A small quantity handler of universal waste who sends universal waste to a foreign destination ~~[other than to those OECD countries specified in Subsection R315-262-58(a)(1), in which case the handler]~~ is subject to the requirements of Sections R315-262-80 through ~~[89]262-84~~, shall:

(a) Comply with the requirements applicable to a primary exporter in Section R315-262-53, Subsections R315-262-56(a)(1) through (4), (6), and (b) and Section R315-262-57;

(b) Export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in Sections R315-262-50 through 58; and

(c) Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.

R315-273-39. Standards for Universal Waste Management, Standards For Large Quantity Handlers Of Universal Waste -- Tracking Universal Waste Shipments.

(a) Receipt of shipments. A large quantity handler of universal waste shall keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, movement document or other shipping document. The record for each shipment of universal waste received shall include the following information:

(1) The name and address of the originating universal waste handler or foreign shipper from whom the universal waste was sent;

(2) The quantity of each type of universal waste received;

(3) The date of receipt of the shipment of universal waste.

(b) Shipments off-site. A large quantity handler of universal waste shall keep a record of each shipment of universal waste sent from the handler to other facilities. The record may take the form of a log, invoice, manifest, bill of lading movement document or other shipping document. The record for each shipment of universal waste sent shall include the following information:

(1) The name and address of the universal waste handler, destination facility, or foreign destination to whom the universal waste was sent;

(2) The quantity of each type of universal waste sent;

(3) The date the shipment of universal waste left the facility.

(c) Record retention.

(1) A large quantity handler of universal waste shall retain the records described in Subsection R315-273-39(a) for at least three years from the date of receipt of a shipment of universal waste.

(2) A large quantity handler of universal waste shall retain the records described in Subsection R315-273-39(b) for at least three years from the date a shipment of universal waste left the facility.

R315-273-40. Standards for Universal Waste Management, Standards for Large Quantity Handlers of Universal Waste -- Exports.

A large quantity handler of universal waste who sends universal waste to a foreign destination ~~[other than to those OECD countries specified in Subsection R315-262-58(a)(1), in which case the handler]~~ is subject to the requirements of Sections R315-262-80 through ~~[89]262-84~~, shall:

(a) Comply with the requirements applicable to a primary exporter in Section R315-262-53, Subsections R315-262-56(a)(1) through (4), (6), and (b) and Section R315-262-57;

(b) Export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in Sections R315-262-50 through 58; and

(c) Provide a copy of the EPA Acknowledgement of Consent for the shipment to the transporter transporting the shipment for export.

R315-273-56. Standards for Universal Waste Management, Standards for Universal Waste Transporters -- Exports.

A universal waste transporter transporting a shipment of universal waste to a foreign destination ~~[other than to those OECD countries specified in Subsection R315-262-58(a)(1), in which case the transporter]~~ is subject to the requirements of Sections R315-262-80 through ~~[89]262-84~~, may not accept a shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent. In addition the transporter shall ensure that:

(a) A copy of the EPA Acknowledgment of Consent accompanies the shipment; and

(b) The shipment is delivered to the facility designated by the person initiating the shipment.

R315-273-62. Standards for Universal Waste Management, Standards for Destination Facilities -- Tracking Universal Waste Shipments.

(a) The owner or operator of a destination facility shall keep a record of each shipment of universal waste received at the facility.

The record may take the form of a log, invoice, manifest, bill of lading, movement document or other shipping document. The record for each shipment of universal waste received shall include the following information:

(1) The name and address of the universal waste handler, destination facility, or foreign shipper from whom the universal waste was sent;

(2) The quantity of each type of universal waste received;

(3) The date of receipt of the shipment of universal waste.

(b) The owner or operator of a destination facility shall retain the records described in Subsection R315-273-62(a) for at least three years from the date of receipt of a shipment of universal waste.

R315-273-70. Standards for Universal Waste Management -- Imports.

Persons managing universal waste that is imported from a foreign country into the United States are subject to **the requirements of Sections R315-262-80 through 262-84 and** the applicable requirements of Rule R315-273, immediately after the waste enters the United States, as indicated in Subsection R315-273-70(a) through (c):

(a) A universal waste transporter is subject to the universal waste transporter requirements of Sections R315-273-50 through 56.

(b) A universal waste handler is subject to the small or large quantity handler of universal waste requirements of Sections R315-273-10 through 20 or 30 through 40, as applicable.

(c) An owner or operator of a destination facility is subject to the destination facility requirements of Sections R315-273-60 through 62.

(d) Persons managing universal waste that is imported from an OECD country as specified in Subsection R315-262-58(a) (1) are subject to Subsections R315-273-70(a) through (c), in addition to the requirements of Sections R315-262-80 through ~~[89]~~ **262-84**.

KEY: hazardous waste, universal waste

Date of Enactment or Last Substantive Amendment: January 14, 2019

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 263, 264, 265, 266, 267, 271 and 273

[EPA-HQ-RCRA-2015-0147; FRL-9947-74-OLEM]

RIN 2050-AG77

Hazardous Waste Export-Import Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending existing regulations regarding the export and import of hazardous wastes from and into the United States. EPA is making these changes to: Provide greater protection to human health and the environment by making existing export and import related requirements more consistent with the current import-export requirements for shipments between members of the Organization for Economic Cooperation and Development (OECD); enable electronic submittal to EPA of all export and import-related documents (e.g., export notices, export annual reports); and enable electronic validation of consent in the Automated Export System (AES) for export shipments subject to RCRA export consent requirements prior to exit. The AES resides in the U.S. Customs and Border Protection’s Automated Commercial Environment (ACE).

DATES: This final rule is effective on December 31, 2016. The compliance dates for the various new and updated provisions in this action can be found in section II.D. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 31, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-RCRA-2015-0147. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Laura Coughlan, Materials Recovery and

Waste Management Division, Office of Resource Conservation and Recovery (5304P), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (703) 308-0005; email address: coughlan.laura@epa.gov.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

- I. General Information
 - A. List of acronyms used in this action
 - B. Does this action apply to me?
 - C. What is the agency’s authority for taking this action?
- II. Background
 - A. History and summary of the proposed rule
 - B. Rationale for the final rule
 - C. Summary of the final rule
 - D. Compliance dates for the final rule
- III. Detailed Discussion of the Final Rule
 - A. Consolidation of hazardous waste import and export requirements consistent with current OECD procedures
 - B. Transition from paper-based to electronic port procedures under ITDS for RCRA waste exports subject to notice and consent
 - C. Conversion of paper submittals for imports and exports to electronic submittals using EPA’s Waste Import Export Tracking System
 - D. Availability of Electronic Reporting
 - E. Changes to hazardous waste manifest requirements for import and export shipments
 - F. Additional requirements for recognized traders arranging for hazardous waste imports or exports
 - G. Incorporation by reference of OECD waste lists
 - H. Conforming Changes to Parts 260, 262 through 267, 271, and 273
- I. Related Proposed Rulemaking
- IV. State Authorization
 - A. Applicability of Rules in Authorized States
 - B. Effect on State Authorization
- V. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
 - B. Paperwork Reduction Act (PRA)
 - C. Regulatory Flexibility Act (RFA)
 - D. Unfunded Mandates Reform Act (UMRA)
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
 - H. Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer and Advancement Act (NTTAA)
 - J. Executive Order 12898: Federal Actions to Address Environmental Justice in

- Minority Populations and Low-Income Populations
- K. Executive Order 13659: Streamlining the Export/Import Process for America’s Businesses
- L. Congressional Review Act

I. General Information

A. List of Acronyms Used in This Action

Acronym	Meaning
ACE	Automated Commercial Environment.
AES	Automated Export System.
AOC	Acknowledgment of Consent (issued by EPA).
CBI	Confidential Business Information.
CBP	United States Customs and Border Protection.
CDX	Central Data Exchange.
CEC	Commission for Environmental Cooperation.
CERCLA ...	Comprehensive Environmental Response, Compensation, and Liability Act.
CFR	Code of Federal Regulations.
CROMERR	Cross-Media Electronic Reporting Regulation.
CRT	Cathode Ray Tube.
CY	Calendar Year.
EPA	United States Environmental Protection Agency.
FR	Federal Register.
FTR	U.S. Census Bureau’s Foreign Trade Regulations.
HSWA	Hazardous and Solid Waste Amendments.
ICR	Information Collection Request.
ITDS	International Trade Data System.
ITN	Internal Transaction Number (issued by AES).
LAB	Lead-Acid Battery.
NAICS	North American Industrial Classification System.
NCEDE	Notice and Consent Electronic Data Exchange.
NTTAA	National Technology Transfer and Advancement Act.
NAFTA	North American Free Trade Agreement.
OECD	Organization for Economic Cooperation and Development.
OLEM	Office of Land and Emergency Management.
OMB	Office of Management and Budget.
RCRA	Resource Conservation and Recovery Act.
RFA	Regulatory Flexibility Act.
SIC	Standard Industrial Classification.
SLAB	Spent Lead-Acid Battery.
UMRA	Unfunded Mandates Reform Act.
WIETS	Waste Import Export Tracking System.

B. Does this action apply to me?

The revisions to export and import requirements in this action generally affect four (4) groups: (1) All persons

who export or import (or arrange for the export or import) hazardous waste for recycling or disposal, including those hazardous wastes subject to the alternate management standards for (a) universal waste for recycling or disposal, (b) spent lead-acid batteries (SLABs) being shipped for reclamation, (c) industrial ethyl alcohol being shipped for reclamation, (d) hazardous waste samples of more than 25 kilograms being shipped for waste characterization or treatability studies, and (e) hazardous recyclable materials being shipped for precious metal recovery; (2) all recycling and disposal facilities who receive imports of such hazardous wastes for recycling or disposal; (3) all persons who export or arrange for the export of conditionally excluded cathode ray tubes being shipped for recycling; and (4) all persons who transport any export and import shipments described above. Potentially affected entities may include, but are not limited to:

NAICS code	NAICS description
211	Oil and Gas Extraction.
212	Mining (except Oil and Gas).
213	Support Activities for Mining.
311	Food Manufacturing.
324	Petroleum and Coal Products Manufacturing.
325	Chemical Manufacturing.
326	Plastics and Rubber Products Manufacturing.
327	Nonmetallic Mineral Product Manufacturing.
331	Primary Metal Manufacturing.
332	Fabricated Metal Product Manufacturing.
333	Machinery Manufacturing.
334	Computer and Electronic Product Manufacturing.
335	Electrical Equipment, Appliance, and Component Manufacturing.
336	Transportation Equipment Manufacturing.
339	Miscellaneous Manufacturing.
423	Merchant Wholesalers, Durable Goods.
424	Merchant Wholesalers, Nondurable Goods.
441	Motor Vehicle and Parts Dealers.
482	Rail transportation.
483	Water transportation.
484	Truck transportation.
488	Support Activities for Transportation.
531	Real Estate.
541	Professional, Scientific, and Technical Services.
561	Administrative and Support Services.
562	Waste Management and Remediation Services.
721	Accommodation.
924	Administration of Environmental Quality Programs.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this final rule to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Information on the estimated future economic impacts of this action is presented in section V of this preamble, as well as in the Regulatory Impact Analysis available in the docket for this action.

C. What is the agency's authority for taking this action?

EPA's authority to promulgate this rule is found in sections 1002, 2002(a), 3001–3004, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), and as amended by the Hazardous and Solid Waste Amendments, 42 U.S.C. 6901 et seq., 6912, 6921–6924, and 6938.

II. Background

A. History and Summary of the Proposed Rule

On October 19, 2015, EPA proposed revisions to the current RCRA regulations governing imports and exports of hazardous waste and certain other materials in part 262 in order to improve protection of public health and the environment (80 FR 63284). First, we proposed to consolidate the hazardous waste import and export regulations so that one set of protective requirements, equivalent to the regulations currently in title 40 of the Code of Federal Regulations (CFR) Part 262 Subpart H implementing the Organization for Economic Cooperation and Development (OECD) Council Decision controlling transboundary movements of recyclable hazardous waste, would apply to all imports and exports of hazardous waste. Second, we proposed to mandate electronic reporting to EPA to make the process more efficient and to enable increased sharing of hazardous waste import and export data with state programs, the general public, and individual hazardous waste exporters and importers. Third, we proposed to require validation of the consent to export as part of the electronic export information submitted to U.S. Customs and Border Protection (CBP) to provide for more efficient compliance

monitoring of hazardous waste export shipments. Fourth, we proposed to require matching of waste stream level consent numbers with waste streams listed on the Resource Conservation and Recovery Act (RCRA) hazardous waste manifests for import and export shipments. Lastly, we proposed to require EPA identification (ID) numbers for those recognized traders¹ arranging for export or import of hazardous waste. For a more detailed description of the proposed revisions, as well as the intended benefits of each revision, please see Sections I.D, III and IV of the proposed rule (80 FR 63284).

The comment period for the proposed rule closed on December 18, 2015. The Agency received thirteen unique sets of comments in response to its October 19, 2015 proposal. Of the thirteen unique comments, three were submitted anonymously, one was submitted by the State of Hawaii's Hazardous Waste Section, three were submitted by individual companies, two were submitted by transportation industry associations, three were submitted by waste treatment related industry associations, and one was submitted by a battery industry association. Most commenters supported requiring OECD procedures for all hazardous waste imports and exports and the proposed electronic reporting requirements. But a few commenters expressed varying levels of concern about the readiness of EPA's Waste Import Export Tracking System (WIETS), and the time needed to learn to use the completed system prior to being required to submit documents using the system. In addition, questions were raised by one commenter concerning how the Automated Export System, EPA's WIETS, and EPA's e-Manifest system would work together. After considering all the submitted comments, and recognizing that the modifications to EPA's WIETS are not yet completed, we are finalizing the revisions largely as proposed, but with several additional features that affect the timing of various provisions. First, we have established a transition period to minimize the impacts of applying OECD procedures and EPA ID requirements to those existing export and import shipments occurring under the terms of a consent issued by EPA prior to the effective date of this action. This will

¹ As defined in the final rule, a recognized trader is a person domiciled in the United States, by site of business, who acts to arrange and facilitate transboundary movements of wastes destined for recovery or disposal operations, either by purchasing from and subsequently selling to United States and foreign facilities, or by acting under arrangements with a United States waste facility to arrange for the export or import of the wastes.

allow persons exporting or importing shipments with Canada, Chile, Mexico, or any non-OECD country² pursuant to an EPA issued consent to continue to operate under the requirements in effect when the consent was issued until the consent expires, after which they would be required to comply with the new procedures. The final rule also includes the addition of delayed implementation for various electronic reporting requirements to EPA using EPA's WIETS, until a future electronic import-export reporting compliance date to be announced in a separate **Federal Register** notice. Lastly, the final rule includes the addition of a transition period prior to the required filing of EPA information into the Automated Export System (AES) for export shipments, during which either paper processes or electronic processes at the port may be used until a future AES filing compliance date, also to be announced in a separate **Federal Register** notice which may or may not be combined with the previously mentioned **Federal Register** notice.

B. Rationale for the Final Rule

Proposed changes to clarify and streamline requirements and convert paper submittals to electronic submittals arose in part from the Agency's periodic retrospective reviews of existing regulations, as called for by Executive Order 13563. Other proposed revisions to replace the paper process for export shipments at the port with an electronic process were needed in order to fulfill the direction set forth in Executive Order 13659 concerning the electronic management of international trade data by the U.S. Government as part of the International Trade Data System (ITDS). Lastly, EPA proposed making all hazardous waste imports and exports subject to the OECD procedures to address concerns and recommendations to strengthen individual shipment oversight in both the 2013 Commission for Environmental

Cooperation³ (CEC) report⁴ on the export and recycling of spent lead-acid batteries (SLABs) within North America and the 2015 EPA Office of Inspector General (OIG) report⁵ on hazardous waste imports.

As discussed in the proposed rule, EPA proposed applying OECD procedures to strengthen its oversight of such transboundary shipments of hazardous waste, as the harmonized OECD and Basel procedures are widely accepted as the international standard of control for such shipments. Transboundary waste shipments have a higher risk of being misdirected due to the increased number of custodial transfers, and the entry and exit procedures (and associated temporary storage) at the ports and border crossings for the countries of export, transit and import. Transboundary waste shipments to unapproved destination facilities are at the highest risk of mismanagement.

Under OECD-based procedures, prior notice and consent is required if either the exporting or importing country control the hazardous waste shipment as an export or import of hazardous waste. This allows the country or countries that control the shipment as hazardous waste to review the proposed import or export for compliance with domestic laws and regulations prior to any actual shipment. In cases where the proposed shipment would not comply with domestic laws or regulations or where there might be an issue with the proposed receiving facility, the importing country may deny consent, thus preventing a shipment to a facility that does not have the capacity to manage the waste properly.

For example, a foreign company recently proposed to ship unused methyl bromide to the U.S. for recycling, but import of methyl bromide into the U.S. for anything other than destruction is prohibited under the Clean Air Act. In a separate notice, a

different foreign company proposed to ship SLABs to a facility in the U.S. for recycling, but the destination facility listed in the notice was not authorized to recycle SLABs. In each of the examples, EPA being able to review the proposed import for compliance with U.S. laws and regulations prior to any actual shipment prevented shipments that would have not complied with one or more regulations from entering the country. Preventing such non-compliant hazardous waste shipments through requiring consent for all hazardous waste imports is more efficient than trying to inspect all incoming shipments at every port, consistent with EPA's NextGen principles⁶ thus protecting the health and environment for U.S. citizens.

In cases where only one of the countries control the proposed shipment as an import or export shipment of hazardous waste, the OECD procedures are to be followed by the country that controls the shipment as an import or export of hazardous waste. This ensures that the country is able to review the proposed import or export prior to actual shipment, and that the proper transport and management of the individual waste shipment occurs as approved.

When the proposed shipment would comply with domestic laws or regulations and the importing country consents, an international movement document must accompany the shipment from the starting site in the country of export to the destination site in the country of import, and copies of the signed movement document must be sent by the destination facility to the exporter and to the countries of export, import, and transit that respectively control the shipment as an export, import or transit of hazardous waste to confirm receipt of the shipment. Such confirmation reduces the risk of a shipment being misdirected to a country or facility not approved to receive the shipments for disposal or recovery. The confirmation of receipt also highlights any incident where the shipment is interrupted or misdirected, as the exporter and competent authorities will not receive the confirmation from the approved destination facility within expected timeframes. Lastly, the confirmation of receipt provides documentation for both the exporter and the countries of import and export that the shipment in fact went to the approved recycling or disposal facility.

Once received at the approved facility, management (*i.e.*, treatment and

² Transboundary shipments of hazardous waste with Canada, Chile, Mexico or any non-OECD country were previously subject to the export requirements of 40 CFR part 262 Subpart E or the import requirements of 40 CFR part 262 Subpart F, and not to the previous version of 40 CFR part 262 Subpart H.

³ The Commission for Environmental Cooperation (CEC) is an international organization created by Canada, Mexico and the United States under the North American Agreement on Environmental Cooperation (NAAEC). The CEC was established, among other things, to address regional environmental concerns, help prevent potential trade and environmental conflicts, and to promote the effective enforcement of environmental law. The Agreement complements the environmental provisions of the North American Free Trade Agreement (NAFTA). More information on the CEC is available on its Web site at www.cec.org.

⁴ http://www.cec.org/Storage/149/17479_CEC_Secretariat-SLABs_Report_may7_en_web.pdf.

⁵ "EPA Does Not Effectively Control or Monitor Imports of Hazardous Waste," July 6, 2015, available online at http://www.epa.gov/sites/production/files/2015-09/documents/oigreportonhwimports015_0.pdf.

⁶ <https://www.epa.gov/compliance/next-generation-compliance>.

disposal, recovery) of each shipment is required to be completed within one year of shipment delivery, and the destination facility must send confirmation of completing such management back to the exporter and to the competent authorities of the countries of export and import that respectively control the shipment as an export or import of hazardous waste. This requirement minimizes the risk of speculative accumulation or abandonment of the waste shipments, and decreases the potential for associated damage to human health and the environment.

As discussed in Section II(B)(4) of the proposed rule, historically the overwhelming majority of the hazardous waste import and export shipments into and out of the United States occur with Canada and Mexico, both of which are member countries of the OECD. Canadian regulations already require U.S. exporters and receiving facilities to comply with OECD requirements through contract terms, and Canadian regulations requires Canadian exporters to comply with OECD requirements, including notice and consent, if the United States controls the planned shipment as an import of hazardous waste. More recently, only 26 export shipments and 111 import shipments out of the 54,152 hazardous waste import and export shipments in 2011 were between the United States and non-OECD countries. Only 84 import shipments out of the 53,376 hazardous waste import and export shipments in 2014 were between the United States and non-OECD countries. Additionally, almost all of the specific non-OECD countries from which the United States received import shipments in 2011 or 2014 (*i.e.*, the Bahamas, Bermuda, the Dominican Republic, Malaysia, the Netherland Antilles, the Philippines, Singapore, Syria) and the specific non-OECD countries to which the United States shipped export shipments in 2011 (*i.e.*, Peru, the Philippines) are Party to the Basel Convention⁷ and the OECD procedures have been harmonized with the Basel procedures. Thus, the requirements established in this action will make U.S. requirements

more consistent with those of our trading partners.

EPA notes that the OECD recovery and disposal operations include operations that would not be generally allowable under domestic RCRA management requirements. The definitions of disposal operations and recovery operations in § 262.81 reflect the complete OECD list of operations, and several operations listed solely in Canadian import-export regulations to accurately harmonize operations listed in notices with those of Canada and other OECD countries. If the recovery or disposal operation listed in a notice proposing shipment of a hazardous waste to the U.S. for recovery or disposal is not allowed under RCRA, EPA will object to the notice on that basis. The inclusion of the complete list of OECD and Canadian-specific recovery and disposal operations in § 262.81 does not make such operations allowable within the United States if RCRA does not allow such management.

Lastly, EPA would like to re-affirm that the existing U.S.-Canada bilateral agreement, the U.S.-Mexico bilateral agreement, and the three import-only bilateral agreements between the United States and Malaysia, Costa Rica, and the Philippines remain in place and are not affected by these revisions. While the revisions change the applicable requirements for hazardous waste shipments with these countries, these additional requirements are fully consistent with the bilateral agreements.

C. Summary of the Final Rule

This section provides a brief overview of this final rule and describes the major ways in which this rule differs from the proposal. For a more detailed description and justification of the changes in this final rule, see Section III of this preamble.

Largely as proposed, this final rule removes and reserves 40 CFR part 262 Subparts E and F, and expands the applicability of a reorganized and clarified 40 CFR part 262 Subpart H to all hazardous waste transboundary shipments, including those import and export shipments of universal waste managed under 40 CFR part 273 (or the authorized State equivalent) and specific hazardous wastes (*e.g.*, spent lead-acid batteries) managed under the alternate standards of 40 CFR part 266 (or authorized State equivalent). Exporters of hazardous waste shipments, and the transporters carrying such shipments, to Canada, Chile, Mexico and any non-OECD country will be required to comply with OECD procedures under new or renewed consents issued after the effective date

of this action. Importers and receiving facilities of hazardous waste shipments, and the transporters carrying such shipments, from Canada, Chile, Mexico and any non-OECD country similarly will be required to comply with OECD procedures under new or renewed consents issued to either the foreign exporter or the U.S. importer after the effective date of this action. As required by OECD procedures and originally implemented in 40 CFR 262.82(g), EPA is finalizing the proposed text in §§ 261.4(d), 261.4(e), and 262.82(d) applying the OECD limit of 25 kilograms to all excluded hazardous waste sample import and export shipments. This limit applies in addition to the conditions for the sample exclusions at 40 CFR 261.4(d) and 40 CFR 261.4(e). EPA notes that for treatability samples, the lower of the limits listed in the existing § 261.4(e)(2)(ii) and new § 261.4(e)(4) would apply. For example, treatability samples of acute hazardous wastes to be imported or exported as excluded samples could be no more than 1 kg.

However, in contrast to the proposed rule, any existing export and import shipments with consents issued prior to the effective date of this action will only be required to comply with the terms of the consent and the original Part 262 subparts E or F based requirements in effect at the time the consents were issued until the relevant consent periods expire. The requirement for recognized traders arranging for import or export to obtain EPA ID numbers will be similarly phased in, in that those traders with consents issued prior to the effective date of this action will be able to continue managing the shipments occurring under those consents without having to immediately obtain an EPA ID number, and recognized traders will only be required to obtain an EPA ID number prior to arranging for any new or renewed consents to import or export hazardous waste on or after the effective date of this action.

Also in contrast to the proposed rule, electronic reporting to EPA using EPA's WIETS, or its successor system, will be phased in over a period of time to give EPA more time to complete and fully test a number of the electronic documents prior to requiring their use. Only electronic submittal of new export notices for hazardous waste or cathode ray tubes (CRTs) for recycling using EPA's WIETS will be required on the effective date of this action. Export annual reports for hazardous waste and CRTs for recycling will be required to be electronically submitted after a full calendar year of electronic-only AES filing has been required. The one-calendar-year period is necessary

⁷ The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal is a comprehensive global environmental agreement on hazardous and other wastes. The Convention has 181 Member countries, also known as Parties, and aims to protect human health and the environment against the adverse effects that may result from the generation, management, transboundary movements and disposal of hazardous and other wastes. The United States is a signatory, but has not yet ratified the Convention. More information on the Basel Convention may be found at www.basel.int.

because the AES data for exported shipments will be used in EPA's WIETS to build the draft export annual reports and EPA will need one full calendar year of this information in order to produce the appropriate draft export annual report for the exporter's review. The exporter will then have the opportunity to make any changes to reflect any return or rejection made subsequent to the AES filing for each shipment. Electronic submittal to EPA of the remaining seven import and export documents will not be required until after EPA completes and fully tests the electronic documents with the help of volunteer exporters, foreign facilities, importers, and receiving facilities. EPA will announce the future electronic import-export reporting compliance date for those submittals in a separate **Federal Register** notice. Paper submittals will be required from the effective date of this action until the electronic submittals are required for each of the following: Export annual reports, export exception reports, import notices, and receiving facility notifications of the need to arrange alternate management or return of an individual import shipment. No submittals to EPA will be required for each of the following, until the electronic import-export reporting compliance date (on or after which electronic submittal of these documents to EPA using EPA's WIETS, or its successor system, will be required): Export confirmations of receipt, export confirmations of recovery or disposal, import confirmations of receipt, and import confirmations of recovery or disposal. Finally, the final rule clarifies that electronic storage in EPA's WIETS of electronically submitted documents will satisfy EPA's recordkeeping requirements, so long as copies are readily available for viewing and production if requested by any EPA or authorized state inspector, and that the submitter will not be held liable for the inability to produce such documents for inspection if the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system, for which the submitter bears no responsibility.

Largely as proposed, EPA is requiring electronic filing in AES for each export shipment. However, the future AES filing compliance date will be announced in a separate **Federal Register** notice in order to give exporters and their authorized agents more time to revise their filing software and fully test out the procedures,

consistent with the approach being used by CBP with other government agencies. Because the AES filing procedures related to validating consent to export a shipment are a new requirement, only a limited number of the exporters and authorized agents were able to test file in a pilot the additional information and validate their consents for individual hazardous waste export shipments as part of their current AES filing procedures prior to the effective date of this action. We are therefore establishing a transition period during which exporters may choose to comply with either the electronic AES filing procedures or the paper-based procedures at the port. EPA will coordinate with CBP on the selection of the AES filing compliance date, which will be announced in a separate **Federal Register** notice. On or after the AES filing compliance date, all exporters of hazardous waste and cathode ray tubes for recycling will be required to comply with the AES filing requirements.

The revisions to RCRA hazardous waste manifest-related requirements for hazardous waste export and import shipments are also being finalized largely as proposed with only a few changes. Exporters and receiving facilities will be required to list the consent number for each waste listed in the manifest from the effective date of this action, but the regulatory text no longer specifies exactly where on the manifest the consent numbers must be added. Also in contrast with the proposed rule, the final rule has removed the inadvertently proposed duplicate submittal of paper import manifests to both the e-Manifest system and EPA's International Compliance Assurance Division so that submittal of paper import manifests to EPA's International Compliance Assurance Division is required only until the receiving facility can mail the manifest to the e-Manifest system per §§ 264.71(a)(2)(v)/265.71(a)(2)(v). EPA is not finalizing the regulatory language proposed in §§ 262.83(a)(5) and (6). These provisions had included instructions for the exporter to obtain a confirmation of receipt from the foreign facility and for the exporter to provide direction to the transporter in cases when the shipment was rejected by the foreign facility. This regulatory language had been in the original manifest instructions under 40 CFR part 262 subpart E. However, EPA is elsewhere finalizing similar requirements such that §§ 262.83(a)(5) and (6) are redundant. Specifically, § 262.83(d)(2)(xv) requires the exporter to direct the foreign facility to confirm

receipt of each shipment, § 262.83(f)(3)(i) requires contract terms to direct the foreign facility to inform the exporter if the shipment cannot be managed according to the consent, § 262.83(e) requires the exporter to arrange for the return of the waste as needed, and § 262.83(h) requires the exporter to file an exception report as needed. Lastly, the proposed deletion of the requirement for transporters to give a copy of the signed and dated manifest to the U.S. customs official at the point of departure from the United States has been amended to reflect the transition period prior to the AES filing compliance date during which the exporter may choose to either electronically file EPA information in AES or follow the existing paper-based process at the port. During the transition period, exporters will be required to inform the transporter whether they have chosen to follow paper-based processes so that the transporter will know whether he or she is required to give a copy of the paper manifest to the U.S. customs official. On or after the electronic AES filing compliance date, no transporter will be required to give a copy of a paper manifest to the U.S. customs official.

Finally, at this time EPA is not finalizing any limits to the number of hazardous waste codes that can be listed to characterize a hazardous waste in export notices, import notices, or export annual reports due to concerns raised by commenters (see response to comment document for more details).

D. Compliance Dates for the Final Rule

This final rule is effective on December 31, 2016. Section 3010(b) of RCRA allows EPA to promulgate a rule with an effective date shorter than six months when other good cause is found and published with the regulation. Under Executive Order 13659, agencies are required to have capabilities, agreements, and other requirements in place by December 31, 2016, to utilize the ITDS and supporting systems, such as the Automated Export System or its successor system, as the primary means of receiving from users the standard set of data and other relevant documentation (exclusive of applications for permits, licenses, or certifications) required for the release of imported cargo and clearance of cargo for export. In order to comply with Executive Order 13659, the effective date must therefore be December 31, 2016.

EPA is, however, cognizant of the impact these changes will have on those companies or individuals currently exporting or importing hazardous waste

under the terms of a consent issued by EPA. As a result, as discussed earlier in this preamble, any consent that was issued by EPA prior to December 31, 2016 for a hazardous waste export or import will remain in effect for the remaining period of consent, and the 40 CFR part 262 based requirements that existed at the time the consent was issued will remain in effect until the 12-month consent period expires. A copy of those requirements has been placed in the docket. With the exception of filing in the Automated Export System (AES) for each hazardous waste export shipment and listing consent numbers matched to each hazardous waste listed on the RCRA manifest for each hazardous waste import and export shipment, exporters, importers and receiving facilities in the U.S. that intend to renew their consent to export or import hazardous wastes will have the remaining consent period to amend their contracts or equivalent arrangements with their foreign counterparts and transporters, obtain an EPA ID number as needed, register in EPA's Central Data Exchange (CDX) system, and otherwise prepare to comply with the requirements based on OECD procedures and the relevant electronic reporting requirements. Any proposed exports or imports of hazardous waste, and export or import shipments of hazardous waste samples that are greater than 25 kilograms that have not yet received consent to ship prior to December 31, 2016, will be subject to the revised export and import requirements on December 31, 2016, as appropriate.

Hazardous waste exporters with existing consents, or their authorized agents, will be required to file the additional information into AES, or its successor system, for each export shipment initiated on or after the future AES filing compliance date in accordance with the existing pre-departure filing deadlines in 15 CFR 30.4(b). Exporters of excluded cathode ray tubes for recycling will be subject to similar AES filing conditions for each export shipment initiated on or after the AES filing compliance date. For export shipments occurring prior to the AES filing compliance date, hazardous waste

exporters will have to either ensure compliance with the existing paper-based process at the port or use the AES electronic filing procedures. For hazardous waste exporters choosing to use the paper-based process prior to the AES filing compliance date, paper documentation of consent (*i.e.*, a copy of the AOC letter for shipments previously subject to Part 262 subpart E, or a paper movement document for shipments previously subject to Part 262 subpart H) must accompany each export shipment, and for those hazardous waste export shipments that are required to be manifested, the transporter for each shipment will have to give a copy of the signed and dated manifest to the customs official at the port or border crossing.

With respect to electronically submitting import and export related documents to EPA using WIETS or its successor system, actual implementation depends upon when the EPA's system will be ready (*i.e.*, completion of the individual electronic documents in WIETS), and in the case of electronic export annual reports, on EPA having a calendar year of electronic AES filing data upon which to build each draft electronic export annual report in WIETS for the exporter to review and amend as necessary prior to electronically signing and submitting to EPA.

Export notices requesting initial consent or renewal of consent for hazardous wastes and for CRTs proposed to be exported for recycling will be required to be submitted to EPA electronically using EPA's WIETS on the effective date of this action.

Export annual reports for hazardous wastes and for CRTs exported for recycling will be required to be submitted to EPA electronically using EPA's WIETS by March 1 of the year after the AES filing compliance date, as all exporters will have been required to file in AES, or its successor system, for at least the previous calendar year. For hazardous waste export annual reports submitted prior to that date, exporters will be required to submit either a paper export annual report or, for those exporters who chose to comply with the optional AES electronic filing

requirements for all export shipments made the previous calendar year, an electronic export annual report using EPA's WIETS. For CRT export annual reports submitted prior to March 1 of the year after the AES filing compliance date, exporters will be required to submit a paper export annual report to EPA.

Because EPA has not yet completed the electronic versions of the export exception report, export confirmation of receipt, export confirmation of recovery or disposal, import notification, import confirmation of receipt, import confirmation of recovery or disposal, or the receiving facility notification of the need to arrange alternate management or return of an import shipment, electronic submittal of these documents will not be required until a future electronic import-export reporting compliance date that will be announced in a separate **Federal Register** notice. Until that future electronic import-export reporting compliance date, paper versions of the export exception reports, import notices, and receiving facility notifications of the need to arrange alternate management or return of an import shipment will be required to be submitted to EPA via mail or hand delivery. Copies of the export confirmation of receipt and export confirmation of recovery or disposal will not be required to be submitted to EPA in paper form prior to the future electronic import-export reporting compliance date, but exporters will be required to make such confirmations available to EPA or an authorized State inspector upon request. Copies of the import confirmation of receipt and import confirmation of recovery or disposal similarly will not be required to be submitted to EPA in paper form prior to the future electronic import-export reporting compliance date, but receiving facilities will be required to make such confirmations available to EPA or an authorized State inspector upon request.

The compliance dates for the various major provisions with respect to import and export shipments occurring under consents issued by EPA prior to the effective date of this action are summarized in the table below:

Major regulatory provisions in final rule	Compliance date for new or renewing shipments requiring consent on or after December 31, 2016	Compliance date for existing shipments with Canada, Mexico, Chile, or any non-OECD country occurring under consent issued by EPA prior to December 31, 2016	Compliance date for existing shipments with OECD country other than Canada, Mexico or Chile occurring under consent issued by EPA prior to December 31, 2016
For Exports of Hazardous Waste Managed under Part 262, Part 266 or Part 273:			
Recognized traders must obtain EPA ID number prior to arranging for export (262.12(d)).	12/31/2016	Recognized trader may continue managing shipments occurring under consent issued prior to 12/31/16 until consent period ends without EPA ID number, but may not arrange renewal or new exports without EPA ID number.	Recognized trader may continue managing shipments occurring under consent issued prior to 12/31/16 until consent period ends without EPA ID number, but may not arrange renewal or new exports without EPA ID number.
Exporters must establish/amend contracts or equivalent arrangements to include items listed in 262.83(f).	12/31/2016	When consent period ends; if requesting renewal of existing shipments, should establish/amend contract during existing period of consent so in place prior to submitting export notice for renewal.	When consent period ends; if requesting renewal of existing shipments, should establish/amend contract during existing period of consent so in place prior to submitting export notice for renewal.
Exporters must submit export notice or renotification with all required OECD items electronically into EPA's WIETS (262.83(b)).	12/31/2016	N/A; submittal of notice only required for new or renewing export shipments.	N/A; submittal of notice only required for new or renewing export shipments.
Until future AES filing compliance date EPA will establish in a separate FR notice, exporters must either file in AES for every shipment to validate consent and provide manifest tracking number as appropriate, or must ensure paper proof of consent accompanies shipment (<i>i.e.</i> , AOC or international movement document) and paper manifest is given by transporter to U.S. customs official at point of departure; after that date, exporters must file in AES for every shipment (262.83(a)(6)).	12/31/2016; either AES filing or paper process at port required for each shipment until future AES filing compliance date; AES filing required thereafter.	Same	Same.
Exporters must prepare and provide RCRA manifest for every shipment, listing waste stream consent numbers matched to each listed waste (262.83(c)).	12/31/2016	12/31/2016	12/31/2016.
Exporters must prepare and provide international movement document for every shipment (262.83(d)).	12/31/2016	when consent period ends	required per previous Part 262 Subpart H.
Last U.S. transporter must sign and date manifest at port for every shipment, keep copy for records and send back copy to generator; prior to future AES filing compliance date must give copy of paper manifest to U.S. customs official at point of departure if instructed to do so by exporter per 262.83(a)(6)(i)(B)(2) (263.20(g)(4)(ii)).	12/31/2016	required per previous Part 262 Subpart E.	required per previous Part 262 Subpart H.

Major regulatory provisions in final rule	Compliance date for new or renewing shipments requiring consent on or after December 31, 2016	Compliance date for existing shipments with Canada, Mexico, Chile, or any non-OECD country occurring under consent issued by EPA prior to December 31, 2016	Compliance date for existing shipments with OECD country other than Canada, Mexico or Chile occurring under consent issued by EPA prior to December 31, 2016
<p>Foreign facilities must (per contract terms) send confirmation of receipt using international movement document to U.S. exporter, country of import and any countries of transit that control the shipments as hazardous, and for shipments occurring on or after future electronic import-export reporting compliance date, to EPA electronically into EPA's WIETS using international movement document within 3 days of shipment delivery (262.83(d)(2)(xv) and 262.83(f)(4)).</p>	<p>12/31/2016; no paper submittal to EPA; electronic submittal to EPA required to be in contract for shipments occurring on or after future electronic import-export reporting compliance date.</p>	<p>when consent period ends; confirmation of receipt required per previous Part 262 Subpart E.</p>	<p>Confirmation of receipt using movement document required per previous Part 262 Subpart H.</p>
<p>When shipment must be managed at alternate facility in the country of import or another country, or returned to the U.S., the exporter must ensure such arrangements. If the waste must be returned, the exporter must provide for the return of the hazardous waste shipment within ninety days from the time the country of import informs EPA of the need to return the waste or such other period of time as the concerned countries agree (262.83(e)).</p>	<p>12/31/2016</p>	<p>when consent period ends</p>	<p>required per previous Part 262 Subpart H.</p>
<p>Exporter must submit exception report to EPA within 30 days (or 1 day prior to return shipment start) if the exporter does not get copy of manifest noting actual departure within 45 days of shipment pickup, or if the exporter does not get confirmation of receipt within 90 days of initial shipment pickup, or if the foreign facility notifies the exporter of the need to return shipment to U.S. or arrange alternate management (262.83(h)).</p>	<p>12/31/16; paper submittal to EPA required until future electronic import-export reporting compliance date; electronic submittal to EPA required thereafter.</p>	<p>paper submittal required per previous Part 262 Subpart E.</p>	<p>paper submittal required per previous Part 262 Subpart H.</p>
<p>Foreign facilities must (per contract terms) send confirmation of recovery or disposal no later than 30 days of completing management of shipment and no later than one year after shipment delivery to exporter, country of import if it controls the shipment as hazardous waste, and for shipments occurring on or after future electronic import-export reporting compliance date, to EPA using EPA's WIETS (262.83(f)(5)).</p>	<p>12/31/2016; no paper submittal to EPA; electronic submittal to EPA using EPA's WIETS required to be in contract for shipments on or after future compliance date for electronic filing.</p>	<p>when consent period ends</p>	<p>paper submittal required per previous Part 262 Subpart H.</p>

Major regulatory provisions in final rule	Compliance date for new or renewing shipments requiring consent on or after December 31, 2016	Compliance date for existing shipments with Canada, Mexico, Chile, or any non-OECD country occurring under consent issued by EPA prior to December 31, 2016	Compliance date for existing shipments with OECD country other than Canada, Mexico or Chile occurring under consent issued by EPA prior to December 31, 2016
Foreign facilities that performed interim recovery or disposal operations must (per contract terms) promptly send confirmation of final recovery or disposal that it receives from final recovery or disposal facility no later than after final facility receives shipment to exporter, country of import if it controls the shipment as hazardous waste, and for shipments occurring on or after future electronic import-export reporting compliance date, to EPA using EPA's WIETS (262.83(f)(6)).	12/31/2016; no paper submittal to EPA; electronic submittal to EPA using EPA's WIETS required to be in contract for shipments on or after future electronic import-export reporting compliance date.	when consent period ends	paper submittal required per previous Part 262 Subpart H.
Exporters must submit export annual report with all OECD items to EPA by March 1 detailing actual shipments made the previous calendar year (262.83(g)).	12/31/2016; until one year after AES filing compliance date, exporter must either submit paper report to EPA or submit electronically to EPA using EPA's WIETS if exporter has filed in AES for all shipments made the previous calendar year; electronic submittal to EPA using EPA's WIETS required thereafter.	paper submittal required per previous Part 262 Subpart E (with the exception of OECD-only items).	paper submittal required per previous Part 262 Subpart H.
Exporters must keep each record for 3 years, may keep electronically submitted documents in EPA's WIETS, providing documents are made available to EPA or authorized State inspector upon request (262.83(i)).	12/31/2016	12/31/16; recordkeeping of paper records required under previous Part 262 Subpart E.	12/31/16; recordkeeping of paper records required under previous Part 262 Subpart H.

For Exports of Excluded Cathode Ray Tubes for recovery:

Exporters must submit export notice or renotification electronically using EPA's WIETS (261.39(a)(5)(ii), 261.39(a)(5)(vi)).	12/31/2016	N/A; submittal of notice only required for new or renewing export shipments.	N/A; submittal of notice only required for new or renewing export shipments.
Exporters must file in AES for every shipment to validate consent on or after a future AES filing compliance date (261.39(a)(5)(v)).	Optional to file in AES from 12/31/2016 until future AES filing compliance date; required to file in AES thereafter.	same	same.
Exporters must submit export annual reports to EPA (261.39(a)(5)(xi)).	12/31/2016; paper submittal to EPA prior to one year after future AES filing compliance date; electronic submittal to EPA using EPA's WIETS thereafter.	same	same.
Exporters must keep each record for 3 years, may keep electronically submitted documents in EPA's WIETS, providing documents are made available to EPA or authorized State inspector upon request (261.39(a)(5)(ix), 261.39(a)(5)(xi)).	12/31/2016	12/31/16; recordkeeping of paper records required previously.	12/31/16; recordkeeping of paper records required previously.

Major regulatory provisions in final rule	Compliance date for new or renewing shipments requiring consent on or after December 31, 2016	Compliance date for existing shipments with Canada, Mexico, Chile, or any non-OECD country occurring under consent issued by EPA prior to December 31, 2016	Compliance date for existing shipments with OECD country other than Canada, Mexico or Chile occurring under consent issued by EPA prior to December 31, 2016
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For Exports or Imports of Excluded Samples for Characterization or Treatability Studies:

Mass of excluded sample to be exported to a foreign lab or imported to a U.S. lab must be no more than 25 kg and comply with all other conditions of sample exclusions (262.82(d), 261.4(d), 261.4(e)).	12/31/2016; samples exceeding 25 kg must follow export or import requirements in Part 262 Subpart H.	12/31/2016; samples exceeding 25 kg must follow export or import requirements in Part 262 Subpart H.	12/31/2016; samples exceeding 25 kg must follow export or import requirements in Part 262 Subpart H.
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For Imports of Hazardous Waste Managed under Part 262, Part 266 or Part 273:

Recognized traders must obtain EPA ID number prior to arranging for import (262.12(d)).	12/31/2016	Recognized trader may continue managing shipments occurring under consent issued prior to 12/31/16 until consent period ends without EPA ID number, but may not arrange renewal or new imports without EPA ID number.	Recognized trader may continue managing shipments occurring under consent issued prior to 12/31/16 until consent period ends without EPA ID number, but may not arrange renewal or new imports without EPA ID number.
Importers must establish/amend contracts or equivalent arrangements to include items listed in 262.84(f).	12/31/2016	When consent period for consent issued to foreign exporter or importer ends; if requesting renewal of existing shipments, should establish/amend contract during existing period of consent so in place prior to foreign exporter submitting notice to country of export for renewal.	When consent period for consent issued to foreign exporter or importer ends; if requesting renewal of existing shipments, should establish/amend contract during existing period of consent so in place prior to foreign exporter submitting notice to country of export for renewal.
When country of export does not control as hazardous waste export, importers must submit import notice or renotification with all required OECD items to EPA (262.84(b), 264.12(a)(1), 265.12(a)(1)).	12/31/16; paper submittal to EPA required prior to future electronic import-export reporting compliance date; electronic submittal to EPA using EPA's WIETS required thereafter.	N/A; submittal of notice only required for new or renewing import shipments.	N/A; submittal of notice only required for new or renewing import shipments. Paper submittal required when country of export does not control as hazardous waste export per previous Part 262 Subpart H.
Importers must prepare and provide RCRA manifest for every shipment (262.84(c)).	12/31/2016	12/31/2016; required under previous Part 262 Subpart F.	12/31/16; required under previous Part 262 Subpart H.
Receiving facilities must send confirmation of receipt using international movement document within 3 days of shipment delivery to foreign exporter, to countries of export and transit that control it as hazardous waste export or transit respectively, and for shipments occurring after the future electronic import-export reporting compliance date, to EPA electronically using EPA's WIETS (262.84(d)(2)(xv), 264.12(a)(2), 265.12(a)(2), 267.71(d)).	12/31/2016; no paper submittal to EPA; electronic submittal to EPA using EPA's WIETS required for shipments on or after future electronic import-export reporting compliance date.	when consent period ends	when consent period ends; paper submittal required per previous Part 262 Subpart H.
Receiving facilities must add waste consent numbers matched to each waste listed in RCRA manifest and send copy of signed manifest to EPA's International Compliance Assurance Division within 30 days of shipment delivery until such time the facility can send the paper manifest to the e-Manifest system (264.71(a)(3), 265.71(a)(3), 267.71(a)(3)).	12/31/2016	12/31/2016; replaces requirement to submit paper manifest with copy of import consent documentation in previous Part 264/265/267.	12/31/2016; replaces requirement to submit paper manifest with copy of import consent documentation in previous Part 264/265/267.

Major regulatory provisions in final rule	Compliance date for new or renewing shipments requiring consent on or after December 31, 2016	Compliance date for existing shipments with Canada, Mexico, Chile, or any non-OECD country occurring under consent issued by EPA prior to December 31, 2016	Compliance date for existing shipments with OECD country other than Canada, Mexico or Chile occurring under consent issued by EPA prior to December 31, 2016
Receiving facilities must inform importer, foreign exporter, and EPA of need to arrange alternate management for shipment or to return shipment to country of export (262.84(f)(4)(i), 264.12(a)(3), 265.12(a)(3)).	12/31/16; paper submittal to EPA required prior to future electronic import-export reporting compliance date; electronic submittal to EPA using EPA's WIETS required thereafter.	when consent period ends	when consent period ends; paper submittal required per previous Part 262 Subpart H.
Receiving facilities must send confirmation of recovery/disposal no later than 30 days of completing management of shipment and no later than one year after shipment delivery to foreign exporter, to country of export if the country of export controls it as hazardous waste export, and on or after future electronic import-export reporting compliance date, to EPA electronically using EPA's WIETS (262.84(g), 264.12(a)(4)(i), 265.12(a)(4)(i)).	12/31/2016; no paper submittal to EPA prior to future electronic import-export reporting compliance date; electronic submittal to EPA using EPA's WIETS thereafter.	when consent period ends	when consent period ends; paper submittal required per previous Part 262 Subpart H.
Receiving facilities that performed interim recovery or disposal operations must promptly send confirmation of final recovery/disposal that it receives from final recovery/disposal facility no later than after final facility receives shipment to foreign exporter, to the country of export if the country controls it as a hazardous waste export, and on or after future electronic import-export reporting compliance date, to EPA using EPA's WIETS (262.84(f)(6), 264.12(a)(4)(ii), 265.12(a)(4)(ii)).	12/31/2016; no paper submittal to EPA prior to future electronic import-export reporting compliance date; electronic submittal to EPA using EPA's WIETS thereafter.	when consent period ends	when consent period ends; paper submittal required per previous Part 262 Subpart H.

III. Detailed Discussion of the Final Rule

A. Consolidation of Hazardous Waste Import and Export Requirements Consistent With Current OECD Procedures

As discussed in the previous section, existing export or import shipments occurring under the terms of a consent issued prior to the effective date of this action are not required to comply with the OECD-based requirements in the newly expanded and reorganized Part 262 subpart H, and instead must continue to comply with the terms of the consent and the requirements that applied at the time the consent was issued until the consent expires. Prior to the expiration of the consent period, any exporter wishing to submit an export notice requesting new consent or a renewal of a previous consent must register in EPA's CDX, obtain an EPA ID number if he or she is a recognized trader that does not already have one,

and establish or amend a contract or equivalent arrangement between all parties to require all the OECD-based requirements prior to submitting the export notice electronically. Any importer must similarly register in EPA's CDX, obtain an EPA ID number if he or she is a recognized trader that does not already have one, and establish or amend a contract or equivalent arrangement between all parties to require all the OECD-based requirements prior to the expiration of the consent issued to the foreign exporter. Lastly, receiving facilities that do not also act as an exporter or as an importer must register in EPA's CDX prior to the electronic import-export reporting compliance date in order to electronically submit to EPA import confirmations of receipt, import confirmations of recovery or disposal, and receiving facility notifications of the need to arrange alternate management or the return of an individual import shipment.

Assuming the exporter obtains consent to export on or after the effective date of this action, the exporter must prepare and provide an international movement document containing all the items listed in § 262.83(d) for each export shipment, require that the movement document accompanies each shipment all the way from the shipment starting point in the U.S. to the receiving facility in the country of import, and that all required signatures are obtained. If the shipment starting point is different from the exporter's address, the movement document must list both the exporter's and the shipment origination information (e.g., facility name, address, contact name and phone number, fax number and email address). The exporter must require the foreign receiving facility per contract terms to use the movement document to confirm acceptance of the waste shipment, or to document partial or total rejection of the waste shipment. Exporters may use the

widely accepted OECD/Basel international movement document, or any other movement document required by the country of import provided that all the required information can be included on the movement document. Environment and Climate Change Canada (ECCC) confirmed that use of the Canadian movement document is required in 2015, and Mexico's Secretaría de Medio Ambiente y Recursos Naturales (SEMARNAT) confirmed in Spring 2016 that they would prefer use of the Mexican tracking document to minimize the number of tracking documents accompanying each shipment. Use of the Mexican tracking document is acceptable to EPA so long as all required items in § 262.83(d) are included. The contract terms must require foreign facilities to send copies of the international movement document to confirm receipt to the exporter, the country of import and any countries of transit that control the shipment as an import or transit shipment of hazardous waste, respectively, and for shipments occurring on or after the future electronic import-export reporting compliance date EPA will establish in a separate FR notice, to EPA using EPA's WIETS within three (3) days of shipment delivery. If the foreign facility rejects the shipment in part or in whole, the contract terms must require the foreign facility to notify the exporter and the country of import of the need to arrange alternate management or the return of the waste to the United States. If alternate management in the country of import that is acceptable to the exporter and the country of import cannot be found, the exporter must provide for the return of the export shipment within 90 days or some other time frame to which the relevant competent authorities all agree. Whether the shipment is managed at an alternate location or returned, the exporter must submit an exception report to EPA.

If the shipment is accepted by the foreign facility for recovery or disposal, the exporter's contract must require the foreign facility to confirm completion of recovering or disposing of the waste in the shipment as soon as possible but no later than thirty (30) days after completing recovery or disposal of the shipment, and no later than one (1) year from the shipment's delivery to the foreign facility. The exporter's contract must also require that the foreign facility send such confirmations to the exporter, the country of import, and on or after the future electronic import-export reporting compliance date, to EPA using EPA's WIETS. If the foreign

facility is solely performing an interim recovery or disposal operation prior to final recovery or disposal at a final facility, the contract must require the foreign facility to promptly forward copies of confirmations of recovery or disposal that it receives in turn from the final facility to the exporter, the country of import, and on or after the future electronic import-export reporting compliance date, to EPA using EPA's WIETS. By March 1 of each year, the exporter must submit an annual report summarizing all the shipments made during the previous calendar year. All records must be kept by the exporter for at least three (3) years. Records submitted electronically may be kept in the user's account in WIETS, but must be made available to EPA or an authorized state inspector upon request. No exporter may be held liable for the inability to produce such documents for inspection under this section if the exporter can demonstrate that the inability to produce the document is due exclusively to technical difficulty with WIETS for which the exporter bears no responsibility.

With respect to import shipments, a contract or equivalent arrangement between all parties to require all the OECD-based requirements must be established prior to any submittal of a notice. In most cases, prior notice is submitted and the eventual consent is issued to the foreign exporter rather than the importer. At the time the consent is sent back to the foreign exporter via the country of export, EPA will send a copy of import consent documentation to the receiving facility as well. But for cases where the country of export does not control the shipment as an export of hazardous waste, for whatever reason, the importer will be required to submit a notice directly to EPA requesting consent for the shipments to occur. EPA will issue the consent in such cases to the importer, and will send a copy of the consent documentation to the receiving facility as well. Just as with export shipments, the shipments must be accompanied by an international movement document and the receiving facility must both confirm receipt and confirm recovery or disposal of the waste shipment. If the country of export does not control the shipment as an export of hazardous waste, the receiving facility does not have to send the confirmations of receipt or the confirmations of recovery or disposal to the country of export. If the receiving facility cannot accept the waste shipment, it must notify the foreign exporter, the importer (if different from the receiving facility),

and EPA of the need to arrange alternate management or the return of the import shipment. In cases of return, EPA will then notify the country of export of the need for the return within 90 days.

If the receiving facility is solely performing interim recovery or disposal operations prior to final recovery or disposal at another facility, the receiving facility must promptly send confirmations of final recovery or disposal it receives from the final facility to the foreign exporter, to the country of export if it controls the shipment as an export of hazardous waste, and on or after the future electronic import-export reporting compliance date, to EPA.

B. Transition From Paper-Based to Electronic Port Procedures Under ITDS for RCRA Waste Exports Subject to Notice and Consent

Under Executive Order 13659, EPA and CBP must have the capabilities, agreements, and requirements in place to utilize electronic processes in AES, or its successor system, in place of existing paper processes at the port or border crossing required to clear export shipments for departure. Under existing paper processes for shipments occurring under consents issued prior to the effective date of this action, transporters of hazardous waste export shipments must carry paper documentation that the exporter has received consent to export the wastes in the shipment, in the form of either EPA's AOC letter for export shipments to Canada, Chile, Mexico, or any non-OECD country, or a movement document for export shipments to all other OECD countries. In addition, for manifested hazardous waste shipments the transporter must give a copy of the signed and dated RCRA manifest to the U.S. customs official at the point of departure. Under the new electronic procedures in AES, or its successor system, exporters will file the following EPA data in the AES, along with the other information required under 15 CFR 30.6:

- (1) EPA license required indicator (to declare shipment is subject to RCRA export notice and consent requirements)
- (2) Commodity classification code (10 digit, numeric description of the commodity) per 15 CFR 30.6(a)(12)
- (3) EPA consent number (specific to waste)
- (4) Country of ultimate destination per 15 CFR 30.6(a)(5)
- (5) Date of export per 15 CFR 30.6(a)(2)
- (6) RCRA hazardous waste manifest tracking number (if required; universal waste, CRTs being shipped for recycling, industrial

ethyl alcohol being shipped for reclamation, and SLABs being shipped for recovery of lead are exempt from RCRA manifest requirements under existing RCRA regulations)

- (7) Quantity of waste in shipment and units for reported quantity (units established by commodity classification number)
- (8) EPA net quantity and EPA net quantity units of measure (if required, must be reported in kilograms if solid waste, and in liters if liquid waste; only required if commodity classification number does not require quantity to be reported in weight or volume units)

Of the items listed previously, only the “EPA license code”, “EPA consent number”, “RCRA hazardous waste manifest tracking number”, “EPA net quantity”, and “EPA net quantity units of measurement” are not already required to be filed in AES under the U.S. Census Bureau’s Foreign Trade Regulations (FTR). Of these five items, one item is only required if the waste is subject to RCRA manifesting requirements and two of the remaining items are only required in cases where the commodity classification number-based quantity reporting does not require that the quantity of the commodity in the shipment be reported in weight or volumetric units (*e.g.*, kg or L). Because an EPA license, or an EPA consent number, is required, AES will require the two to five additional items to be filed, as appropriate, and will validate the country of ultimate destination and the date of export against EPA-supplied reference data for the entered EPA consent number. If the consent number is not in the correct format, AES will provide a fatal error message for the filer that specifies the error in the filing. The filer will then need to correct and resubmit the filing to correct it. If the country of ultimate destination does not match the country of import for the consent number, AES will provide a fatal error message for the filer that specifies the error in the filing. The filer will then need to correct and resubmit the filing. If a RCRA manifest is required for the consent number and the filer does not enter a correctly formatted RCRA manifest number (*i.e.*, nine digits followed by three letters), AES will provide a fatal error message for the filer

that specifies the error in the filing. The filer will then need to correct and resubmit the filing. Lastly, if the EPA net shipping quantity is required to be entered based on the commodity classification number entered and the filer does not enter that quantity, the AES will provide a fatal error message for the filer that specifies the error in the filing. The filer will then need to correct and resubmit the filing. AES will not issue an Internal Transaction Number (ITN) to indicate successful completion until the filing passes all validations. The exporter and transporter will be in violation of the FTR if the shipment is exported without a valid ITN. When the shipment is validated and the ITN issued, the shipment will be cleared to leave the port of export.

As discussed in the previous section, EPA is establishing a transition period under which exporters may choose to comply with either the electronic AES filing procedures or the paper-based procedures at the port. Exporters choosing to use the paper process at the port must provide the paper documentation of consent to the initial transporter, along with a paper RCRA manifest if the shipment is required to be manifested, and must instruct the transporter via email, mail or fax to give a copy of the signed and dated RCRA manifest to the U.S. customs official at the port or border crossing. Exporters choosing to use electronic AES filing procedures must file the EPA data listed above in AES as part of their electronic export information in AES, obtain an ITN number, provide the ITN number to the initial transporter, and if providing the transporter with a paper RCRA manifest, confirm to the transporter that no manifest must be given to the U.S. customs official at the port by manually crossing out the sentence instructing transporters to do so in the Instructions for the International Block on the RCRA manifest.

EPA will coordinate with CBP on the selection of the future AES filing compliance date, but we anticipate that it will likely be at the start of a calendar year to ensure a full calendar year of AES filing data for the first year to enable EPA to build draft export annual reports in EPA’s WIETS for electronic review and submittal by exporters. EPA will announce the future AES filing compliance date in a separate **Federal Register** notice. On or after the AES filing compliance date, all exporters of hazardous waste and cathode ray tubes for recycling will be required to comply with the AES filing requirements.

C. Conversion of Paper Submittals for Imports and Exports to Electronic Submittals Using EPA’s Waste Import Export Tracking System

As discussed in the previous section, EPA has not yet completed or tested out electronic versions of the export exception report, export confirmation of receipt, export confirmation of recovery or disposal, import notification, import confirmation of receipt, import confirmation of recovery or disposal, or the receiving facility notification of the need to arrange alternate management or return of an import shipment. Electronic submittal of these documents is therefore not required until a future electronic import-export reporting compliance date that EPA will establish in a separate **Federal Register** notice. The electronic export notice has been completed, and electronic submittal of export notices requesting new or renewed consent will be required on the effective date of this action. The electronic export annual report has been completed but since the draft export annual report will be built using AES filing data on validated export shipments that is automatically sent from AES to EPA’s WIETS, electronic submittal of the export annual report will not be required until one year after the AES filing compliance date. Paper submittals of export annual reports, export exception reports, import notices, and receiving facility notifications of the need to arrange alternate management or return of an individual import shipment will be required from the effective date of this action until the future electronic import-export reporting compliance date. No submittals to EPA of export confirmations of receipt, export confirmations of recovery or disposal, import confirmations of receipt, or import confirmations of recovery or disposal will be required until the future electronic import-export reporting compliance date, on or after which electronic submittal of these documents to EPA using EPA’s WIETS will be required.

D. Availability of Electronic Reporting

As of December 31, 2016, exporters of cathode ray tubes for recycling (40 CFR 261.39(a)(5)(ii)) or RCRA-regulated hazardous wastes (40 CFR 262.83(b)) must complete and submit hazardous waste export notices using EPA’s WIETS. EPA’s Central Data Exchange (CDX) is the agency entry point for the agency electronic reporting. EPA’s WIETS can be accessed by logging into EPA’s CDX. As part of the one-time CDX registration process, individual

exporters and export preparers must create a CDX account.⁸ As of one year after the AES filing compliance date, exporters of cathode ray tubes for recycling (40 CFR 261.39(a)(5)(xi)) or RCRA-regulated hazardous wastes (40 CFR 262.83(g)) can review draft export annual reports generated by WIETS and submit final export annual reports similarly using EPA's WIETS. They can prepare, sign, submit and receive receipt of their export notice or their annual report in WIETS. The submitter can also track which of their export notices are pending or processed.

A separate **Federal Register** Notice will be published for the other 7 reports (40 CFR 262.83(d)(2)(xv), 262.83(f)(4), 262.83(f)(5), 262.83(f)(6), 262.83(h), 262.84(b), 262.84(d)(2)(xv), 262.84(f)(4)(i), 262.84(f)(6), 262.84(g), 264.12(a)(1), 264.12(a)(2), 264.12(a)(3), 264.12(a)(4)(i), 264.12(a)(4)(ii), 264.71(d), 265.12(a)(1), 265.12(a)(2), 265.12(a)(3), 265.12(a)(4)(i), 265.12(a)(4)(ii), 265.71(d)).

How to Access the System: WIETS can be accessed by going to <https://cdx.epa.gov> and registering with CDX and selecting WIETS as your Program Service.

How to Get Help for the System: The CDX Help desk is available for help with CDX registration for WIETS. There are also several user's guides (for both CDX and the WIETS data system). There is a user guide to guide the user through the registration process on CDX and then there is a user's guide for using WIETS. That guide is posted in WIETS. Users may register in CDX at any time, and EPA encourages those exporters and export preparers that expect to submit export notices in 2017 to begin the CDX registration process as soon as possible. For assistance with registering in CDX, please contact the CDX help desk via phone at 888-890-1995 from 8:00 a.m. to 6:00 p.m. (EST/EDT), or via email at helpdesk@epacdx.net. For more information about WIETS, please contact Jin Yoo via phone at 202-564-5721 or via email at yoo.jin@epa.gov.

E. Changes to Hazardous Waste Manifest Requirements for Import and Export Shipments

As discussed in the previous section, exporters and receiving facilities will be required to list the consent number for each waste matched to each waste listed in the hazardous waste manifest from the effective date of this action but the regulatory text in 262.83(c)(3), 264.71(a)(3)(i), 265.71(a)(3)(i), and

267.71(a)(6), respectively, does not specify exactly where on the manifest the consent numbers must be added. If additional space is needed to list the consent numbers for each waste on the paper manifest, a continuation sheet (EPA Form 8700-22A) should be used. EPA is not specifying where on the manifest to list the consent number for each waste in order to give the exporters and receiving facilities more flexibility in listing the numbers on paper manifests, and to give EPA more flexibility in determining how best to design data entry of the consent numbers in the e-Manifest currently under development. Unlike the other requirements in this rule that are based on the OECD procedures, these new requirements apply even to existing hazardous waste export and import shipments occurring under the terms of a consent issued prior to the effective date of this action.

Specific to hazardous waste import shipments, receiving facilities continue to be required to submit paper import manifests to EPA's International Compliance Assurance Division (ICAD) within thirty (30) days of shipment delivery, but the text in §§ 264.71(a)(3)(ii), 265.71(a)(3)(ii), and 267.71(a)(6)(ii) now clarifies that submittal to EPA ICAD is required only until the receiving facility can mail the paper manifest to the e-Manifest system per §§ 264.71(a)(2)(v) or 265.71(a)(2)(v).

Specific to hazardous waste export shipments, EPA is not finalizing the regulatory language proposed in §§ 262.83(a)(5) and (6). These provisions had included instructions for the exporter to obtain a confirmation of receipt from the foreign facility and for the exporter to provide direction to the transporter in cases when the shipment was partially or wholly rejected by the foreign facility. This regulatory language had been in the original manifest instructions under 40 CFR part 262 subpart E. However, EPA is elsewhere finalizing similar requirements such that §§ 262.83(a)(5) and (6) are redundant. Specifically,

§ 262.83(d)(2)(xv) requires the exporter to direct the foreign facility to confirm receipt of each shipment,

§ 262.83(f)(3)(i) requires contract terms to direct the foreign facility to inform the exporter if the shipment cannot be managed according to the consent, 262.83(e) requires the exporter to arrange for the return of the waste as needed, and 262.83(h) requires the exporter to file an exception reports as needed. In addition, the proposed deletion of the requirement for transporters to give a copy of the signed and dated manifest to the U.S. customs

official at the point of departure from the United States has been amended to reflect the transition period prior to the AES filing compliance date during which the exporter may choose to either electronically file EPA information in AES or follow the existing paper-based process at the port. During the transition period, exporters will be required to inform the transporter via mail, email or fax whether they have chosen to follow paper-based processes so that the transporter will know whether or not he or she is required to carry paper documentation of consent (*i.e.*, EPA Acknowledgement of Consent letter, international movement document) with the shipment and to give a copy of the paper manifest to the U.S. customs official at the port or border crossing. On or after the AES filing compliance date, no transporter will be required to give a copy of a paper manifest to the U.S. customs official. Lastly, the final revision to the instructions for Item 16 in the Appendix to Part 262 has been modified to delete the last sentence in the instructions to Item 16 in order to reflect that transporters will not be required to give a copy of the manifest to the U.S. customs official at the point of departure on or after the electronic AES filing compliance date. But this form change and the other form changes from the e-Manifest Final rule (79 FR 7518) will not be implemented until the e-Manifest system is available for use, and on or after the AES filing compliance date. Manifest users and manifest suppliers should therefore continue to use their existing supplies of manifests. EPA encourages exporters following electronic AES filing procedures to manually cross out the last sentence in the instructions for Item 16 to confirm that the transporter will not be required to give a copy of the signed and dated manifest to the U.S. Customs official at the port or border crossing.

F. Additional Requirements for Recognized Traders Arranging for Hazardous Waste Imports or Exports

Under this action, recognized traders arranging for export or import will be required to obtain an EPA ID number prior to arranging for import or export on or after the effective date of this final rule per § 262.12. As with the application of OECD procedures, recognized traders will not have to obtain an EPA ID number to continue managing import and export shipments occurring under the terms of a consent issued by EPA prior to the effective date of this final rule. But any recognized trader must have an EPA ID number prior to requesting a new or renewed

⁸Detailed directions on how to create a CDX account are available at <https://dev.epacdx.net/About/UserGuide>.

consent to export or import. Regulated entities request EPA ID Numbers by submitting EPA Form 8700–12 (or an authorized State’s equivalent form). EPA Form 8700–12 will have to be modified in order for recognized traders wishing to arrange for export to request an EPA ID number, as the form and its instructions currently do not reflect this requirement. Changes to EPA Form 8700–12 are developed and approved separate from this action. Until changes to EPA Form 8700–12 can be finalized, EPA recommends that recognized traders wishing to request an EPA ID number in order to arrange for export of hazardous wastes fill out page 1 of the form, reflecting his or her place of business as the site in question, and note on the form in “Item 13–Comments” that the requestor is a recognized trader that arranges for import or export of hazardous waste, universal waste or spent lead batteries subject to Part 262 Subpart H requirements.

G. Incorporation by Reference of OECD Waste Lists

This action updates the IBR source material in § 260.11(g)(1) for the OECD amber and green waste lists, and their associated waste codes, which are used to identify a waste. The OECD waste lists, entitled “List of Wastes Subject to the Green Control Procedures” and “List of Wastes Subject to Amber Control Procedures,” are set forth in Appendix 3 and Appendix 4, respectively, of the OECD Decision. The most current waste lists from the OECD Decision have been consolidated and incorporated in Annex B and C of the 2009 “Guidance Manual for the Control of Transboundary Movements of Recoverable Wastes.” Sections 262.82(a), 262.83(b)(1)(xi), 262.83(d)(2)(vi), 262.83(g)(4)(iii), 262.84(b)(1)(xi), and 262.84(d)(2)(vi) reference the IBR material in the revised § 260.11(g)(1). The material is available for inspection at: The U.S. Environmental Protection Agency, Docket Center Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004 (Docket # EPA–HQ–RCRA–2015–0147) and may be obtained from the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue André Pascal, F–75775 Paris Cedex 16, France. The material is also available online (for free) at <http://www.oecd.org/env/waste/42262259.pdf>. To contact the EPA Docket Center Public Reading Room, call (202) 566–1744. To contact the OECD, call +33 (0) 1 45 24 81 67.

H. Conforming Changes to Parts 260, 262 Through 267, 271, and 273

A number of technical level corrections to citations previously referencing Part 262 Subparts E or F were made to reflect applying the expanded Part 262 Subpart H. For a full list of the corrections, please see Section III of the proposed rule or the regulatory text in this action.

I. Related Proposed Rulemaking

In order to improve information on the movement and disposition of hazardous wastes, and to enable interested members of the community and the government to benefit from the provision of publicly accessible data, EPA intends to separately propose that U.S. exporters and U.S. receiving facilities be required to post the confirmations of receipt and confirmations of recovery or disposal that they receive for export shipments and import shipments respectively to a public company Web site until the exporters and receiving facilities are required to submit such confirmations electronically to EPA’s WIETS on or after the future electronic reporting compliance date that EPA will establish in a separate **Federal Register** notice.

IV. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer their own hazardous waste programs in lieu of the federal program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for State authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that State. The federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in that State, since only the State was authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated, the State was obligated to enact equivalent authorities within specified time frames. However, the new federal requirements did not take effect in an authorized State until the State adopted the federal requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed by the statute to implement these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA related provisions as State law to retain final authorization, EPA implements the HSWA provisions in authorized States until the States do so.

Authorized States are required to modify their programs only when EPA enacts federal requirements that are more stringent or broader in scope than existing federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the federal program (see also 40 CFR 271.1). Therefore, authorized States may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

B. Effect on State Authorization

Because of the federal government’s special role in matters of foreign policy, EPA does not authorize States to administer Federal import/export functions in any section of the RCRA hazardous waste regulations. This approach of having Federal, rather than State, administering of the import/export functions promotes national coordination, uniformity and the expeditious transmission of information between the United States and foreign countries.

Although States do not receive authorization to administer the Federal government’s export functions in 40 CFR part 262 subpart E, import functions in 40 CFR part 262 subpart F, import/export functions in 40 CFR part 262 subpart H, or the import/export relation functions in any other section of the RCRA hazardous waste regulations, State programs are still required to adopt the provisions in this rule to maintain their equivalency with the Federal program (see 40 CFR 271.10(e) which will also be amended in this rule).

This rule contains many amendments to 40 CFR part 262 subpart H, both for clarity and organization, and replaces the regulations that are currently in 40 CFR part 262 subparts E and F with the more stringent 40 CFR part 262 subpart H regulations. The rule also contains conforming import and export-related

amendments to 40 CFR parts 260, 261, 262, 263, 264, 265, 266, 267, 271 and 273, almost all of which are more stringent.

The States that have already adopted 40 CFR part 262 subparts E, F and H, 40 CFR part 263, 40 CFR part 264, 40 CFR part 265, and any other import/export related regulations must adopt the revisions to those provisions in this final rule. But only States that have previously adopted the optional CRT conditional exclusion in 40 CFR 261.39, or the optional exclusions for samples in 40 CFR 261.4(d) and 40 CFR 261.4(e) are required to adopt the revisions related to those exclusions in this final rule.

When a State adopts the import/export provisions in this rule (if final), they must not replace Federal or international references or terms with State references or terms.

The provisions of this rule will take effect in all States on the effective date of the rule, since these import and export requirements will be administered by the Federal government as a foreign policy matter, and will not be administered by States.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review, because it may raise novel legal or policy issues [3(f)(4)] arising out of legal mandates, although it is not economically significant. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared a regulatory impact analysis of the potential costs and benefits associated with this action. This analysis, titled "Regulatory Impact Analysis: EPA's Hazardous Waste Export-Import Revisions Final Rule," is available in the docket.

This rule is projected to result in aggregate annualized costs (*i.e.*, including both industry and government costs) of approximately \$2.42 and \$2.44 million using a discount rate of 3 percent or 7 percent, and assuming a 2018 electronic import-export reporting compliance date for EPA's WIETS. Costs are \$2.37 and 2.38 million assuming a 2022 electronic import-export reporting

compliance date for EPA's WIET and 3 and 7 percent discount rates, respectively. Costs to industry represent approximately 62 percent of this total. This is significantly below the \$100 million threshold established under part 3(f)(1) of the Executive Order. This rule is therefore not considered to be an economically significant action.

In addition to calling for assessment of regulatory costs, the Executive Order also requires Federal agencies to assess benefits and, "recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs." As described in Chapter 3 of the RIA, monetization of all the rule's benefits is not possible given limitations in the available data. The analysis, however, estimates that the rule will lead to quantifiable annualized cost savings of \$0.7 million using a discount rate of 3 percent or 7 percent associated with the relaxation of certain requirements and Agency benefits associated with the electronic submission of notices, annual reports, and other documents. Cost savings to industry represent approximately 66 percent of this total. In addition, the rule would lead to certain benefits that cannot be quantified. These include increased efficiency and convenience of electronic submission, enhanced tracking of hazardous waste transportation recognized trader activities, increased regulatory efficiency, consistency with trade requirements for OECD countries, reduction of risks associated with the treatment and disposal of hazardous wastes, and improved ability to acquire information regarding exports and imports of hazardous waste.

B. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2519.02, OMB ICR Control Number 2050-0214. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The requirements covered in this ICR are necessary for EPA to oversee the international trade of hazardous wastes. EPA is promulgating the above regulatory changes/amendments under the authority of Sections 1006, 1007, 2002(a), 3001 through 3010, 3013 through 3015, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery

Act (RCRA), and as amended by the Hazardous and Solid Waste Amendments, 42 U.S.C. 6905, 6906, 6912, 6921 through 6930, 6934, and 6938.

The Office of Enforcement and Compliance Assurance, U.S. EPA, uses the information provided by each U.S. exporter, receiving facility, transporter, and recognized trader to determine compliance with the applicable RCRA regulatory provisions. In addition, the information is used to determine the number, origin, destination, and type of exports from and imports to the U.S. for tracking purposes and for reporting to the OECD. This information also is used to assess the efficiency of the program.

Most of the information required by the regulations covered by this ICR is not available from any source but the respondents. In certain occasions, such as the notification of intent to export hazardous waste, EPA allows the primary exporter to submit one notice that covers activities over a period of twelve months.

Except as described below, this rule does not result in the collection of duplicate data. Although some of the information required for the hazardous waste manifest and the movement document is substantively the same, up to six pieces of additional information are required for the movement document. In addition, these two documents serve different purposes. A signed copy of the hazardous waste manifest, which is not valid beyond U.S. borders, is sent back to the U.S. exporter when the shipment leaves the U.S. to verify pertinent information, including point of departure, date of departure, destination, and contents of the shipment. The movement document must accompany the shipment until it reaches the foreign recovery facility. The signed movement document is subsequently returned to EPA and the U.S. exporter to acknowledge receipt of the shipment.

In certain cases, some of the information on the tracking document also may be collected in the Automated Export System (AES), or successor system. An AES filing is required for all shipments that are valued over \$2,500 per Schedule B number or when a license is required. However, the information currently contained in the AES is not adequate for EPA's purpose of tracking and identifying the export of hazardous waste from the U.S. For example, the wastes are identified by tariff codes that are less precise than the waste codes required by the tracking document.

Section 3007(b) of RCRA and 40 CFR part 2, subpart B, which defines EPA's

general policy on public disclosure of information, contain provisions for confidentiality. However, the Agency does not anticipate that businesses will assert a claim of confidentiality covering all or part of the final rule. If such a claim were asserted, EPA must and will treat the information in accordance with the regulations cited above. EPA also will assure that this information collection complies with the Privacy Act of 1974 and OMB Circular 108.

Respondents/affected entities:

Importers, exporters, and recycling and disposal facilities.

Respondent's obligation to respond:

Mandatory (RCRA 3002 (42 U.S.C 6922) and RCRA 3003 (42 U.S.C 6923)).

Estimated number of respondents:

1,305.

Frequency of response: Annual or on occasion.

Total estimated burden: 29,563 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$1,958,103 million, includes \$19,455 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this action are exporters, importers, transporters, and recognized traders. The Agency has determined that between 22 and 25 percent of exporters, importers, and recognized traders, and approximately 80 percent of transporters, are small entities, for a total of 555 small entities, may experience an impact between 0.1 and 0.3 percent of annual revenues. Thus, the average costs of the rule, on a per entity basis, is expected to be less than one percent of annual revenues for any regulated entity. Details of this analysis are presented in the document titled "Regulatory Impact Analysis: EPA's Hazardous Waste Export-Import Revisions Final Rule," which is available in the docket.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. Further, UMRA does not apply to the portions of this action concerning application of OECD import and export procedures because those portions are necessary for the national security or the ratification or implementation of international treaty obligations (*i.e.*, the 1986 OECD Decision-Recommendation and the Amended 2001 OECD Decision).

E. Executive Order 13132: Federalism

This action does not have federalism implications because the state and local governments do not administer the export and import requirements under RCRA. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. No exporters, importers or transporters affected by this action are known to be owned by Tribal governments or located within or adjacent to Tribal lands. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The procedural requirements in this action should prevent mismanagement of hazardous wastes in foreign countries and better document proper management of imported hazardous wastes in the United States.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This action will have little to no effect on the supply, distribution, or use of energy, as this action is intended to prevent mismanagement of hazardous wastes in foreign countries and better document proper management of imported hazardous wastes in the United States.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because this action should prevent mismanagement of hazardous wastes in foreign countries and better document proper management of imported hazardous wastes in the United States. Specifically, this action is designed to increase tracking of individual hazardous waste import and export shipments, improve regulatory efficiency and improve information collection on imports and exports of hazardous wastes subject to RCRA notice and consent requirements.

K. Executive Order 13659: Streamlining the Export/Import Process for America's Businesses

Executive Order 13659, titled "Streamlining the Export/Import Process for America's Businesses" (79 FR 10657, February 25, 2014), establishes federal executive policy on improving the technologies, policies, and other controls governing the movement of goods across our national borders. It directs participating agencies to have capabilities, agreements, and other requirements in place by December 31, 2016, to utilize the ITDS and supporting systems as the primary means of receiving from users the standard set of data and other relevant documentation (exclusive of applications for permits, licenses, or certifications) required for the release of imported cargo and clearance of cargo for export. To meet the requirement of

the Executive Order, portions of this action directly require exporters subject to RCRA export consent requirements to electronically file consent related data and the manifest tracking number within AES, the supporting IT system for exports under the ITDS after a transition period. Additionally, this action improves regulatory efficiency related to hazardous waste imports and exports by consolidating import and export procedures for hazardous waste into one set of procedures that are widely accepted by other countries, and by replacing existing submittals to EPA of paper documentation related to hazardous waste imports and exports with electronic submittal into EPA's WIETS. Thus, this action complies with Executive Order 13659.

L. Congressional Review Act

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Incorporation by reference.

40 CFR Part 261

Environmental protection, Hazardous materials, Intergovernmental relations, Recycling, Waste treatment and disposal.

40 CFR Part 262

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, International organizations, Labeling, Packaging and containers, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 263

Environmental protection, Exports, Hazardous materials transportation.

40 CFR Part 264

Environmental protection, Hazardous waste, Imports, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 265

Environmental protection, Hazardous waste, Imports, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 266

Environmental protection, Exports, Hazardous recyclable materials, Imports, Precious metal recovery, Recycling, Spent lead-acid batteries, Waste treatment and disposal.

40 CFR Part 267

Environmental protection, Hazardous waste, Imports, Reporting and recordkeeping requirements.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Hazardous materials transportation, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 273

Environmental protection, Exports, Imports, Universal waste.

Dated: October 28, 2016.

Gina McCarthy,
Administrator.

For the reasons stated in the preamble, EPA amends title 40, chapter 1 of the Code of Federal Regulations as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

- 1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

- 2. Amend § 260.10 by adding, in alphabetical order, the definitions of "AES filing compliance date," "Electronic import-export reporting compliance date," and "Recognized trader" to read as follows:

§ 260.10 Definitions.

* * * * *

AES filing compliance date means the date that EPA announces in the **Federal Register**, on or after which exporters of hazardous waste and exporters of cathode ray tubes for recycling are required to file EPA information in the Automated Export System or its successor system, under the International Trade Data System (ITDS) platform.

* * * * *

Electronic import-export reporting compliance date means the date that EPA announces in the **Federal Register**, on or after which exporters, importers, and receiving facilities are required to submit certain export and import related documents to EPA using EPA's Waste

Import Export Tracking System, or its successor system.

* * * * *

Recognized trader means a person domiciled in the United States, by site of business, who acts to arrange and facilitate transboundary movements of wastes destined for recovery or disposal operations, either by purchasing from and subsequently selling to United States and foreign facilities, or by acting under arrangements with a United States waste facility to arrange for the export or import of the wastes.

* * * * *

- 3. Amend § 260.11 by revising paragraph (g) to read as follows:

§ 260.11 Incorporation by reference.

* * * * *

(g) The following materials are available for purchase from the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue André Pascal, F-75775 Paris Cedex 16, France.

(1) Guidance Manual for the Control of Transboundary Movements of Recoverable Wastes, copyright 2009, Annex B: OECD Consolidated List of Wastes Subject to the Green Control Procedure and Annex C: OECD Consolidated List of Wastes Subject to the Amber Control Procedure, IBR approved for §§ 262.82(a), 262.83(b),(d), and (g), and 262.84(b) and (d) of this chapter.

(2) [Reserved]

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

- 4. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

- 5. Amend § 261.4 by:

- a. Revising paragraph (d)(1) introductory text;
- b. Adding paragraph (d)(4);
- c. Revising paragraph (e)(1) introductory text; and
- d. Adding paragraph (e)(4).

The revisions and additions read as follows:

§ 261.4 Exclusions.

* * * * *

(d) * * * (1) Except as provided in paragraphs (d)(2) and (4) of this section, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of this part or parts 262 through 268 or part 270 or part 124 of this chapter or to the

notification requirements of section 3010 of RCRA, when:

* * * * *

(4) In order to qualify for the exemption in paragraphs (d)(1)(i) and (ii) of this section, the mass of a sample that will be exported to a foreign laboratory or that will be imported to a U.S. laboratory from a foreign source must additionally not exceed 25 kg.

(e) * * * (1) Except as provided in paragraphs (e)(2) and (4) of this section, persons who generate or collect samples for the purpose of conducting treatability studies as defined in 40 CFR 260.10, are not subject to any requirement of 40 CFR parts 261 through 263 or to the notification requirements of Section 3010 of RCRA, nor are such samples included in the quantity determinations of 40 CFR 261.5 and 262.34(d) when:

* * * * *

(4) In order to qualify for the exemption in paragraph (e)(1)(i) of this section, the mass of a sample that will be exported to a foreign laboratory or testing facility, or that will be imported to a U.S. laboratory or testing facility from a foreign source must additionally not exceed 25 kg.

* * * * *

■ 6. Amend § 261.6 by revising paragraphs (a)(3)(i) and (a)(5) to read as follows:

§ 261.6 Requirements for recyclable materials.

(a) * * *

(3) * * *

(i) Industrial ethyl alcohol that is reclaimed except that exports and imports of such recyclable materials must comply with the requirements of 40 CFR part 262, subpart H.

* * * * *

(5) Hazardous waste that is exported or imported for purpose of recovery is subject to the requirements of 40 CFR part 262, subpart H.

* * * * *

■ 7. Amend § 261.39 by revising paragraphs (a)(5)(ii), (v), (vi), (ix), and (xi) to read as follows:

§ 261.39 Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling.

* * * * *

(a) * * *

(5) * * *

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

* * * * *

(v) The export of CRTs is prohibited unless all of the following occur:

(A) The receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the CRTs, EPA will forward an Acknowledgment of Consent to Export CRTs to the exporter. Where the receiving country objects to receipt of the CRTs or withdraws a prior consent, EPA will notify the exporter in writing. EPA will also notify the exporter of any responses from transit countries.

(B) On or after the AES filing compliance date, the exporter or a U.S. authorized agent must:

(1) Submit Electronic Export Information (EEI) for each shipment to the Automated Export System (AES) or its successor system, under the International Trade Data System (ITDS) platform, in accordance with 15 CFR 30.4(b).

(2) Include the following items in the EEI, along with the other information required under 15 CFR 30.6:

(i) EPA license code;

(ii) Commodity classification code per 15 CFR 30.6(a)(12);

(iii) EPA consent number;

(iv) Country of ultimate destination per 15 CFR 30.6(a)(5);

(v) Date of export per 15 CFR 30.6(a)(2);

(vi) Quantity of waste in shipment and units for reported quantity, if required reporting units established by value for the reported commodity classification number are in units of weight or volume per 15 CFR 30.6(a)(15); or

(vii) EPA net quantity reported in units of kilograms, if required reporting units established by value for the reported commodity classification number are not in units of weight or volume.

(vi) When the conditions specified on the original notification change, the exporter must provide EPA with a written renotification of the change using the allowable methods listed in paragraph (a)(5)(ii) of this section, except for changes to the telephone number in paragraph (a)(5)(i)(A) of this section and decreases in the quantity indicated pursuant to paragraph (a)(5)(i)(C) of this section. The shipment cannot take place until consent of the receiving country to the changes has been obtained (except for changes to information about points of entry and departure and transit countries pursuant to paragraphs (a)(5)(i)(D) and (H) of this section) and the exporter of CRTs receives from EPA a copy of the Acknowledgment of Consent to Export CRTs reflecting the receiving country's consent to the changes.

* * * * *

(ix) Exporters must keep copies of notifications and Acknowledgments of Consent to Export CRTs for a period of three years following receipt of the Acknowledgment. Exporters may satisfy this recordkeeping requirement by retaining electronically submitted notifications or electronically generated Acknowledgments in the CRT exporter's 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 CRT exporter may be held liable for the inability to produce a notification or Acknowledgment for inspection under this section if the CRT exporter 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 CRT exporter bears no responsibility.

* * * * *

(xi) Prior to one year after the AES filing compliance date, annual reports must be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Hand-delivered annual reports on used CRTs exported during 2016 should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 1200 Pennsylvania Ave. NW., Washington, DC. Subsequently, annual reports must be submitted to the office listed using the allowable methods specified in paragraph (a)(5)(ii) of this section. Exporters must keep copies of each annual report for a period of at least three years from the due date of the report. Exporters may satisfy this recordkeeping requirement by retaining electronically submitted annual reports in the CRT exporter's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that a copy is readily available for viewing and production if requested by any EPA or authorized state inspector. No CRT exporter may be held liable for the inability to produce an annual report for inspection under this section if the CRT exporter can demonstrate that the inability to produce the annual report is due

exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system for which the CRT exporter bears no responsibility.

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

■ 8. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C 6906, 6912, 6922–6925, 6937, and 6938.

■ 9. Amend § 262.10 by revising paragraph (d) to read as follows:

§ 262.10 Purpose, scope, and applicability.

* * * * *

(d) Any person who exports or imports hazardous wastes must comply with § 262.12 and subpart H of this part.

* * * * *

■ 10. Amend § 262.12 by adding paragraph (d) to read as follows:

§ 262.12 EPA identification numbers.

* * * * *

(d) A recognized trader must not arrange for import or export of hazardous waste without having received an EPA identification number from the Administrator.

■ 11. Amend § 262.41 by revising the last sentence in paragraph (b) to read as follows:

§ 262.41 Biennial report.

* * * * *

(b) * * * A separate annual report requirement is set forth at § 262.83(g) for hazardous waste exporters.

Subpart E—[Removed and Reserved]

■ 12. Remove and reserve subpart E, consisting of §§ 262.50 through 262.58.

Subpart F—[Removed and Reserved]

■ 13. Remove and reserve subpart F, consisting of § 262.60.

■ 14. Subpart H is revised to read as follows:

Subpart H—Transboundary Movements of Hazardous Waste for Recovery or Disposal

Sec.

262.80 Applicability.

262.81 Definitions.

262.82 General conditions.

262.83 Exports of hazardous waste.

262.84 Imports of hazardous waste.

262.85–262.89 [Reserved]

Subpart H—Transboundary Movements of Hazardous Waste for Recovery or Disposal

§ 262.80 Applicability.

(a) The requirements of this subpart apply to transboundary movements of hazardous wastes.

(b) Any person (including exporter, importer, disposal facility operator, or recovery facility operator) who mixes two or more wastes (including hazardous and non-hazardous wastes) or otherwise subjects two or more wastes (including hazardous and non-hazardous wastes) to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under RCRA and any exporter duties, if applicable, under this subpart.

§ 262.81 Definitions.

In addition to the definitions set forth at 40 CFR 260.10, the following definitions apply to this subpart:

Competent authority means the regulatory authority or authorities of concerned countries having jurisdiction over transboundary movements of wastes.

Countries concerned means the countries of export or import and any countries of transit.

Country of export means any country from which a transboundary movement of hazardous wastes is planned to be initiated or is initiated.

Country of import means any country to which a transboundary movement of hazardous wastes is planned or takes place for the purpose of submitting the wastes to recovery or disposal operations therein.

Country of transit means any country other than the country of export or country of import across which a transboundary movement of hazardous wastes is planned or takes place.

Disposal operations means activities which do not lead to the possibility of resource recovery, recycling, reclamation, direct re-use or alternate uses, which include:

(1) D1 Release or Deposit into or onto land, other than by any of operations D2 through D5 or D12.

(2) D2 Land treatment, such as biodegradation of liquids or sludges in soils.

(3) D3 Deep injection, such as injection into wells, salt domes or naturally occurring repositories.

(4) D4 Surface impoundment, such as placing of liquids or sludges into pits, ponds or lagoons.

(5) D5 Specially engineered landfill, such as placement into lined discrete

cells which are capped and isolated from one another and the environment.

(6) D6 Release into a water body other than a sea or ocean, and other than by operation D4.

(7) D7 Release into a sea or ocean, including sea-bed insertion, other than by operation D4.

(8) D8 Biological treatment not specified elsewhere in operations D1 through D12, which results in final compounds or mixtures which are discarded by means of any of operations D1 through D12.

(9) D9 Physical or chemical treatment not specified elsewhere in operations D1 through D12, such as evaporation, drying, calcination, neutralization, or precipitation, which results in final compounds or mixtures which are discarded by means of any of operations D1 through D12.

(10) D10 Incineration on land.

(11) D11 Incineration at sea.

(12) D12 Permanent storage.

(13) D13 Blending or mixing, prior to any of operations D1 through D12.

(14) D14 Repackaging, prior to any of operations D1 through D13.

(15) D15 (or DC17 for transboundary movements with Canada only) Interim Storage, prior to any of operations D1 through D12.

(16) DC15 Release, including the venting of compressed or liquified gases, or treatment, other than by any of operations D1 to D12 (for transboundary movements with Canada only).

(17) DC16 Testing of a new technology to dispose of a hazardous waste (for transboundary movements with Canada only).

EPA Acknowledgment of Consent (AOC) means the letter EPA sends to the exporter documenting the specific terms of the country of import's consent and the country(ies) of transit's consent(s). The AOC meets the definition of an export license in U.S. Census Bureau regulations 15 CFR 30.1.

Export means the transportation of hazardous waste from a location under the jurisdiction of the United States to a location under the jurisdiction of another country, or a location not under the jurisdiction of any country, for the purposes of recovery or disposal operations therein.

Exporter, also known as primary exporter on the RCRA hazardous waste manifest, means the person domiciled in the United States who is required to originate the movement document in accordance with § 262.83(d) or the manifest for a shipment of hazardous waste in accordance with subpart B of this part, or equivalent State provision, which specifies a foreign receiving facility as the facility to which the

hazardous wastes will be sent, or any recognized trader who proposes export of the hazardous wastes for recovery or disposal operations in the country of import.

Foreign exporter means the person under the jurisdiction of the country of export who has, or will have at the time the planned transboundary movement commences, possession or other forms of legal control of the hazardous wastes and who proposes shipment of the hazardous wastes to the United States for recovery or disposal operations.

Foreign importer means the person to whom possession or other form of legal control of the hazardous waste is assigned at the time the exported hazardous waste is received in the country of import.

Foreign receiving facility means a facility which, under the importing country's applicable domestic law, is operating or is authorized to operate in the country of import to receive the hazardous wastes and to perform recovery or disposal operations on them.

Import means the transportation of hazardous waste from a location under the jurisdiction of another country to a location under the jurisdiction of the United States for the purposes of recovery or disposal operations therein.

Importer means the person to whom possession or other form of legal control of the hazardous waste is assigned at the time the imported hazardous waste is received in the United States.

OECD area means all land or marine areas under the national jurisdiction of any OECD Member country. When the regulations refer to shipments to or from an OECD Member country, this means OECD area.

OECD means the Organization for Economic Cooperation and Development.

OECD Member country means the countries that are members of the OECD and participate in the Amended 2001 OECD Decision. (EPA provides a list of OECD Member countries at <https://www.epa.gov/hwgenerators/international-agreements-transboundary-shipments-waste>).

Receiving facility means a U.S. facility which, under RCRA and other applicable domestic laws, is operating or is authorized to operate to receive hazardous wastes and to perform recovery or disposal operations on them.

Recovery operations means activities leading to resource recovery, recycling, reclamation, direct re-use or alternative uses, which include:

(1) R1 Use as a fuel (other than in direct incineration) or other means to generate energy.

(2) R2 Solvent reclamation/regeneration.

(3) R3 Recycling/reclamation of organic substances which are not used as solvents.

(4) R4 Recycling/reclamation of metals and metal compounds.

(5) R5 Recycling/reclamation of other inorganic materials.

(6) R6 Regeneration of acids or bases.

(7) R7 Recovery of components used for pollution abatement.

(8) R8 Recovery of components used from catalysts.

(9) R9 Used oil re-refining or other reuses of previously used oil.

(10) R10 Land treatment resulting in benefit to agriculture or ecological improvement.

(11) R11 Uses of residual materials obtained from any of the operations numbered R1 through R10 or RC14 (for transboundary shipments with Canada only).

(12) R12 Exchange of wastes for submission to any of the operations numbered R1 through R11 or RC14 (for transboundary shipments with Canada only).

(13) R13 Accumulation of material intended for any operation numbered R1 through R12 or RC14 (for transboundary shipments with Canada only).

(14) RC14 Recovery or regeneration of a substance or use or re-use of a recyclable material, other than by any of operations R1 to R10 (for transboundary shipments with Canada only).

(15) RC15 Testing of a new technology to recycle a hazardous recyclable material (for transboundary shipments with Canada only).

(16) RC16 Interim storage prior to any of operations R1 to R11 or RC14 (for transboundary shipments with Canada only).

Transboundary movement means any movement of hazardous wastes from an area under the national jurisdiction of one country to an area under the national jurisdiction of another country.

§ 262.82 General conditions.

(a) *Scope.* The level of control for exports and imports of waste is indicated by assignment of the waste to either a list of wastes subject to the Green control procedures or a list of wastes subject to the Amber control procedures and whether the waste is or is not hazardous waste. The OECD Green and Amber lists are incorporated by reference in 40 CFR 260.11.

(1) *Green list wastes.* (i) Green wastes that are not hazardous wastes are

subject to existing controls normally applied to commercial transactions, and are not subject to the requirements of this subpart.

(ii) Green wastes that are hazardous wastes are subject to the requirements of this subpart.

(2) *Amber list wastes.* (i) Amber wastes that are hazardous wastes are subject to the requirements of this subpart, even if they are imported to or exported from a country that does not consider the waste to be hazardous or control the transboundary shipment as a hazardous waste import or export.

(A) For exports, the exporter must comply with § 262.83.

(B) For imports, the recovery or disposal facility and the importer must comply with § 262.84.

(ii) Amber wastes that are not hazardous wastes, but are considered hazardous by the other country are subject to the Amber control procedures in the country that considers the waste hazardous, and are not subject to the requirements of this subpart. All responsibilities of the importer or exporter shift to the foreign importer or foreign exporter in the other country that considers the waste hazardous unless the parties make other arrangements through contracts.

Note to paragraph (a)(2): Some Amber list wastes are not listed or otherwise identified as hazardous under RCRA, and therefore are not subject to the requirements of this subpart. Regardless of the status of the waste under RCRA, however, other Federal environmental statutes (e.g., the Toxic Substances Control Act) restrict certain waste imports or exports. Such restrictions continue to apply with regard to this subpart.

(3) *Mixtures of wastes.* (i) A Green waste that is mixed with one or more other Green wastes such that the resulting mixture is not hazardous waste is not subject to the requirements of this subpart.

Note to paragraph (a)(3)(i): The regulated community should note that some countries may require, by domestic law, that mixtures of different Green wastes be subject to the Amber control procedures.

(ii) A Green waste that is mixed with one or more Amber wastes, in any amount, de minimis or otherwise, or a mixture of two or more Amber wastes, such that the resulting waste mixture is hazardous waste is subject to the requirements of this subpart.

Note to paragraph (a)(3)(ii): The regulated community should note that some countries may require, by domestic law, that a mixture of a Green waste and more than a de minimis amount of an Amber waste or a mixture of two or more Amber wastes be subject to the Amber control procedures.

(4) Wastes not yet assigned to an OECD waste list are eligible for transboundary movements, as follows:

(i) If such wastes are hazardous wastes, such wastes are subject to the requirements of this subpart.

(ii) If such wastes are not hazardous wastes, such wastes are not subject to the requirements of this subpart.

(b) *General conditions applicable to transboundary movements of hazardous waste.* (1) The hazardous waste must be destined for recovery or disposal operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the country of import;

(2) The transboundary movement must be in compliance with applicable international transport agreements; and

Note to paragraph (b)(2): These international agreements include, but are not limited to, the Chicago Convention (1944), ADR (1957), ADN (1970), MARPOL Convention (1973/1978), SOLAS Convention (1974), IMDG Code (1985), COTIF (1985), and RID (1985).

(3) Any transit of hazardous waste through one or more countries must be conducted in compliance with all applicable international and national laws and regulations.

(c) *Duty to return wastes subject to the Amber control procedures during transit through the United States.* When a transboundary movement of hazardous wastes transiting the United States and subject to the Amber control procedures does not comply with the requirements of the notification and movement documents or otherwise constitutes illegal shipment, and if alternative arrangements cannot be made to recover or dispose of these wastes in an environmentally sound manner, the waste must be returned to the country of export. The U.S. transporter must inform EPA at the specified mailing address in paragraph (e) of this section of the need to return the shipment. EPA will then inform the competent authority of the country of export, citing the reason(s) for returning the waste. The U.S. transporter must complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned countries.

(d) *Laboratory analysis exemption.* Export or import of a hazardous waste sample is exempt from the requirements of this subpart if the sample is destined for laboratory analysis to assess its physical or chemical characteristics, or to determine its suitability for recovery or disposal operations, does not exceed twenty-five kilograms (25 kg) in

quantity, is appropriately packaged and labeled, and complies with the conditions of 40 CFR 261.4(d) or (e).

(e) *EPA Address for submittals by postal mail or hand delivery.* Submittals required in this subpart to be made by postal mail or hand delivery should be sent to the following addresses:

(1) For postal mail delivery, the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

(2) For hand-delivery, the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, William Jefferson Clinton South Bldg., Room 6144, 12th St. and Pennsylvania Ave NW., Washington, DC 20004.

§ 262.83 Exports of hazardous waste.

(a) *General export requirements.* Except as provided in paragraphs (a)(5) and (6) of this section, exporters that have received an AOC from EPA before December 31, 2016 are subject to that approval and the requirements listed in the AOC that existed at the time of that approval until such time the approval period expires. All other exports of hazardous waste are prohibited unless:

(1) The exporter complies with the contract requirements in paragraph (f) of this section;

(2) The exporter complies with the notification requirements in paragraph (b) of this section;

(3) The exporter receives an AOC from EPA documenting consent from the countries of import and transit (and original country of export if exporting previously imported hazardous waste);

(4) The exporter ensures compliance with the movement documents requirements in paragraph (d) of this section;

(5) The exporter ensures compliance with the manifest instructions for export shipments in paragraph (c) of this section; and

(6) The exporter or a U.S. authorized agent:

(i) For shipments initiated prior to the AES filing compliance date, does one of the following:

(A) Submits Electronic Export Information (EEI) for each shipment to the Automated Export System (AES) or its successor system, under the International Trade Data System (ITDS) platform, in accordance with 15 CFR 30.4(b), and includes the following items in the EEI, along with the other

information required under 15 CFR 30.6:

(1) EPA license code;

(2) Commodity classification code for each hazardous waste per 15 CFR 30.6(a)(12);

(3) EPA consent number for each hazardous waste;

(4) Country of ultimate destination code per 15 CFR 30.6(a)(5);

(5) Date of export per 15 CFR 30.6(a)(2);

(6) RCRA hazardous waste manifest tracking number, if required;

(7) Quantity of each hazardous waste in shipment and units for reported quantity, if required reporting units established by value for the reported commodity classification number are in units of weight or volume per 15 CFR 30.6(a)(15); or

(8) EPA net quantity for each hazardous waste reported in units of kilograms if solid or in units of liters if liquid, if required reporting units established by value for the reported commodity classification number are not in units of weight or volume.

(B) Complies with a paper-based process by:

(1) Attaching paper documentation of consent (*i.e.*, a copy of the EPA Acknowledgment of Consent, international movement document) to the manifest, or shipping papers if a manifest is not required, which must accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter must provide the transporter with the paper documentation of consent which must accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter must attach the paper documentation of consent to the shipping paper.

(2) Providing the transporter with an additional copy of the manifest, and instructing the transporter via mail, email or fax to deliver that copy to the U.S. Customs official at the point the hazardous waste leaves the United States in accordance with 40 CFR 263.20(g)(4)(ii)

(ii) For shipments initiated on or after the AES filing compliance date, submits Electronic Export Information (EEI) for each shipment to the Automated Export System (AES) or its successor system, under the International Trade Data System (ITDS) platform, in accordance with 15 CFR 30.4(b), and includes the following items in the EEI, along with the other information required under 15 CFR 30.6:

(A) EPA license code;

(B) Commodity classification code for each hazardous waste per 15 CFR 30.6(a)(12);

(C) EPA consent number for each hazardous waste;

(D) Country of ultimate destination code per 15 CFR 30.6(a)(5);

(E) Date of export per 15 CFR 30.6(a)(2);

(F) RCRA hazardous waste manifest tracking number, if required;

(G) Quantity of each hazardous waste in shipment and units for reported quantity, if required reporting units established by value for the reported commodity classification number are in units of weight or volume per 15 CFR 30.6(a)(15); or

(H) EPA net quantity for each hazardous waste reported in units of kilograms if solid or in units of liters if liquid, if required reporting units established by value for the reported commodity classification number are not in units of weight or volume.

(b) *Notifications*—(1) *General notifications*. At least sixty (60) days before the first shipment of hazardous waste is expected to leave the United States, the exporter must provide notification in English to EPA of the proposed transboundary movement. Notifications must be submitted electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The notification may cover up to one year of shipments of one or more hazardous wastes being sent to the same recovery or disposal facility, and must include all of the following information:

(i) Exporter name and EPA identification number, address, telephone, fax numbers, and email address;

(ii) Foreign receiving facility name, address, telephone, fax numbers, email address, technologies employed, and the applicable recovery or disposal operations as defined in § 262.81;

(iii) Foreign importer name (if not the owner or operator of the foreign receiving facility), address, telephone, fax numbers, and email address;

(iv) Intended transporter(s) and/or their agent(s); address, telephone, fax, and email address;

(v) "U.S." as the country of export name, "USA01" as the relevant competent authority code, and the intended U.S. port(s) of exit;

(vi) The ISO standard 3166 country name 2-digit code, OECD/Basel competent authority code, and the ports of entry and exit for each country of transit;

(vii) The ISO standard 3166 country name 2-digit code, OECD/Basel

competent authority code, and port of entry for the country of import;

(viii) Statement of whether the notification covers a single shipment or multiple shipments;

(ix) Start and End Dates requested for transboundary movements;

(x) Means of transport planned to be used;

(xi) Description(s) of each hazardous waste, including whether each hazardous waste is regulated universal waste under 40 CFR part 273, or the state equivalent, spent lead-acid batteries being exported for recovery of lead under 40 CFR part 266, subpart G, or the state equivalent, or industrial ethyl alcohol being exported for reclamation under 40 CFR 261.6(a)(3)(i), or the state equivalent, estimated total quantity of each waste in either metric tons or cubic meters, the applicable RCRA waste code(s) for each hazardous waste, the applicable OECD waste code from the lists incorporated by reference in 40 CFR 260.11, and the United Nations/U.S. Department of Transportation (DOT) ID number for each waste;

(xii) Specification of the recovery or disposal operation(s) as defined in § 262.81.

(xiii) Certification/Declaration signed by the exporter that states:

I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally enforceable written contractual obligations have been entered into and that any applicable insurance or other financial guarantee is or shall be in force covering the transboundary movement.

Name:
Signature:
Date:

(2) *Exports to pre-consented recovery facilities in OECD Member countries*. If the recovery facility is located in an OECD member country and has been pre-consented by the competent authority of the OECD member country to recover the waste sent by exporters located in other OECD member countries, the notification may cover up to three years of shipments.

Notifications proposing export to a pre-consented facility in an OECD member country must include all information listed in paragraphs (b)(1)(i) through (b)(1)(xiii) of this section and additionally state that the facility is pre-consented. Exporters must submit the notification to EPA using the allowable methods listed in paragraph (b)(1) of this section at least ten days before the first shipment is expected to leave the United States.

(3) Notifications listing interim recycling operations or interim disposal

operations. If the foreign receiving facility listed in paragraph (b)(1)(ii) of this section will engage in any of the interim recovery operations R12 or R13 or interim disposal operations D13 through D15, or in the case of transboundary movements with Canada, any of the interim recovery operations R12, R13, or RC16, or interim disposal operations D13 to D14, or DC17, the notification submitted according to paragraph (b)(1) of this section must also include the final foreign recovery or disposal facility name, address, telephone, fax numbers, email address, technologies employed, and which of the applicable recovery or disposal operations R1 through R11 and D1 through D12, or in the case of transboundary movements with Canada, which of the applicable recovery or disposal operations R1 through R11, RC14 to RC15, D1 through D12, and DC15 to DC16 will be employed at the final foreign recovery or disposal facility. The recovery and disposal operations in this paragraph are defined in § 262.81.

(4) *Renotifications*. When the exporter wishes to change any of the information specified on the original notification (including increasing the estimate of the total quantity of hazardous waste specified in the original notification or adding transporters), the exporter must submit a renotification of the changes to EPA using the allowable methods in paragraph (b)(1) of this section. Any shipment using the requested changes cannot take place until the countries of import and transit consent to the changes and the exporter receives an EPA AOC letter documenting the countries' consents to the changes.

(5) For cases where the proposed country of import and recovery or disposal operations are not covered under an international agreement to which both the United States and the country of import are parties, EPA will coordinate with the Department of State to provide the complete notification to country of import and any countries of transit. In all other cases, EPA will provide the notification directly 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 paragraph (b)(1)(i) through (b)(1)(xiii) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by paragraphs (b)(1)(i) through (b)(1)(xiii) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(6) Where the countries of import and transit consent to the proposed transboundary movement(s) of the hazardous waste(s), EPA will forward an EPA AOC letter to the exporter documenting the countries' consents. Where any of the countries of import and transit objects to the proposed transboundary movement(s) of the hazardous waste or withdraws a prior consent, EPA will notify the exporter.

(7) Export of hazardous wastes for recycling or disposal operations that were originally imported into the United States for recycling or disposal operations in a third country is prohibited unless an exporter in the United States complies with the export requirements in § 262.83, including providing notification to EPA in accordance with paragraph (b)(1) of this section. In addition to listing all required information in paragraphs (b)(1)(i) through (b)(1)(xiii) of this section, the exporter must provide the original consent number issued for the initial import of the wastes in the notification, and receive an AOC from EPA documenting the consent of the competent authorities in new country of import, the original country of export, and any transit countries prior to re-export.

(8) Upon request by EPA, the exporter must furnish to EPA any additional information which the country of import requests in order to respond to a notification.

(c) *RCRA manifest instructions for export shipments.* The exporter must comply with the manifest requirements of §§ 262.20 through 262.23 except that:

(1) In lieu of the name, site address and EPA ID number of the designated permitted facility, the exporter must enter the name and site address of the foreign receiving facility;

(2) In the International Shipments block, the exporter must check the export box and enter the U.S. port of exit (city and State) from the United States.

(3) The exporter must list the consent number from the AOC for each hazardous waste listed on the manifest, matched to the relevant list number for the hazardous waste from block 9b. If additional space is needed, the exporter should use a Continuation Sheet(s) (EPA Form 8700-22A).

(4) The exporter may obtain the manifest from any source that is registered with the U.S. EPA as a supplier of manifests (*e.g.*, states, waste handlers, and/or commercial forms printers).

(d) *Movement document requirements for export shipments.* (1) All exporters must ensure that a movement document

meeting the conditions of paragraph (d)(2) of this section accompanies each transboundary movement of hazardous wastes from the initiation of the shipment until it reaches the foreign receiving facility, including cases in which the hazardous waste is stored and/or sorted by the foreign importer prior to shipment to the foreign receiving facility, except as provided in paragraphs (d)(1)(i) and (ii) of this section.

(i) For shipments of hazardous waste within the United States solely by water (bulk shipments only), the exporter must forward the movement document to the last water (bulk shipment) transporter to handle the hazardous waste in the United States if exported by water.

(ii) For rail shipments of hazardous waste within the United States which start from the company originating the export shipment, the exporter must forward the movement document to the next non-rail transporter, if any, or the last rail transporter to handle the hazardous waste in the United States if exported by rail.

(2) The movement document must include the following paragraphs (d)(2)(i) through (xv) of this section:

(i) The corresponding consent number(s) and hazardous waste number(s) for the listed hazardous waste from the relevant EPA AOC(s);

(ii) The shipment number and the total number of shipments from the EPA AOC;

(iii) Exporter name and EPA identification number, address, telephone, fax numbers, and email address;

(iv) Foreign receiving facility name, address, telephone, fax numbers, email address, technologies employed, and the applicable recovery or disposal operations as defined in § 262.81;

(v) Foreign importer name (if not the owner or operator of the foreign receiving facility), address, telephone, fax numbers, and email address;

(vi) Description(s) of each hazardous waste, quantity of each hazardous waste in the shipment, applicable RCRA hazardous waste code(s) for each hazardous waste, applicable OECD waste code for each hazardous waste from the lists incorporated by reference in 40 CFR 260.11, and the United Nations/U.S. Department of Transportation (DOT) ID number for each hazardous waste;

(vii) Date movement commenced;

(viii) Name (if not exporter), address, telephone, fax numbers, and email of company originating the shipment;

(ix) Company name, EPA ID number, address, telephone, fax, and email address of all transporters;

(x) Identification (license, registered name or registration number) of means of transport, including types of packaging;

(xi) Any special precautions to be taken by transporter(s);

(xii) Certification/declaration signed and dated by the exporter that the information in the movement document is complete and correct;

(xiii) Appropriate signatures for each custody transfer (*e.g.*, transporter, importer, and owner or operator of the foreign receiving facility);

(xiv) Each U.S. person that has physical custody of the hazardous waste from the time the movement commences until it arrives at the foreign receiving facility must sign the movement document (*e.g.*, transporter, foreign importer, and owner or operator of the foreign receiving facility); and

(xv) As part of the contract requirements per paragraph (f) of this section, the exporter must require that the foreign receiving facility send a copy of the signed movement document to confirm receipt within three working days of shipment delivery to the exporter, to the competent authorities of the countries of import and transit, and for shipments occurring on or after the electronic import-export reporting compliance date, the exporter must additionally require that the foreign receiving facility send a copy to EPA at the same time using the allowable methods listed in paragraph (b)(1) of this section.

(e) *Duty to return or re-export hazardous wastes.* When a transboundary movement of hazardous wastes cannot be completed in accordance with the terms of the contract or the consent(s) and alternative arrangements cannot be made to recover or dispose of the waste in an environmentally sound manner in the country of import, the exporter must ensure that the hazardous waste is returned to the United States or re-exported to a third country. If the waste must be returned, the exporter must provide for the return of the hazardous waste shipment within ninety days from the time the country of import informs EPA of the need to return the waste or such other period of time as the concerned countries agree. In all cases, the exporter must submit an exception report to EPA in accordance with paragraph (h) of this section.

(f) *Export contract requirements.* (1) Exports of hazardous waste are prohibited unless they occur under the terms of a valid written contract, chain

of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the exporter, foreign importer (if different from the foreign receiving facility), and the owner or operator of the foreign receiving facility, and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangements.

(2) Contracts or equivalent arrangements must specify the name and EPA ID number, where available, of paragraph (f)(2)(i) through (iv) of this section:

(i) The company from where each export shipment of hazardous waste is initiated;

(ii) Each person who will have physical custody of the hazardous wastes;

(iii) Each person who will have legal control of the hazardous wastes; and

(iv) The foreign receiving facility.

(3) Contracts or equivalent arrangements must specify which party to the contract will assume responsibility for alternate management of the hazardous wastes if their disposition cannot be carried out as described in the notification of intent to export. In such cases, contracts must specify that:

(i) The transporter or foreign receiving facility having actual possession or physical control over the hazardous wastes will immediately inform the exporter, EPA, and either the competent authority of the country of transit or the competent authority of the country of import of the need to make alternate management arrangements; and

(ii) The person specified in the contract will assume responsibility for the adequate management of the hazardous wastes in compliance with applicable laws and regulations including, if necessary, arranging the return of hazardous wastes and, as the case may be, shall provide the notification for re-export to the competent authority in the country of import and include the equivalent of the information required in paragraph (b)(1) of this section, the original consent number issued for the initial export of the hazardous wastes in the notification, and obtain consent from EPA and the competent authorities in the new country of import and any transit countries prior to re-export.

(4) Contracts must specify that the foreign receiving facility send a copy of the signed movement document to confirm receipt within three working days of shipment delivery to the exporter and to the competent authorities of the countries of import and transit. For contracts that will be in effect on or after the electronic import-export reporting compliance date, the contracts must additionally specify that the foreign receiving facility send a copy to EPA at the same time using the allowable methods listed in paragraph (b)(1) of this section on or after that date.

(5) Contracts must specify that the foreign receiving facility shall send a copy of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the exporter and to the competent authority of the country of import. For contracts that will be in effect on or after the electronic import-export reporting compliance date, the contracts must additionally specify that the foreign receiving facility send a copy to EPA at the same time using the allowable methods listed in paragraph (b)(1) of this section on or after that date.

(6) Contracts must specify that the foreign importer or the foreign receiving facility that performed interim recycling operations R12, R13, or RC16, or interim disposal operations D13 through D15 or DC17, (recovery and disposal operations defined in 40 CFR 262.81) as appropriate, will:

(i) Provide the notification required in paragraph (f)(3)(ii) of this section prior to any re-export of the hazardous wastes to a final foreign recovery or disposal facility in a third country; and

(ii) Promptly send copies of the confirmation of recovery or disposal that it receives from the final foreign recovery or disposal facility within one year of shipment delivery to the final foreign recovery or disposal facility that performed one of recovery operations R1 through R11, or RC16, or one of disposal operations D1 through D12, DC15 or DC16 to the competent authority of the country of import. For contracts that will be in effect on or after the electronic import-export reporting compliance date, the contracts must additionally specify that the foreign facility send copies to EPA at the same time using the allowable method listed in paragraph (b)(1) of this section on or after that date.

(7) Contracts or equivalent arrangements must include provisions

for financial guarantees, if required by the competent authorities of the country of import and any countries of transit, in accordance with applicable national or international law requirements.

Note 1 to paragraph (f)(7): Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD Member countries and other foreign countries do. It is the responsibility of the exporter to ascertain and comply with such requirements; in some cases, persons or facilities located in those OECD Member countries or other foreign countries may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.

(8) Contracts or equivalent arrangements must contain provisions requiring each contracting party to comply with all applicable requirements of this subpart.

(9) Upon request by EPA, U.S. exporters, importers, or recovery facilities must submit to EPA copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted in accordance with 40 CFR 2.203(b) will be treated as confidential and will be disclosed by EPA only as provided in 40 CFR 260.2.

(g) *Annual reports.* The exporter shall file an annual report with EPA no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. Prior to one year after the AES filing compliance date, the exporter must mail or hand-deliver annual reports to EPA using one of the addresses specified in § 262.82(e), or submit to EPA using the allowable methods specified in paragraph (b)(1) of this section if the exporter has electronically filed EPA information in AES, or its successor system, per paragraph (a)(6)(i)(A) of this section for all shipments made the previous calendar year. Subsequently, the exporter must submit annual reports to EPA using the allowable methods specified in paragraph (b)(1) of this section. The annual report must include all of the following paragraphs (g)(1) through (6) of this section specified as follows:

(1) The EPA identification number, name, and mailing and site address of the exporter filing the report;

(2) The calendar year covered by the report;

(3) The name and site address of each foreign receiving facility;

(4) By foreign receiving facility, for each hazardous waste exported:

(i) A description of the hazardous waste;

(ii) The applicable EPA hazardous waste code(s) (from 40 CFR part 261, subpart C or D) for each waste;

(iii) The applicable waste code from the appropriate OECD waste list incorporated by reference in 40 CFR 260.11;

(iv) The applicable DOT ID number;

(v) The name and U.S. EPA ID number (where applicable) for each transporter used over the calendar year covered by the report; and

(vi) The consent number(s) under which the hazardous waste was shipped, and for each consent number, the total amount of the hazardous waste and the number of shipments exported during the calendar year covered by the report;

(5) In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than 100kg but less than 1,000kg in a calendar month, and except for hazardous waste for which information was already provided pursuant to § 262.41:

(i) A description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated; and

(ii) A description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and

(6) A certification signed by the exporter that states:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining 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.

(h) *Exception reports.* (1) The exporter must file an exception report in lieu of the requirements of § 262.42 (if applicable) with EPA if any of the following occurs:

(i) The exporter has not received a copy of the RCRA hazardous waste manifest (if applicable) signed by the transporter identifying the point of departure of the hazardous waste from the United States, within forty-five (45)

days from the date it was accepted by the initial transporter, in which case the exporter must file the exception report within the next thirty (30) days;

(ii) The exporter has not received a written confirmation of receipt from the foreign receiving facility in accordance with paragraph (d) of this section within ninety (90) days from the date the waste was accepted by the initial transporter in which case the exporter must file the exception report within the next thirty (30) days; or

(iii) The foreign receiving facility notifies the exporter, or the country of import notifies EPA, of the need to return the shipment to the U.S. or arrange alternate management, in which case the exporter must file the exception report within thirty (30) days of notification, or one (1) day prior to the date the return shipment commences, whichever is sooner.

(2) Prior to the electronic import-export reporting compliance date, exception reports must be mailed or hand delivered to EPA using the addresses listed in § 262.82(e). Subsequently, exception reports must be submitted to EPA using the allowable methods listed in paragraph (b)(1) of this section.

(i) *Recordkeeping.* (1) The exporter shall keep the following records in paragraphs (i)(1)(i) through (v) of this section and provide them to EPA or authorized state personnel upon request:

(i) A copy of each notification of intent to export and each EPA AOC for a period of at least three (3) years from the date the hazardous waste was accepted by the initial transporter;

(ii) A copy of each annual report for a period of at least three (3) years from the due date of the report;

(iii) A copy of any exception reports and a copy of each confirmation of receipt (*i.e.*, movement document) sent by the foreign receiving facility to the exporter for at least three (3) years from the date the hazardous waste was accepted by the initial transporter; and

(iv) A copy of each confirmation of recovery or disposal sent by the foreign receiving facility to the exporter for at least three (3) years from the date that the foreign receiving facility completed interim or final processing of the hazardous waste shipment.

(v) A copy of each contract or equivalent arrangement established per § 262.85 for at least three (3) years from the expiration date of the contract or equivalent arrangement.

(2) Exporters may satisfy these recordkeeping requirements by retaining electronically submitted documents in the exporter's account on EPA's Waste

Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No exporter may be held liable for the inability to produce such documents for inspection under this section if the exporter can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system for which the exporter bears no responsibility.

(3) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

§ 262.84 Imports of hazardous waste.

(a) *General import requirements.* (1) With the exception of paragraph (a)(5) of this section, importers of shipments covered under a consent from EPA to the country of export issued before December 31, 2016 are subject to that approval and the requirements that existed at the time of that approval until such time the approval period expires. Otherwise, any other person who imports hazardous waste from a foreign country into the United States must comply with the requirements of this part and the special requirements of this subpart.

(2) In cases where the country of export does not require the foreign exporter to submit a notification and obtain consent to the export prior to shipment, the importer must submit a notification to EPA in accordance with paragraph (b) of this section.

(3) The importer must comply with the contract requirements in paragraph (f) of this section.

(4) The importer must ensure compliance with the movement documents requirements in paragraph (d) of this section; and

(5) The importer must ensure compliance with the manifest instructions for import shipments in paragraph (c) of this section.

(b) *Notifications.* In cases where the competent authority of the country of export does not regulate the waste as hazardous waste and, thus, does not require the foreign exporter to submit to it a notification proposing export and obtain consent from EPA and the competent authorities for the countries of transit, but EPA does regulate the waste as hazardous waste:

(1) The importer is required to provide notification in English to EPA

of the proposed transboundary movement of hazardous waste at least sixty (60) days before the first shipment is expected to depart the country of export. Notifications submitted prior to the electronic import-export reporting compliance date must be mailed or hand delivered to EPA at the addresses specified in § 262.82(e). Notifications submitted on or after the electronic import-export reporting compliance date must be submitted electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The notification may cover up to one year of shipments of one or more hazardous wastes being sent from the same foreign exporter, and must include all of the following information:

(i) Foreign exporter name, address, telephone, fax numbers, and email address;

(ii) Receiving facility name, EPA ID number, address, telephone, fax numbers, email address, technologies employed, and the applicable recovery or disposal operations as defined in § 262.81;

(iii) Importer name (if not the owner or operator of the receiving facility), EPA ID number, address, telephone, fax numbers, and email address;

(iv) Intended transporter(s) and/or their agent(s); address, telephone, fax, and email address;

(v) "U.S." as the country of import, "USA01" as the relevant competent authority code, and the intended U.S. port(s) of entry;

(vi) The ISO standard 3166 country name 2-digit code, OECD/Basel competent authority code, and the ports of entry and exit for each country of transit;

(vii) The ISO standard 3166 country name 2-digit code, OECD/Basel competent authority code, and port of exit for the country of export;

(viii) Statement of whether the notification covers a single shipment or multiple shipments;

(ix) Start and End Dates requested for transboundary movements;

(x) Means of transport planned to be used;

(xi) Description(s) of each hazardous waste, including whether each hazardous waste is regulated universal waste under 40 CFR part 273, or the state equivalent, spent lead-acid batteries being exported for recovery of lead under 40 CFR part 266, subpart G, or the state equivalent, or industrial ethyl alcohol being exported for reclamation under 40 CFR 261.6(a)(3)(i), or the state equivalent, estimated total quantity of each hazardous waste, the applicable RCRA hazardous waste

code(s) for each hazardous waste, the applicable OECD waste code from the lists incorporated by reference in 40 CFR 260.11, and the United Nations/ U.S. Department of Transportation (DOT) ID number for each hazardous waste;

(xii) Specification of the recovery or disposal operation(s) as defined in § 262.81; and

(xiii) Certification/Declaration signed by the importer that states:

I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally enforceable written contractual obligations have been entered into and that any applicable insurance or other financial guarantee is or shall be in force covering the transboundary movement.

Name:

Signature:

Date:

Note to paragraph (b)(1)(xiii): The United States does not currently require financial assurance for these waste shipments.

(2) Notifications listing interim recycling operations or interim disposal operations. If the receiving facility listed in paragraph (b)(1)(ii) of this section will engage in any of the interim recovery operations R12 or R13 or interim disposal operations D13 through D15, the notification submitted according to paragraph (b)(1) of this section must also include the final recovery or disposal facility name, address, telephone, fax numbers, email address, technologies employed, and which of the applicable recovery or disposal operations R1 through R11 and D1 through D12, will be employed at the final recovery or disposal facility. The recovery and disposal operations in this paragraph are defined in § 262.81.

(3) *Renotifications.* When the foreign exporter wishes to change any of the conditions specified on the original notification (including increasing the estimate of the total quantity of hazardous waste specified in the original notification or adding transporters), the importer must submit a renotification of the changes to EPA using the allowable methods in paragraph (b)(1) of this section. Any shipment using the requested changes cannot take place until EPA and the countries of transit consent to the changes and the importer receives an EPA AOC letter documenting the consents to the changes.

(4) A notification is complete when EPA determines the notification satisfies the requirements of paragraph (b)(1)(i) through (xiii) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by paragraphs (b)(1)(i) through

(xiii) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(5) Where EPA and the countries of transit consent to the proposed transboundary movement(s) of the hazardous waste(s), EPA will forward an EPA AOC letter to the importer documenting the countries' consents and EPA's consent. Where any of the countries of transit or EPA objects to the proposed transboundary movement(s) of the hazardous waste or withdraws a prior consent, EPA will notify the importer.

(6) Export of hazardous wastes originally imported into the United States. Export of hazardous wastes that were originally imported into the United States for recycling or disposal operations is prohibited unless an exporter in the United States complies with the export requirements in § 262.83(b)(7).

(c) *RCRA Manifest instructions for import shipments.* (1) When importing hazardous waste, the importer must meet all the requirements of § 262.20 for the manifest except that:

(i) In place of the generator's name, address and EPA identification number, the name and address of the foreign generator and the importer's name, address and EPA identification number must be used.

(ii) In place of the generator's signature on the certification statement, the importer or his agent must sign and date the certification and obtain the signature of the initial transporter.

(2) The importer may obtain the manifest form from any source that is registered with the EPA as a supplier of manifests (e.g., states, waste handlers, and/or commercial forms printers).

(3) In the International Shipments block, the importer must check the import box and enter the point of entry (city and State) into the United States.

(4) The importer must provide the transporter with an additional copy of the manifest to be submitted by the receiving facility to U.S. EPA in accordance with 40 CFR 264.71(a)(3) and 265.71(a)(3).

(5) In lieu of the requirements of § 262.20(d), where a shipment cannot be delivered for any reason to the receiving facility, the importer must instruct the transporter in writing via fax, email or mail to:

(i) Return the hazardous waste to the foreign exporter or designate another facility within the United States; and

(ii) Revise the manifest in accordance with the importer's instructions.

(d) *Movement document requirements for import shipments.* (1) The importer

must ensure that a movement document meeting the conditions of paragraph (d)(2) of this section accompanies each transboundary movement of hazardous wastes from the initiation of the shipment in the country of export until it reaches the receiving facility, including cases in which the hazardous waste is stored and/or sorted by the importer prior to shipment to the receiving facility, except as provided in paragraphs (d)(1)(i) and (ii) of this section.

(i) For shipments of hazardous waste within the United States by water (bulk shipments only), the importer must forward the movement document to the last water (bulk shipment) transporter to handle the hazardous waste in the United States if imported by water.

(ii) For rail shipments of hazardous waste within the United States which start from the company originating the export shipment, the importer must forward the movement document to the next non-rail transporter, if any, or the last rail transporter to handle the hazardous waste in the United States if imported by rail.

(2) The movement document must include the following paragraphs (d)(2)(i) through (xv) of this section:

(i) The corresponding AOC number(s) and waste number(s) for the listed waste;

(ii) The shipment number and the total number of shipments under the AOC number;

(iii) Foreign exporter name, address, telephone, fax numbers, and email address;

(iv) Receiving facility name, EPA ID number, address, telephone, fax numbers, email address, technologies employed, and the applicable recovery or disposal operations as defined in § 262.81;

(v) Importer name (if not the owner or operator of the receiving facility), EPA ID number, address, telephone, fax numbers, and email address;

(vi) Description(s) of each hazardous waste, quantity of each hazardous waste in the shipment, applicable RCRA hazardous waste code(s) for each hazardous waste, the applicable OECD waste code for each hazardous waste from the lists incorporated by reference in 40 CFR 260.11, and the United Nations/U.S. Department of Transportation (DOT) ID number for each hazardous waste;

(vii) Date movement commenced;

(viii) Name (if not the foreign exporter), address, telephone, fax numbers, and email of the foreign company originating the shipment;

(ix) Company name, EPA ID number, address, telephone, fax, and email address of all transporters;

(x) Identification (license, registered name or registration number) of means of transport, including types of packaging;

(xi) Any special precautions to be taken by transporter(s);

(xii) Certification/declaration signed and dated by the foreign exporter that the information in the movement document is complete and correct;

(xiii) Appropriate signatures for each custody transfer (e.g., transporter, importer, and owner or operator of the receiving facility);

(xiv) Each person that has physical custody of the waste from the time the movement commences until it arrives at the receiving facility must sign the movement document (e.g., transporter, importer, and owner or operator of the receiving facility); and

(xv) The receiving facility must send a copy of the signed movement document to confirm receipt within three working days of shipment delivery to the foreign exporter, to the competent authorities of the countries of export and transit, and for shipments received on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system.

(e) *Duty to return or export hazardous wastes.* When a transboundary movement of hazardous wastes cannot be completed in accordance with the terms of the contract or the consent(s), the provisions of paragraph (f)(4) of this section apply. If alternative arrangements cannot be made to recover the hazardous waste in an environmentally sound manner in the United States, the hazardous waste must be returned to the country of export or exported to a third country. The provisions of paragraph (b)(6) of this section apply to any hazardous waste shipments to be exported to a third country. If the return shipment will cross any transit country, the return shipment may only occur after EPA provides notification to and obtains consent from the competent authority of the country of transit, and provides a copy of that consent to the importer.

(f) *Import contract requirements.* (1) Imports of hazardous waste must occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the foreign exporter,

importer, and the owner or operator of the receiving facility, and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangements.

(2) Contracts or equivalent arrangements must specify the name and EPA ID number, where available, of paragraph (f)(2)(i) through (iv) of this section:

(i) The foreign company from where each import shipment of hazardous waste is initiated;

(ii) Each person who will have physical custody of the hazardous wastes;

(iii) Each person who will have legal control of the hazardous wastes; and

(iv) The receiving facility.

(3) Contracts or equivalent arrangements must specify the use of a movement document in accordance with § 262.84(d).

(4) Contracts or equivalent arrangements must specify which party to the contract will assume responsibility for alternate management of the hazardous wastes if their disposition cannot be carried out as described in the notification of intent to export submitted by either the foreign exporter or the importer. In such cases, contracts must specify that:

(i) The transporter or receiving facility having actual possession or physical control over the hazardous wastes will immediately inform the foreign exporter and importer, and the competent authority where the shipment is located of the need to arrange alternate management or return; and

(ii) The person specified in the contract will assume responsibility for the adequate management of the hazardous wastes in compliance with applicable laws and regulations including, if necessary, arranging the return of the hazardous wastes and, as the case may be, shall provide the notification for re-export required in § 262.83(b)(7).

(5) Contracts must specify that the importer or the receiving facility that performed interim recycling operations R12, R13, or RC16, or interim disposal operations D13 through D15 or DC15 through DC17, as appropriate, will provide the notification required in § 262.83(b)(7) prior to the re-export of hazardous wastes. The recovery and disposal operations in this paragraph are defined in § 262.81.

(6) Contracts or equivalent arrangements must include provisions

for financial guarantees, if required by the competent authorities of any countries concerned, in accordance with applicable national or international law requirements.

Note to paragraph (f)(6): Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD Member countries or other foreign countries do. It is the responsibility of the importer to ascertain and comply with such requirements; in some cases, persons or facilities located in those countries may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.

(7) Contracts or equivalent arrangements must contain provisions requiring each contracting party to comply with all applicable requirements of this subpart.

(8) Upon request by EPA, importers or disposal or recovery facilities must submit to EPA copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted in accordance with 40 CFR 2.203(b) will be treated as confidential and will be disclosed by EPA only as provided in 40 CFR 260.2.

(g) *Confirmation of recovery or disposal.* The receiving facility must do the following:

(1) Send copies of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the foreign exporter, to the competent authority of the country of export, and for shipments recycled or disposed of on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system.

(2) If the receiving facility performed any of recovery operations R12, R13, or RC16, or disposal operations D13 through D15, or DC17, the receiving facility shall promptly send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11, or RC14 to RC15, or one of disposal

operations D1 through D12, or DC15 to DC16, to the competent authority of the country of export, and for confirmations received on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The recovery and disposal operations in this paragraph are defined in § 262.81.

(h) *Recordkeeping.* (1) The importer shall keep the following records and provide them to EPA or authorized state personnel upon request:

(i) A copy of each notification that the importer sends to EPA under paragraph (b)(1) of this section and each EPA AOC it receives in response for a period of at least three (3) years from the date the hazardous waste was accepted by the initial foreign transporter; and

(ii) A copy of each contract or equivalent arrangement established per paragraph (f) of this section for at least three (3) years from the expiration date of the contract or equivalent arrangement.

(2) The receiving facility shall keep the following records:

(i) A copy of each confirmation of receipt (*i.e.*, movement document) that the receiving facility sends to the foreign exporter for at least three (3) years from the date it received the hazardous waste;

(ii) A copy of each confirmation of recovery or disposal that the receiving facility sends to the foreign exporter for at least three (3) years from the date that it completed processing the waste shipment;

(iii) For the receiving facility that performed any of recovery operations R12, R13, or RC16, or disposal operations D13 through D15, or DC17 (recovery and disposal operations defined in § 262.81), a copy of each confirmation of recovery or disposal that the final recovery or disposal facility sent to it for at least three (3) years from the date that the final recovery or disposal facility completed processing the waste shipment; and

(iv) A copy of each contract or equivalent arrangement established per paragraph (f) of this section for at least three (3) years from the expiration date of the contract or equivalent arrangement.

(3) Importers and receiving facilities may satisfy these recordkeeping requirements by retaining electronically submitted documents in the importer's or receiving facility's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized

state inspector. No importer or receiving facility may be held liable for the inability to produce such documents for inspection under this section if the importer or receiving facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system for which the importer or receiving facility bears no responsibility.

(4) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

§§ 262.85–262.89 [Reserved]

Appendix to Part 262 [Amended]

■ 15. Amend the Appendix to Part 262, under "II Instructions for International Shipment Block" by removing the last sentence in the instructions for Item 16.

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

■ 16. The authority citation for part 263 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

■ 17. Amend § 263.10 by:

■ a. Removing from paragraph (a), in the Note, the last paragraph; and

■ b. Revising paragraph (d).

The revisions read as follows:

§ 263.10 Scope.

* * * * *

(d) A transporter of hazardous waste that is being imported from or exported to any other country for purposes of recovery or disposal is subject to this Subpart and to all other relevant requirements of subpart H of 40 CFR part 262, including, but not limited to, 40 CFR 262.83(d) and 262.84(d) for movement documents.

* * * * *

■ 18. Amend § 263.20 by revising paragraphs (a)(2), (c), (e)(2), (f)(2), and (g) to read as follows:

§ 263.20 The manifest system.

(a) * * *

(2) *Exports.* For exports of hazardous waste subject to the requirements of subpart H of 40 CFR part 262, a transporter may not accept hazardous waste without a manifest signed by the generator in accordance with this section, as appropriate, and for exports occurring under the terms of a consent issued by EPA on or after December 31, 2016, a movement document that

includes all information required by 40 CFR 262.83(d).

* * * * *

(c) The transporter must ensure that the manifest accompanies the hazardous waste. In the case of exports occurring under the terms of a consent issued by EPA to the exporter on or after December 31, 2016, the transporter must ensure that a movement document that includes all information required by 40 CFR 262.83(d) also accompanies the hazardous waste. In the case of imports occurring under the terms of a consent issued by EPA to the country of export or the importer on or after December 31, 2016, the transporter must ensure that a movement document that includes all information required by 40 CFR 262.84(d) also accompanies the hazardous waste.

* * * * *

(e) * * *

(2) A shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for exports or imports occurring under the terms of a consent issued by EPA on or after December 31, 2016, a movement document that includes all information required by 40 CFR 262.83(d) or 262.84(d) accompanies the hazardous waste; and

* * * * *

(f) * * *

(2) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for exports or imports occurring under the terms of a consent issued by EPA on or after December 31, 2016, a movement document that includes all information required by 40 CFR 262.83(d) or 262.84(d) accompanies the hazardous waste at all times.

Note to paragraph (f)(2): Intermediate rail transporters are not required to sign the manifest, movement document, or shipping paper.

* * * * *

(g) Transporters who transport hazardous waste out of the United States must:

(1) Sign and date the manifest in the International Shipments block to indicate the date that the shipment left the United States;

(2) Retain one copy in accordance with § 263.22(d);

(3) Return a signed copy of the manifest to the generator; and

(4) For paper manifests only,

(i) Send a copy of the manifest to the e-Manifest system in accordance with

the allowable methods specified in 40 CFR 264.71(a)(2)(v); and

(ii) For shipments initiated prior to the AES filing compliance date, when instructed by the exporter to do so, give a copy of the manifest to a U.S. Customs official at the point of departure from the United States.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 19. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

■ 20. Amend § 264.12 by revising paragraph (a) to read as follows:

§ 264.12 Required notices.

(a) The owner or operator of a facility that is arranging or has arranged to receive hazardous waste subject to 40 CFR part 262, subpart H from a foreign source must submit the following required notices:

(1) As per 40 CFR 262.84(b), for imports where the competent authority of the country of export does not require the foreign exporter to submit to it a notification proposing export and obtain consent from EPA and the competent authorities for the countries of transit, such owner or operator of the facility, if acting as the importer, must provide notification of the proposed transboundary movement in English to EPA using the allowable methods listed in 40 CFR 262.84(b)(1) at least 60 days before the first shipment is expected to depart the country of export. The notification may cover up to one year of shipments of wastes having similar physical and chemical characteristics, the same United Nations classification, the same RCRA waste codes and OECD waste codes, and being sent from the same foreign exporter.

(2) As per 40 CFR 262.84(d)(2)(xv), a copy of the movement document bearing all required signatures within three (3) working days of receipt of the shipment to the foreign exporter; to the competent authorities of the countries of export and transit that control the shipment as an export and transit shipment of hazardous waste respectively; and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The original of the signed movement document must be maintained at the facility for at least

three (3) years. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system for which the owner or operator of a facility bears no responsibility.

(3) As per 40 CFR 262.84(f)(4), if the facility has physical control of the waste and it must be sent to an alternate facility or returned to the country of export, such owner or operator of the facility must inform EPA, using the allowable methods listed in 40 CFR 262.84(b)(1) of the need to return or arrange alternate management of the shipment.

(4) As per 40 CFR 262.84(g), such owner or operator shall:

(i) Send copies of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the foreign exporter, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and for shipments recycled or disposed of on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system.

(ii) If the facility performed any of recovery operations R12, R13, or RC16, or disposal operations D13 through D15, or DC17, promptly send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11, or RC16, or one of disposal operations D1 through D12, or DC15 to DC16, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import

disposal operations in this paragraph are defined in 40 CFR 262.81.

* * * * *

■ 24. Amend § 265.71 by revising paragraphs (a)(3) and (d) to read as follows:

§ 265.71 Use of manifest system.

(a) * * *

(3) The owner or operator of a facility that receives hazardous waste subject to 40 CFR part 262, subpart H from a foreign source must:

(i) Additionally list the relevant consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest, matched to the relevant list number for the waste from block 9b. If additional space is needed, the owner or operator should use a Continuation Sheet(s) (EPA Form 8700–22A); and
 (ii) Send a copy of the manifest to EPA using the addresses listed in 40 CFR 262.82(e) within thirty (30) days of delivery until the facility can submit such a copy to the e-Manifest system per paragraph (a)(2)(v) of this section.

* * * * *

(d) As per 40 CFR 262.84(d)(2)(xv), within three (3) working days of the receipt of a shipment subject to 40 CFR part 262, subpart H, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the foreign exporter; to the competent authorities of the countries of export and transit that control the shipment as

an export and transit shipment of hazardous waste respectively; and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA’s Waste Import Export Tracking System (WIETS), or its successor system. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility’s account on EPA’s Waste Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA’s Waste Import Export Tracking System (WIETS), or its successor system, for which the owner or operator of a facility bears no responsibility.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

■ 25. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 3017, 6905, 6906, 6912, 6921, 6922, 6924–6927, 6934, and 6937.

■ 26. Amend § 266.70 by revising paragraph (b) to read as follows:

§ 266.70 Applicability and requirements.

* * * * *

(b) Persons who generate, transport, or store recyclable materials that are regulated under this subpart are subject to the following requirements:

(1) Notification requirements under section 3010 of RCRA;

(2) Subpart B of part 262 (for generators), 40 CFR 263.20 and 263.21 (for transporters), and 40 CFR 265.71 and 265.72 (for persons who store) of this chapter; and

(3) For precious metals exported to or imported from other countries for recovery, 40 CFR part 262, subpart H and 265.12.

* * * * *

■ 27. Amend § 266.80 by revising paragraphs (a)(6) and (7) and adding paragraphs (a)(8), (9), and (10) to read as follows:

§ 266.80 Applicability and requirements.

(a) * * *

If your batteries . . .	And if you . . .	Then you . . .	And you . . .
(6) Will be reclaimed through regeneration or any other means.	export these batteries for reclamation in a foreign country.	are exempt from 40 CFR parts 262 (except for §262.11, §262.12 and subpart H), 263, 264, 265, 266, 268, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	are subject to 40 CFR part 261, §262.11, §262.12, and 40 CFR part 262, subpart H.
(7) Will be reclaimed through regeneration or any other means.	Transport these batteries in the U.S. to export them for reclamation in a foreign country.	are exempt from 40 CFR parts 263, 264, 265, 266, 268, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	must comply with applicable requirements in 40 CFR part 262, subpart H.
(8) Will be reclaimed other than through regeneration.	Import these batteries from foreign country and store these batteries but you aren’t the claimer.	are exempt from 40 CFR parts 262 (except for §262.11, §262.12 and subpart H), 263, 264, 265, 266, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	are subject to 40 CFR parts 261, §262.11, §262.12, part 262 subpart H, and applicable provisions under part 268.
(9) Will be reclaimed other than through regeneration.	Import these batteries from foreign country and store these batteries before you reclaim them.	must comply with 40 CFR 266.80(b) and as appropriate other regulatory provisions described in 266.80(b).	are subject to 40 CFR parts 261, §262.11, §262.12, part 262 subpart H, and applicable provisions under part 268.

If your batteries . . .	And if you . . .	Then you . . .	And you . . .
(10) Will be reclaimed other than through regeneration.	Import these batteries from foreign country and don't store these batteries before you reclaim them.	are exempt from 40 CFR parts 262 (except for §262.11, §262.12 and subpart H), 263, 264, 265, 266, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	are subject to 40 CFR parts 261, §262.11, §262.12, part 262 subpart H, and applicable provisions under part 268.

* * * * *

PART 267—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT

■ 28. The authority citation for part 267 continues to read as follows:

Authority: 42 U.S.C. 6902, 6912(a), 6924–6926, and 6930.

■ 29. Amend § 267.71 by:

- a. Revising paragraphs (a)(4) and (5);
- b. Adding paragraph (a)(6); and
- c. Revising paragraph (d).

The revisions and additions read as follows:

§ 267.71 Use of the manifest system.

(a) * * *

(4) Within 30 days after the delivery, send a copy of the manifest to the generator;

(5) Retain at the facility a copy of each manifest for at least three years from the date of delivery; and

(6) If a facility receives hazardous waste subject to 40 CFR part 262, subpart H from a foreign source, the receiving facility must:

(i) Additionally list the relevant consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest, matched to the relevant list number for the waste from block 9b. If additional space is needed, the

receiving facility should use a Continuation Sheet(s) (EPA Form 8700–22A); and

(ii) Mail a copy of the manifest to EPA using the addresses listed in 40 CFR 262.82(e) within thirty (30) days of delivery until the facility can submit such a copy to the e-Manifest system per 40 CFR 264.71(a)(2)(v) or 265.71(a)(2)(v).

* * * * *

(d) As per 40 CFR 262.84(d)(2)(xv), within three (3) working days of the receipt of a shipment subject to 40 CFR part 262, subpart H, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the foreign exporter; to the competent authorities of the countries of export and transit that control the shipment as an export and transit shipment of hazardous waste respectively; and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on EPA's Waste Import Export Tracking System (WIETS), or its

successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system, for which the owner or operator of a facility bears no responsibility.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

■ 30. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

■ 31. Amend § 271.1(j)(2) by:

- a. Adding an entry to Table 1 in chronological order by "Promulgation date" and
 - b. Adding an entry to Table 2 in chronological order by "Effective date".
- The additions read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

(2) * * *

TABLE 1—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
[Date of publication of final rule in the Federal Register (FR)].	Hazardous Waste Export-Import Revisions.	[Insert FR page citation]	December 31, 2016.

* * * * *

TABLE 2—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
December 31, 2016	Hazardous Waste Export-Import Revisions.	3017(a)	[Insert Federal Register page citation].

* * * * *

- 32. Amend § 271.10 by revising paragraph (e) to read as follows:

§ 271.10 Requirements for generators of hazardous wastes.

* * * * *

(e) The State program shall provide requirements respecting international shipments which are equivalent to those at 40 CFR part 262 subpart H, other hazardous waste import and export regulations in 40 CFR parts 260, 262, 263, 264, 265, 266, 267 and 273, and exclusion conditions for export or import in 40 CFR part 261 to the extent that State has adopted such exclusion conditions, except that States shall not replace EPA or international references with State references.

* * * * *

- 33. Amend § 271.11 by revising paragraph (c)(4) to read as follows:

§ 271.11 Requirements for transporters of hazardous wastes.

(c) * * *

(4) For exports of hazardous waste, the state must require the transporter to refuse to accept hazardous waste for export if the exporter has not provided: A manifest listing the consent numbers for the hazardous waste shipment; a movement document for shipments occurring under consents issued by EPA on or after December 31, 2016; and on or after the AES filing compliance date, the ITN number for the hazardous waste shipment. The state must further require the transporter to carry a movement document and manifest with the shipment, as required; to sign and date the International Shipments Block of the manifest to indicate the date the shipment leaves the U.S.; to carry paper documentation of consent (*i.e.*, Acknowledgement of Consent, movement document) with the shipment and to give a copy of the manifest to the U.S. customs official at the point of departure if instructed by mail, email or fax by the exporter to do so; and to send a copy of the manifest, if in paper form, to the e-Manifest system using the allowable methods listed in 40 CFR 264.71(a)(2)(v).

* * * * *

- 34. Amend § 271.12 by revising paragraph (i)(2) to read as follows:

§ 271.12 Requirements for hazardous waste management facilities.

* * * * *

(i) * * *

(2) After listing the relevant consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest, matched to the relevant list number for the waste from block 9b, to EPA using the allowable methods listed in 40 CFR 262.84(b)(1) until the facility can submit such a copy to the e-Manifest system per 40 CFR 264.71(a)(2)(v) and 265.71(a)(2)(v).

* * * * *

PART 273—STANDARDS FOR UNIVERSAL WASTE MANAGEMENT

- 35. The authority citation for part 273 continues to read as follows:

Authority: 42 U.S.C. 6922, 6923, 6924, 6925, 6930, and 6937.

- 36. Revise § 273.20 to read as follows:

§ 273.20 Exports.

A small quantity handler of universal waste who sends universal waste to a foreign destination is subject to the requirements of 40 CFR part 262, subpart H.

- 37. Amend § 273.39 by revising the introductory text of paragraphs (a) and (b) to read as follows:

§ 273.39 Tracking universal waste shipments.

(a) *Receipt of shipments.* A large quantity handler of universal waste must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, movement document or other shipping document. The record for each shipment of universal waste received must include the following information:

* * * * *

(b) *Shipments off-site.* A large quantity handler of universal waste must keep a record of each shipment of universal waste sent from the handler to other facilities. The record may take the form of a log, invoice, manifest, bill of lading, movement document or other shipping document. The record for each shipment of universal waste sent must include the following information:

* * * * *

- 38. Revise § 273.40 to read as follows:

§ 273.40 Exports.

A large quantity handler of universal waste who sends universal waste to a foreign destination is subject to the requirements of 40 CFR part 262, subpart H.

- 39. Revise § 273.56 to read as follows:

§ 273.56 Exports.

A universal waste transporter transporting a shipment of universal waste to a foreign destination is subject to the requirements of 40 CFR part 262, subpart H.

- 40. Amend § 273.62 by revising the introductory text of paragraph (a) to read as follows:

§ 273.62 Tracking universal waste shipments.

(a) The owner or operator of a destination facility must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, movement document or other shipping document. The record for each shipment of universal waste received must include the following information:

* * * * *

- 41. Revise § 273.70 to read as follows:

§ 273.70 Imports.

Persons managing universal waste that is imported from a foreign country into the United States are subject to the requirements of 40 CFR part 262 subpart H and the applicable requirements of this part, immediately after the waste enters the United States, as indicated in paragraphs (a) through (c) of this section:

(a) A universal waste transporter is subject to the universal waste transporter requirements of subpart D of this part.

(b) A universal waste handler is subject to the small or large quantity handler of universal waste requirements of subparts B or C, as applicable.

(c) An owner or operator of a destination facility is subject to the destination facility requirements of subpart E of this part.

[FR Doc. 2016-27428 Filed 11-25-16; 8:45 am]

BILLING CODE 6560-50-P

Polymer

CAS No.

[FR Doc. 2017-27805 Filed 12-22-17; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, and 262

[EPA-HQ-OLEM-2016-0492; FRL-9971-49-OLEM]

RIN 2050-AG90

Confidentiality Determinations for Hazardous Waste Export and Import Documents

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is amending existing regulations regarding the export and import of hazardous wastes from and into the United States. Specifically, this rule applies a confidentiality determination such that no person can assert confidential business information (CBI) claims for documents related to the export, import, and transit of hazardous waste and export of excluded cathode ray tubes (CRTs). EPA is making these changes to apply a consistent approach in addressing confidentiality claims for export and import documentation. The rule will result in cost-savings and greater efficiency for EPA and the regulated community as well as facilitate transparency with respect to the documents that are within the scope of this rulemaking. However, EPA is not finalizing the proposed internet posting requirement in the proposed rule.

DATES: The final rule is effective on June 26, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OLEM-2016-0492. All documents in the docket are listed at <https://www.regulations.gov>. Docket materials are also available in hard copy at the EPA Docket Center Reading Room. Please see <https://www.epa.gov/dockets/epa-docket-center-reading-room> or call (202) 566-1744 for more information on the Docket Center Reading Room.

FOR FURTHER INFORMATION CONTACT: Lia Yohannes, Office of Resource Conservation and Recovery; telephone

number: (703) 308-8413; email: yohannes.lia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. What is the Agency's authority for taking this action?

EPA's authority to promulgate this rule is found in sections 1002, 2002(a), 3001-3004, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), and as amended by the Hazardous and Solid Waste Amendments, 42 U.S.C. 6901 *et seq.*, 6912, 6921-6924, and 6938.

B. Does this action apply to me?

The application of confidentiality determinations to RCRA export, import, and transit documents in this action generally affects three (3) groups: (1) All persons who export or import (or arrange for the export or import of) of hazardous waste for recycling or disposal, including those hazardous wastes subject to the alternate management standards for (a) universal waste for recycling or disposal, (b) spent lead-acid batteries (SLABs) being shipped for reclamation, (c) industrial ethyl alcohol being shipped for reclamation, (d) hazardous waste samples of more than 25 kilograms being shipped for waste characterization or treatability studies, and (e) hazardous recyclable materials being shipped for precious metal recovery; (2) all recycling and disposal facilities who receive imports of such hazardous wastes for recycling or disposal; and (3) all persons who export (or arrange for the export of) conditionally excluded cathode ray tubes (CRTs) being shipped for recycling.

Potentially affected entities may include, but are not limited to:

NAICS code	NAICS description
211	Oil and Gas Extraction.
324	Petroleum and Coal Products Manufacturing.
325	Chemical Manufacturing.
326	Plastics and Rubber Products Manufacturing.
327	Nonmetallic Mineral Product Manufacturing.
331	Primary Metal Manufacturing.
332	Fabricated Metal Product Manufacturing.
333	Machinery Manufacturing.

NAICS code	NAICS description
334	Computer and Electronic Product Manufacturing.
335	Electrical Equipment, Appliance, and Component Manufacturing.
336	Transportation Equipment Manufacturing.
339	Miscellaneous Manufacturing.
423	Merchant Wholesalers, Durable Goods.
424	Merchant Wholesalers, Nondurable Goods.
522	Credit Intermediation and Related Activities.
525	Funds, Trusts, and Other Financial Vehicles.
531	Real Estate.
541	Professional, Scientific, and Technical Services.
561	Administrative and Support Services.
562	Waste Management and Remediation Services.
721	Accommodation.
813	Religious, Grantmaking, Civic, Professional, and Similar Organizations.
211	Oil and Gas Extraction.
324	Petroleum and Coal Products Manufacturing.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this rule to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. Background

On November 28, 2016, EPA proposed revisions to the current RCRA regulations governing imports and exports of hazardous waste and certain other materials in parts 260, 262, 264, 265, and 267 in order to strengthen public accessibility and transparency of import and export-related documentation to better monitor proper compliance with EPA's hazardous waste regulations and help ensure that hazardous waste shipments are properly received and disposed (81 FR 85459). The internet Posting of and Confidentiality Determinations for Hazardous Waste Export and Import Documents Proposed Rule was a companion action to EPA's Hazardous

Waste Export-Import Revisions Final Rule ("Revisions Final Rule") published on November 28, 2016 (81 FR 85696), which was one of the Agency's priority actions under its plan for periodic retrospective reviews of existing regulations, as required by Executive Order 13563. Under the Revisions Final Rule, export notices for hazardous waste and excluded CRTs exported for recycling are currently required to be submitted electronically to EPA using EPA's Waste Import Export Tracking System (WIETS) as of December 31, 2016. Export annual reports for hazardous waste and excluded CRTs exported for recycling will be required to be submitted electronically to EPA using WIETS on March 1, 2019. Other import and export documents for hazardous waste and excluded CRTs exported for recycling are transitioning from paper submittal to electronic submittal, and will be required to be submitted electronically to EPA using WIETS on a future compliance date to be announced in a future, separate **Federal Register** notice.

The proposed rulemaking for this final action consisted of two parts. First, EPA proposed requiring exporters and receiving facilities of hazardous waste from foreign sources to post *confirmation of receipt* and *confirmation of recovery or disposal* documents on publicly accessible websites when such documents are required for individual export and import shipments of hazardous wastes. EPA proposed that the documents be publicly accessible on company websites by the first of March of each year and that the websites include all of the confirmations of receipt and confirmations of recovery or disposal received by the exporter or sent out by the receiving facility related to exports or imports of hazardous waste made during the previous calendar year. Each document was to be made available for a period of at least three years following the date on which each document was first posted to the website. The proposed internet posting requirement was planned to be effective during the interim period prior to the electronic import-export reporting compliance date when electronic submittal to EPA of confirmations of receipt and confirmations of recovery or disposal for hazardous waste shipments will be required in EPA's WIETS system per the Revisions Final Rule. The second part of the proposed rule consisted of applying confidentiality determinations such that no person could assert CBI claims for individual documents and compiled data for required documents related to

the export, import, and transit of hazardous waste and export of conditionally excluded cathode ray tubes (CRTs).

III. Detailed Discussion of the Final Rule

A. Summary of the Final Rule

This section provides an overview of this final rule and describes the way in which it differs from the proposal. With this action, EPA finalizes the application of confidentiality determinations such that no CBI claims may be asserted by any person with respect to any of the following documents related to the export, import, and transit of hazardous waste and export of excluded CRTs:

(1) Documents related to the export of Resource Conservation and Recovery Act (RCRA) hazardous waste under 40 CFR part 262, subpart H, including but not limited to the notifications of intent to export, contracts submitted in response to requests for supplemental information from countries of import or transit, RCRA manifests, annual reports, EPA acknowledgements of consent, any subsequent communication withdrawing a prior consent or objection, responses that neither consent nor object, exception reports, transit notifications, and renotifications;

(2) Documents related to the import of hazardous waste, under 40 CFR part 262, subpart H, including but not limited to contracts and notifications of intent to import hazardous waste into the U.S. from foreign countries or U.S. importers;

(3) Documents related to the confirmation of receipt and confirmation of recovery or disposal of hazardous waste exports and imports, under 40 CFR part 262, subpart H;

(4) Documents related to the transit of hazardous waste, under 40 CFR part 262, subpart H, including notifications from U.S. exporters of intent to transit through foreign countries, or notifications from foreign countries of intent to transit through the U.S.;

(5) Documents related to the export of cathode ray tubes (CRTs), under 40 CFR part 261, subpart E, including but not limited to notifications of intent to export CRTs;

(6) Documents related to the export and import of non-crushed spent lead acid batteries (SLABs) with intact casings, under 40 CFR part 266 subpart G, including but not limited to notifications of intent to export SLABs;

(7) Submissions from transporters under 40 CFR part 263, or from treatment, storage or disposal facilities under 40 CFR parts 264 and 265, related

to exports or imports of hazardous waste, including but not limited to receiving facility notices of the need to arrange alternate management or return of an import shipment under 40 CFR 264.12(a) and 265.12(a); and

(8) Documents related to the export and import of RCRA universal waste under 40 CFR part 273, subparts B, C, D, and F.

(9) Documents required under 40 CFR 262, subparts E, F, and H and submitted in accordance with consents issued prior to December 31, 2016.

Unless otherwise required by Federal law, EPA is not considering the documents described in items (1) through (9) in this preamble to be final until March 1 of the year after which the shipments occur.

These changes will be reflected in revisions to 40 CFR part 260, as proposed, and in conforming revisions to 40 CFR parts 261 and 262.

EPA is not finalizing the proposed internet posting requirement of *confirmation of receipt* and *confirmation of recovery or disposal* documents where they would have been required for individual export and import shipments of hazardous wastes. As required under the recordkeeping requirements for exports and imports of hazardous waste under 40 CFR part 262, subpart H, exporters and receiving facilities of hazardous waste from foreign sources are required to retain paper copies of such confirmations such that copies are available for viewing and production if requested by any EPA or authorized state inspector. Once electronic submittals of the confirmation documents are required after the electronic import-export reporting compliance date that EPA will establish in a separate **Federal Register** notice, electronically submitted confirmations can be retained in EPA's Waste Import Export Tracking System (WIETS), or its successor system, such that copies are available for viewing and production if requested by any EPA or authorized state inspector.

B. Summary of Public Comments

The Agency received seven unique comments in response to its November 28, 2016 proposed rule. Of the seven comments, two were submitted anonymously, two were submitted from individual companies, one was submitted by a trade association representing hazardous waste treatment, recycling and disposal companies, one was submitted by a coalition representing generators of hazardous waste, and one was submitted by a trade association representing fuel and petrochemical manufacturers.

With respect to the proposed internet posting requirement, two anonymous commenters expressed their support, stating that it would improve transparency and environmental awareness of the potential environmental and health risks associated with exposure to hazardous waste, and potentially lead to reduced generation and improved management of hazardous waste. The remaining five commenters from industry expressed concern with the proposed internet posting requirement. These commenters stated that EPA underestimated the costs associated with posting information on company websites and were apprehensive about the burden of complying with a temporary requirement that would be in place for an unspecified amount of time. Two commenters suggested that the lag in time between when the confirmations of receipt and confirmations of recovery or disposal are required to be sent and when the documents would be posted on company websites would cause confusion and an incorrect perception by the general public of mismanagement. Two commenters also suggested that requiring industry to submit export and import documentation to EPA, rather than post on individual company websites, would provide better consistency to the regulated community and ensure greater compliance with export and import regulations. Finally, one commenter suggested that EPA develop its own website to post the documents to improve public access to the information. (See Section “II.C. Changes to the Proposed Rule” of this preamble for EPA’s rationale for not finalizing the proposed internet posting requirement.)

EPA received only one comment on the proposed confidentiality determination. The commenter expressed concerns about the application of a confidentiality determination to aggregate data related to exports and imports of hazardous waste. EPA considers aggregate data to be a list of consolidated information about shipments organized by company. According to the commenter, the application of a confidentiality determination to aggregate data poses different concerns from those raised by application of confidentiality determinations to individual documents. The commenter was specifically concerned about the potential for competitive harm from public release of customer lists and issues related to national security if aggregate data about shipments were available to individuals with the intent

to do harm. Because of the substantial effort required to compile a customer list from individual export and import documents, the commenter did not have similar concerns with respect to the release of individual hazardous waste export and import documents. (See response to comments document and Section “II.D. Rationale for Final Rule” of this preamble for details on EPA’s response to these comments.)

C. Changes to the Proposed Rule

After considering all the submitted comments, EPA is finalizing, as proposed, the application of confidentiality determinations to documents related to the export, import and transit of hazardous waste and export of excluded CRTs. We provide our rationale in the following section. EPA is not finalizing the proposed internet posting requirement that exporters and receiving facilities of hazardous waste from foreign sources upload confirmations of receipt and confirmations of recovery or disposal on their websites. This internet posting requirement was intended to be in effect on a temporary basis while EPA develops its Waste Import Export Tracking System (WIETS) to be able to receive electronic submittals of the documents. Recognizing that the internet posting requirement would be superseded when exporters and receiving facilities are required to submit confirmations electronically, EPA has decided to avoid the potential confusion as described by some commenters, that may result from requiring internet posting of documents on a temporary basis on company websites and from the time lag between the receipt and posting of confirmations of receipt and confirmations of recovery or disposal.

D. Rationale for the Final Rule

This final rule applies confidentiality determinations such that EPA will no longer accept future CBI claims for individual documents and/or aggregate data related to the export, import, and transit of hazardous waste and export of excluded CRTs. EPA is making these changes to apply a consistent approach in addressing confidentiality claims for export and import documentation which will result in cost-savings and greater efficiency for EPA and the regulated community. Moreover, as described in the proposed rulemaking, EPA will no longer publish the annual **Federal Register** notice requesting comment from third party affected businesses (other than original submitters), as defined in 40 CFR 2.201(d), on their need to assert

confidentiality claims for documents submitted to EPA related to hazardous waste exports and imports as well as data compiled from such documents, prior to EPA considering such documents releasable upon public request. The **Federal Register** notice covers documents related to the export, import and transit of RCRA hazardous waste, including those hazardous wastes managed under the special management standards in 40 CFR part 266 (e.g., spent lead acid batteries) and 40 CFR part 273 (e.g., universal waste batteries, universal waste mercury lamps), and related to the export of CRTs under 40 CFR part 261, made during the previous calendar year. The annual **Federal Register** notices have not addressed CBI claims likely to be made by the original submitters, since RCRA regulations at 40 CFR 260.2(b) already address the CBI requirements for original submitters.

Our rationale for applying confidentiality determinations to these documents is summarized in the following paragraphs.

As discussed in the proposed rulemaking, application of confidentiality determinations is consistent with the non-CBI treatment of hazardous waste manifests at the Federal and state level. Manifests contain similar information as that required by the documents related to the export, import and transit of hazardous waste and export of conditionally excluded CRTs within the scope of this action. On February 7, 2014, EPA published the Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System; Electronic Manifests final rule (79 FR 7518) which made a categorical determination for individual RCRA hazardous waste manifest records and aggregate data. In that action, EPA concluded that information contained in individual manifested records and aggregate data are essentially public information and therefore is not eligible under Federal law for treatment as CBI. The effect of this decision was that EPA made a categorical determination that it will not accept any CBI claims that might be asserted in connection with processing, using, or retaining individual paper or electronic manifests or aggregate data (see 40 CFR 260.2(c)(1)). The decision in that action is consistent with how manifests are treated in many states that have policies that do not recognize CBI claims for manifests as individual documents or as aggregate data. Because the information contained in RCRA hazardous waste manifests is largely similar to the information contained in hazardous waste export and import documents,

such as information about the waste being shipped (waste codes, type, quantity) and contact information for the generator, transporter, and destination or receiving facility, EPA concludes that application of confidentiality determinations in this action is consistent with the categorical determination that electronic manifests are not CBI.

Furthermore, EPA believes that any CBI claim that might be asserted with respect to the hazardous waste documents within the scope of this action would be extremely difficult to sustain under the substantive CBI criteria set forth in the Agency's CBI regulations (40 CFR part 2, subpart B). For example, to make a CBI claim, a business must satisfactorily show that it has taken reasonable measures to protect the confidentiality of the information, and that it intends to continue to take such measures. The documents related to the export, import, and transit of hazardous waste and export of excluded CRTs submitted to EPA are also shared with several commercial entities while they are being processed and used. As a result, a business concerned with protecting its commercial information would find it exceedingly difficult to protect its records from disclosure by all the other persons who come into contact with the documents.

Moreover, to substantiate a CBI claim, a business must also show that the information is not, and has not been, reasonably obtainable without the business's consent by other persons (other than governmental bodies) by use of legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding). Since the documents are shared with several commercial entities throughout the chain of custody of a hazardous waste shipment, they are easily accessible to other parties without the business's explicit consent.

For these reasons, EPA believes that any CBI claim that might be asserted with respect to hazardous waste export and import documents would be difficult to sustain under the substantive CBI criteria (40 CFR part 2, subpart B).

EPA has also established precedent in determining that the information contained in certain hazardous waste export documents is not entitled to confidential treatment. To date, our records indicate that EPA has received four assertions of confidentiality for documents within the scope of this action and for which EPA has made a CBI determination: One from Horizon Environment, Inc. in 2004, two from Johnson Controls Battery Group, Inc. in

2010 and 2011, and one from Waste Technologies Industries in 1994. In three of the four cases, the Agency determined that the information claimed as confidential was not entitled to confidential treatment.

In the confidentiality claims presented by Horizon Environment, Inc. and Johnson Controls Battery Group, Inc., both companies asserted confidentiality for certain hazardous waste export documents that were responsive to Freedom of Information Act (FOIA) requests to EPA. The FOIA, 5 U.S.C. 552(a), section 3007(b) of RCRA, and EPA regulations implementing the FOIA and RCRA section 3007(b) generally mandate the disclosure to the public of information and records in the possession of government agencies. However, there are nine categories of information that may be exempt from disclosure, and one such category of information (Exemption 4) is for "trade secrets and commercial information obtained from a person and privileged or confidential" (see 5 U.S.C. 552(b)(4)). Under these statutes and regulations, "business information" means information which pertains to the interests of a business, was acquired or developed by the business, and which is possessed by EPA in a recorded form (see 40 CFR 2.201(c)). Such business information may be claimed by an "affected business" to be entitled to treatment as CBI if the business information is a "trade secret" or other type of proprietary information which produces business or competitive advantages for the business, such that the business has a legally protected right to limit the use of the information or its disclosure to others. See § 2.201(e).

In order for information to meet the requirements of Exemption 4, EPA must find that the information is either (1) a trade secret; or (2) commercial or financial information obtained from a person and privileged or confidential (commonly referred to as "Confidential Business Information" (CBI)). Horizon Environment's claims related to export notices, and Johnson Controls Battery Group's claims related to annual reports. Both companies claimed the information to be confidential, but did not claim that the information was privileged. Information that is required to be submitted to the Government is confidential if its "disclosure would be likely either (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained." Critical Mass, 975 F.2d at 878 (quoting

National Parks and Conservation Association v. Morton, 498 F.2d 765, 770 (DC Cir. 1974)) (footnote omitted). In these cases, the Agency had the authority to require the submission of the information and exercised it. Therefore, EPA concluded that the information was a required submission and was not voluntary.

EPA also found that the information the companies claimed as confidential did not meet EPA's CBI criteria. As set forth in EPA's regulations at 40 CFR 2.208, required business information is entitled to confidential treatment if: The business has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position. After careful consideration of the arguments submitted by both companies, EPA concluded that neither claim explained specifically how disclosure of the information in the submissions would likely cause substantial competitive harm to the companies, and therefore did not support the claim of competitive harm. Accordingly, EPA concluded that release of this was not likely to cause substantial harm to the companies' competitive positions.

As a result of these analyses, EPA found that the information the companies claimed as confidential was not within the scope of Exemption 4 of the FOIA.

For the fourth confidentiality claim submitted by Waste Technologies Industries in 1994, EPA determined that the identities and addresses of the foreign generators listed in its import notification letters were entitled to confidential treatment under EPA's criteria (40 CFR 2.208). Since that time, EPA promulgated the Electronic Manifest final rule in which it was determined that manifests and the data contained therein are not CBI (79 FR 7518). Because the contact information of foreign generators is a required data element on manifests, this information is no longer treated as confidential. EPA found the record pertaining to this case after the proposed rule was published.

Based on EPA's analysis and decision in three of the four confidentiality claims asserted by companies for their hazardous waste export notices and annual reports, EPA expects to similarly conclude that these and the other documents within the scope of this rulemaking are not entitled to confidential treatment. As for the fourth decision in the Waste Technologies Industries' claim, EPA's more recent determination that manifests are no longer CBI supersedes the decision to withhold the information as confidential in 1994.

Finally, EPA has never received a claim of confidentiality from a third-party business with respect to hazardous waste export and import documentation. As described previously, EPA issues a **Federal Register** notice each year requesting comment from affected businesses (other than original submitters), as defined in 40 CFR 2.201(d), on their need to assert confidentiality claims for documents submitted to EPA related to hazardous waste exports and imports as well as data compiled from such documents, prior to EPA considering such documents releasable upon public request. To date, EPA has never received a comment from any business not an original submitter as a result of the annual **Federal Register** notice.

EPA received one comment in response to our request for input about applying confidentiality determinations to individual documents and aggregate data related to hazardous waste export and import shipments. In its comment, a trade association for the hazardous waste treatment industry expressed concern about the ability of competitors to gain an unfair advantage from access to aggregate export and import data. The commenter also indicated that access to aggregate data could pose national security concerns if sensitive shipment information were available to parties with malicious intent. The commenter stated that aggregate shipment data are a more efficient means to gain access to customer lists and export and import patterns compared to individual documents, which would require significant cost and labor to compile. However, as stated previously, at the Federal level and in many states, CBI claims are not accepted with respect to individual or aggregate manifest data. The main difference between the manifest and the export and import documents is that the manifest provides information on domestic management of hazardous waste shipments, while the export and import documents provide information related to both the domestic and the international part of those shipments. Because the information contained in hazardous waste export and import documents is so similar to that contained in manifests, EPA believes that it is appropriate to treat the domestic and international shipping documents the same.

Nonetheless, while EPA is not accepting CBI claims for either individual documents or aggregate data related to exports and imports, EPA recognizes that the information in its possession may not be ready for general release to the public because it is not yet "final." As with manifests, hazardous

waste exporters, importers, receiving facilities and brokers acting on their behalf need sufficient time to address discrepancies or exceptions related to hazardous waste shipments and to verify and correct data recorded on their documents. Until such time as these corrections can be made and data can be verified and finalized, the data in these documents, just as in manifests, will be considered "in process." To that end, unless otherwise required by Federal law, EPA is not considering such documents to be final until March 1 of the year after which the shipments occur. EPA believes this timeframe is responsive to the concerns about competitive harm and national security risk with respect to access to aggregate data. EPA believes that this relatively long timeframe also makes it more likely that the shipment will have been received and the waste recovered or disposed by the time the documents are considered final.

Furthermore, in response to the national security concerns raised by commenters on the proposed rule and on the e-manifest user fee proposed rule (81 FR 49072, July 26, 2016), EPA has consulted with the Department of Homeland Security (DHS) to determine whether public access to certain shipment information in the e-Manifest system poses a significant chemical security risk and if so, the action the Agency should take to mitigate that risk. Because the export and import data are similar to the data collected on manifests, EPA will apply mitigating measures to manage export and import data in a manner consistent with those implemented by the e-Manifest system.

III. Costs and Benefits of the Final Rule

A. Cost Impacts

The Agency conducted an economic assessment for the proposed rule to this action which evaluated costs, cost savings, benefits, and other impacts, such as environmental justice, children's health, unfunded mandates, regulatory takings, and small entity impacts. The costs incurred by the regulated community under the proposed rule were associated with the proposed internet posting requirement only. Because EPA is not finalizing the proposed internet posting requirement, there are no costs associated with this action and the economic assessment conducted for the proposed rule no longer applies. Rather, the final rule reduces burden and results in cost-savings.

B. Benefits

There are a number of qualitative benefits associated with this final rule. By providing a consistent approach to addressing confidentiality claims with respect to the documents within the scope of this rulemaking, this action will result in cost-savings and greater efficiency to both the regulated community and EPA. The Agency will not incur the costs associated with developing and publishing the annual **Federal Register** notice requesting comment from affected businesses (other than original submitters), as defined in 40 CFR 2.201(d), on their need to assert confidentiality claims for documents submitted to EPA related to hazardous waste exports and imports. Industry cost-savings result from the avoided costs associated with reading and responding to the **Federal Register** notice. Furthermore, this action will achieve greater transparency by excluding export and import documents from CBI claims.

IV. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer their own hazardous waste programs in lieu of the Federal program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for State authorization are found at 40 CFR part 271. Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in that State, since only the State was authorized to issue RCRA permits. When new, more stringent Federal requirements were promulgated, the State was obligated to enact equivalent authorities within specified time frames. However, the new Federal requirements did not take effect in an authorized State until the State adopted the Federal requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed by

the statute to implement these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA related provisions as State law to retain final authorization, EPA implements the HSWA provisions in authorized States until the States do so.

Authorized States are required to modify their programs only when EPA enacts Federal requirements that are more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program (see also 40 CFR 271.1). Therefore, authorized States may, but are not required to, adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous Federal regulations.

B. Effect on State Authorization

Because of the Federal government's special role in matters of foreign policy, EPA does not authorize States to administer Federal import/export functions in any section of the RCRA hazardous waste regulations. This approach of having Federal, rather than State, administering of the import/export functions promotes national coordination, uniformity and the expeditious transmission of information between the United States and foreign countries.

Although States do not receive authorization to administer the Federal government's import/export functions in 40 CFR part 262, subpart H, or the import/export relation functions in any other section of the RCRA hazardous waste regulations, State programs are still required to adopt the provisions in this rule to maintain their equivalency with the Federal program (see 40 CFR 271.10(e)).

This final rule contains amendments to 40 CFR 260.2 such that no claim of business confidentiality may be asserted by any person with respect to information from cathode ray tube export documents prepared, used and submitted under §§ 261.39(a)(5) and 261.41(a) and hazardous waste export, import, and transit documents prepared, used and submitted under §§ 262.82, 262.83, 262.84, 263.20, 264.12, 264.71, 265.12, 265.71, and 267.71.

The States that have previously adopted 40 CFR part 262, subparts E, F and H, 40 CFR part 263, 40 CFR part 264, 40 CFR part 265, and any other import/export related regulations, and that will be adopting the revisions in the Hazardous Waste Export-Import

Revisions Final Rule (81 FR 85696) must adopt the revisions to those provisions in this final rule. But only States that have previously adopted the optional CRT conditional exclusion in 40 CFR 261.39 are required to adopt the revisions related to that exclusion in this final rule.

When a State adopts the import/export provisions in this rule, they must not replace Federal or international references or terms with State references or terms.

The provisions of this rule will take effect in all States on the effective date of the rule, since these export and import requirements will be administered by the Federal government as a foreign policy matter, and will not be administered by States.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This final rule is a non-significant regulatory action because it does not have a significant economic impact nor does it raise novel legal or policy issues. The Office of Management and Budget (OMB) waived review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is considered an Executive Order 13771 deregulatory action. This final rule provides burden reduction by providing a consistent approach to addressing confidentiality claims with respect to the documents within the scope of this rulemaking. As a result, this action will result in cost-savings and greater efficiency for industry and EPA. EPA will no longer expend resources to publish an annual **Federal Register** notice related to confidential business information and industry will avoid the costs and burden associated with reading and responding to the annual **Federal Register** notice.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

D. Regulatory Flexibility Act (RFA)

EPA certifies that this action will not have a significant economic impact on a substantial number of small entities

under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. The small entities subject to the requirements of this action are hazardous waste exporters, importers, receiving facilities and brokers acting on their behalf. There are no costs associated with this action; rather, the final rule results in cost-savings. We have therefore concluded that this action will relieve regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. Thus, it is not subject to Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

F. Executive Order 13132: Federalism

This action does not have federalism implications because the state and local governments do not administer the export and import requirements under RCRA. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. No exporters, importers or transporters affected by this action are known to be owned by Tribal governments or located within or adjacent to Tribal lands. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994), because this action only applies a confidentiality determination such that no person can assert confidential business information (CBI) claims for documents related to the export, import, and transit of hazardous waste and export of excluded cathode ray tubes (CRTs).

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 260

Environmental protection, Cathode ray tubes (CRTs), Confidential business information, Exports, Hazardous waste, Imports, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental protection, Cathode ray tubes (CRTs), Confidential business information, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 262

Environmental protection, Confidential business information, Exports, Hazardous waste, Imports, Reporting and recordkeeping requirements.

Dated: December 11, 2017.

E. Scott Pruitt,
Administrator.

For the reasons stated in the preamble, EPA amends 40 CFR parts 260, 261, and 262 as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

■ 1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

■ 2. Amend § 260.2 by revising paragraph (b) and adding paragraph (d) to read as follows:

§ 260.2 Availability of information; confidentiality of information.

* * * * *

(b) Except as provided under paragraphs (c) and (d) of this section, any person who submits information to EPA in accordance with parts 260 through 266 and 268 of this chapter may assert a claim of business confidentiality covering part or all of that information by following the procedures set forth in § 2.203(b) of this chapter. Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in part 2, subpart B, of this chapter.

* * * * *

(d)(1) After June 26, 2018, no claim of business confidentiality may be asserted by any person with respect to information contained in cathode ray tube export documents prepared, used and submitted under §§ 261.39(a)(5) and 261.41(a) of this chapter, and with respect to information contained in hazardous waste export, import, and transit documents prepared, used and submitted under §§ 262.82, 262.83, 262.84, 263.20, 264.12, 264.71, 265.12, 265.71, and 267.71 of this chapter, whether submitted electronically into EPA’s Waste Import Export Tracking System or in paper format.

(2) EPA will make any cathode ray tube export documents prepared, used and submitted under §§ 261.39(a)(5) and 261.41(a) of this chapter, and any hazardous waste export, import, and transit documents prepared, used and submitted under §§ 262.82, 262.83, 262.84, 263.20, 264.12, 264.71, 265.12, 265.71, and 267.71 of this chapter available to the public under this section when these electronic or paper documents are considered by EPA to be final documents. These submitted electronic and paper documents related to hazardous waste exports, imports and transits and cathode ray tube exports are

considered by EPA to be final documents on March 1 of the calendar year after the related cathode ray tube exports or hazardous waste exports, imports, or transits occur.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

■ 4. Amend § 261.39 by revising paragraph (a)(5)(iv) to read as follows:

§ 261.39 Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling.

* * * * *

(a) * * *

(5) * * *

(iv) EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of paragraph (a)(5)(i) of this section.

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

■ 5. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C 6906, 6912, 6922–6925, 6937, and 6938.

■ 6. Amend § 262.83 by revising paragraphs (b)(5) and (f)(9) to read as follows:

§ 262.83 Exports of hazardous waste.

* * * * *

(b) * * *

(5) For cases where the proposed country of import and recovery or disposal operations are not covered under an international agreement to which both the United States and the country of import are parties, EPA will coordinate with the Department of State to provide the complete notification to country of import and any countries of transit. In all other cases, EPA will provide the notification directly 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 paragraphs (b)(1)(i) through (xiii) of this section.

* * * * *

(f) * * *

(9) Upon request by EPA, U.S. exporters, importers, or recovery facilities must submit to EPA copies of

contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity).

* * * * *

■ 7. Amend § 262.84 by revising paragraphs (b)(4) and (f)(8) to read as follows:

§ 262.84 Imports of hazardous waste.

* * * * *

(b) * * *

(4) A notification is complete when EPA determines the notification satisfies the requirements of paragraphs (b)(1)(i) through (xiii) of this section.

* * * * *

(f) * * *

(8) Upon request by EPA, importers or disposal or recovery facilities must submit to EPA copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity).

* * * * *

[FR Doc. 2017-27525 Filed 12-22-17; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA-HQ-SFUND-1987-0002; FRL-9972-38-Region 3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the C&D Recycling Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region III is publishing a direct final Notice of Deletion of the C&D Recycling Superfund Site (Site), located in Foster Township, Pennsylvania, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the Commonwealth of Pennsylvania (Commonwealth), through the Pennsylvania Department of Environmental Protection (PADEP), because EPA has determined that all

appropriate response actions under CERCLA have been completed. However, this deletion does not preclude EPA from taking future actions at the Site under Superfund.

DATES: This direct final deletion is effective February 26, 2018 unless EPA receives adverse comments by January 25, 2018. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-SFUND-1987-0002 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Gregory Voigt, Remedial Project Manager, U.S. Environmental Protection Agency, Region III, Mail Code 3HS21, 1650 Arch Street, Philadelphia, PA 19013, (215) 814-5737, email: voigt.gregory@epa.gov.

SUPPLEMENTARY INFORMATION:

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- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Site Deletion
- V. Deletion Action

I. Introduction

EPA Region III is publishing this direct final Notice of Deletion of the C&D Recycling Superfund Site, from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300, which is the Oil and Hazardous

Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the state, whether any of the following criteria have been met:

- i. Responsible parties or other persons have implemented all appropriate response actions required;
- ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or
- iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

- (1) EPA consulted with the Commonwealth prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published

**WASTE MANAGEMENT AND RADIATION CONTROL BOARD
EXECUTIVE SUMMARY
FINAL ADOPTION – Changes to the Radiation Control Rules
R313-19-34, R313-22-75, and R313-32 of the Utah Administrative Code
August 8, 2019**

<p>What is the issue before the Board?</p>	<p>Board approval for final adoption of rule changes to R313-19-34, <i>Terms and Conditions of Licenses</i>, R313-22-75, <i>Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices Which Contain Radioactive Material</i>, and R313-32, <i>Medical Use of Radioactive Material</i>, of the radiation control rules to incorporate federal regulatory changes promulgated by the Nuclear Regulatory Commission (NRC) and published in the <i>Federal Register</i> on July 16, 2018 (83 FR 33046).</p> <p>Included with the above, is Board approval for final adoption of the following additional wording to the requirements in 10 CFR 35.92, as referenced in R313-32-2(5).</p> <p><u>(b) The Director may approve a radioactive material with a physical half-life of greater than 120 days but less than 175 days for decay-in-storage before disposal without regard to its radioactivity on a case by case basis if the licensee:</u></p> <p><u>(1) Requests an amendment to the licensee's radioactive materials license for the approval;</u></p> <p><u>(2) Can demonstrate that the radioactive waste will be safely stored, and accounted for during the decay-in-storage period and that the additional radioactive waste will not exceed the licensee's radioactive waste storage capacity; and</u></p> <p><u>(3) Commits to monitor the waste before disposal as stated in paragraphs (a)(1) and (a)(2) of this section before the waste is disposed.</u></p> <p>The above wording is added to address anticipated variance requests from licensees to the Board due to the use of a new radioactive drug at medical facilities and eliminate potential delays for medical facilities who wish to begin using this material in certain radiation treatments.</p>
<p>What is the historical background or context for this issue?</p>	<p>At the Board meeting on June 13, 2019, the Board approved the proposed rule changes to R313-19-34, R313-22-75, and R313-32 be filed with the Office of Administrative Rules for publication in the <i>Utah State Bulletin</i> and receive public comment. The approval included the additional wording for 10 CFR 35.92 as referenced in R313-32-2(5).</p> <p>The proposed rule changes were published in the July 1, 2019 issue of the Bulletin, initiating a 30-day public comment period, which ended on July 31, 2019. No comments were received.</p> <p>The pertinent pages of the July 1, 2019 Bulletin follow this summary.</p>

On July 16, 2018, the NRC amended the federal radioactive materials regulations regarding the medical use of radioactive material. These amendments update the medical use of radioactive materials requirements which were last updated in their entirety in 2002. The rule changes address technological advances, changes to medical procedures, and enhance patient safety. In addition, the NRC amended certain federal requirements for radioactive materials licensees that manufacture and prepare radioactive drugs for distribution to medical use licensees for administration to patients.

R313-19-34(8) changes the requirement to include a quality control test for each generator eluate of a molybdenum-99/technitium-99m generator and introduces a requirement for generator users to report test results for any generator that exceeds the permissible breakthrough concentration.

The changes to R313-22-75 clarify the requirements for the labels for radioactive drugs and removes the requirement for a written attestation statement for individuals who are board certified by an approved specialty board and who seek to be named on a radioactive materials license as an Authorized Nuclear Pharmacist.

Because R313-32 incorporates by reference 10 CFR Part 35, the date of the incorporation by reference is changed from 2010 to 2019, which includes the changes published by the NRC on July 16, 2018. Some of the major changes included in the revised rules are as follows:

- Written attestation statements will no longer be required to be submitted for individuals who are board certified by an appropriate approved specialty board and are seeking to be named on a radioactive materials license as an authorized user; authorized medical physicist, or authorized nuclear pharmacist;
- The ability to have an Associate Radiation Safety Officer (ARSO) named to the license and requirements related to ARSOs were added;
- The medical event criteria was modified and new requirements for medical events involving permanent brachytherapy implants were added;
- Requires licensees to develop specific procedures;
- An addition of a requirement to providing reports to the DWMRC for breakthrough tests exceeding permissible concentrations; and
- Adds a new training requirement for the use of remote afterloader units, teletherapy devices and gamma stereotactic surgery units;

In addition to the changes to adopt the NRC revisions as stated above, Board approval is requested to add a requirement for an issue not addressed by the NRC. The requirements in 10 CFR 35.92 include

	<p>specific requirements for holding radioactive waste for "decay-in-storage" (DIS) if the radioactive materials have half-lives of 120 days or less. Radioactive waste containing materials with longer half-lives is required to be disposed as low-level radioactive waste (LLRW). Recently, a new radioactive drug using Lutetium-177 (Lu-177) was introduced into use at medical facilities. It has been determined that this drug contains a very small quantity of a radioactive impurity that has a half-life of about 161 days. If the impurity is detected in the radioactive waste, the waste created from the administration of Lu-177 would be required to be disposed as LLRW unless a variance from the Board was requested. In anticipation of the increased use of this radioactive drug, the Director recommends that the proposed requirement allowing the Director to approve an amendment for the DIS of radioactive waste with half-lives greater than 120 days but less than 175 days on a case by case basis. For approval, the licensee would be required to demonstrate that the waste will be secured and safely stored, that the additional waste would not exceed the licensee's storage capacity, and that the licensee will meet the survey criteria required for DIS waste with half-lives of 120 days or less.</p>
<p>What is the governing statutory or regulatory citation?</p>	<p>The Board is authorized under Subsection 19-3-104(4)(b) of the Radiation Control Act 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.</p> <p>The rule changes also meet existing DEQ and state rulemaking procedures.</p>
<p>Is Board action required?</p>	<p>Yes, Board approval for final adoption of the referenced rule changes, as published in the July 1, 2019 issue of the <i>Utah State Bulletin</i> and set an effective date of August 9, 2019.</p>
<p>What is the Division Director's recommendation?</p>	<p>The Director recommends that the Board approve for final adoption the rule changes to R313-19-34, R313-22-75, and R313-32, as published in the July 1, 2019 issue of the <i>Utah State Bulletin</i> and set an effective date of August 9, 2019. Following this summary, the pertinent pages from the July 1, 2019 issue of the <i>Utah State Bulletin</i> are provided.</p>
<p>Where can more information be obtained?</p>	<p>For questions or additional information, please contact Gwyn Galloway (801-536-4258, (ggalloway@utah.gov) or Rusty Lundberg (801) 536-4257, (rlundberg@utah.gov).</p>

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed June 01, 2019, 12:00 a.m. through June 14, 2019, 11:59 p.m.

Number 2019-13
July 01, 2019

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://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://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://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
R313-19-34
Terms and Conditions of Licenses**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43810

FILED: 06/14/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change is proposed in order to maintain compatibility with the U.S. Nuclear Regulatory Commission (NRC) requirements and to enhance patient safety. To maintain the authority to regulate the use of certain licensed radioactive materials in the state of Utah, the state must maintain rules that are compatible with NRC requirements. Recent changes to 10 CFR Part 35 and related requirements were adopted by the NRC and published in the 07/16/2018 Federal Register (83 FR 33046). This proposed rule change maintains compatibility with the changes published for the requirements in 10 CFR 30.3a(g).

SUMMARY OF THE RULE OR CHANGE: The proposed rule change incorporates the requirements of 10 CFR 30.34(9), and consequently the requirements of 10 CFR 35.204(a), which requires commercial radiopharmacies to test each eluate from the elution of Molybdenum-99/Technetium (Mo-99/Tc-99m) generators for breakthrough instead of testing only the first eluate from the generator. Additionally, the change requires that results of breakthrough tests that exceed permissible concentrations from all medical generators be reported to the Director of the Division of Waste Management and Radiation Control (DWMRC) and the manufacturer of the generator. The reports must be made within a specified time frame and must be made by telephone and in writing.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** In the state of Utah there are two state-owned entities that provide commercial radiopharmacy services (NAICS# 325412). Only one of these entities uses medical generators to prepare dosages for distribution to other licensees for medical use under the provisions of Rule R313-32. Until 2002, testing each eluate of a Mo-99/Tc-99m medical generator for breakthrough was required. The 2002 revisions of 10 CFR Part 35 eliminated this requirement. Presently, only the initial elution of a Mo-99/Tc-99m medical generator is required to be tested for the breakthrough concentration of a specific impurity. Subsequent elutions are not required to be tested. Even so, radiopharmacy licensees

in the state of Utah continued to test every eluate for the breakthrough concentrations. Due to certain incidents that occurred after 2002, the NRC determined that the requirement was necessary for patient safety. The requirement was reinstated in the regulations and a reporting requirement was added. Because the radiopharmacies in the state of Utah continued to test each eluate from the Mo-99/Tc-99m generators, there will be no increase to the number of breakthrough tests that must be conducted. The number of tests that may exceed the permissible concentration limits is not known but is estimated by the NRC to be about seven reports per year based on reports voluntarily made by medical licensees across the nation. The reports must be made by the licensee to the Director of DWMRC and the generator's manufacturer. The licensee's presently report any breakthrough test that exceeds the permissible concentration to the generator's manufacturer, therefore the proposed rule change will only add a requirement to make the report to the Director of DWMRC. There are no fees proposed in the rule change, therefore, there are no direct or indirect fiscal impacts associated with the proposed rule change. Since no additional breakthrough testing will be required and the required reports are presently made to the generator's manufacturer, the licensee is expected to experience a direct fiscal impact related to reporting breakthrough tests that exceed the permissible concentration to the Director of DWMRC. Using the estimated personnel time required to make the report and the mean hourly wage of a pharmacist to determine the potential costs associated with seven reports for results that exceed the permissible concentration, it is expected that the licensee may experience a direct fiscal impact of about \$420. The proposed rule change requires licensees to report the results of medical generator breakthrough tests that exceed permissible concentration limits to the Director of the DWMRC. There are no fees associated with the rule change; therefore, there are no expected direct or indirect fiscal impacts for the revenues or expenditures of the DWMRC. Using the number of reports that may be made to the Director each year by all affected licensees, as estimated by the NRC, the DWMRC may receive about 14 reports annually. Based on the number of reports, the estimated time for processing the reports and evaluating the incident, and estimated personnel costs, the DWMRC is expected to experience an indirect fiscal impact of about \$2,520 per year. (EDITOR'S NOTE: A proposed amendment to Rule R313-32 is under Filing No. 43812 in this issue, July 1, 2019, of the Bulletin.)

◆ **LOCAL GOVERNMENTS:** The proposed rule change is not expected to have any fiscal impact on local governments' revenues or expenditures because interactions due to the proposed rule change with government agencies all occur at the state government level. There is no interaction of local government agencies with either the licensee or the DWMRC with respect to this rule.

◆ **SMALL BUSINESSES:** There is one small business in the state of Utah that has been issued a radioactive materials license to provide commercial radiopharmacy services (NAICS# 325412) in the state. The assumptions as stated above under the state budget answer remain the same for the

analysis of the impacts to small businesses. The commercial radiopharmacy uses Mo-99/Tc-99m generators and other medical generators to prepare dosages for distribution to other licensees who use radioactive materials for medical use under the provisions of Rule R313-32. The proposed rule change will require the licensee to test each eluate from the Mo-99/Tc-99m generator to ensure that the breakthrough does not exceed the permissible concentration; however, the radiopharmacy presently performs this testing and there will be no change to the licensee's operations due to this proposed rule change. Additionally, the proposed rule change requires that a breakthrough test that exceeds the permissible concentration be reported to the state and the manufacturer. Reports are currently made to the manufacturer if a permissible breakthrough concentration limit is exceeded as required by the manufacturer. Based on voluntary reports made to the NRC over the years, the NRC estimates that licensees will report approximately seven tests where the results of breakthrough tests exceed the permissible concentration each year. The licensee is expected to have a direct fiscal impact related to the reporting requirement of about \$420 per year. There are no other direct fiscal impacts expected to be experienced by the licensee.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** It is possible that the 47 medical use radioactive materials licensees could experience an indirect fiscal impact from the proposed rule change if the radiopharmacy licensees increase the prices they charge for the dosages they prepare from the Mo-99/Tc-99m eluate due to the increased indirect fiscal costs they will incur; however, the expected costs to the licensee are not significant. Therefore, it is likely that the prices charged to medical use licensees will remain the same. At this time, it is not expected that medical use licensees will experience direct or indirect fiscal impacts due to this proposed change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The affected licensees will experience an estimated total of \$420 annually to remain compliant with this proposed rule change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Although the proposed rule change will directly cost the affected licensees about \$420 in personnel costs to provide the required reports to the state, the proposed rule change is necessary to enhance patient safety. There were a number of cases where a medical generator's eluate exceeded the permissible concentration limit and was found by a licensee that was voluntarily testing the eluates at a greater frequency than required. There were also a number of cases where a patient set off a monitoring portal after the medical isotope they had been administered should have decayed to undetectable levels. This was the result of the breakthrough concentration exceeding the permissible concentration at the time of administration to the patient. Since there was no reporting requirement, even though a few of these instances

occurred simultaneously in different parts of the nation, the NRC and the agreement states were not able to quickly identify the issue and address corrective measures. The reporting requirement was proposed to address patient safety, and provide a mechanism for tracking and a timely response and solution to address the unnecessary patient exposure to radiation from elevated breakthrough concentrations. Given the small number of expected reports that will be made to the DWMRC, processing the reports will have a minimal impact on the work assigned to DWMRC personnel.

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:
 ◆ Gwyn Galloway by phone at 801-536-4258, by FAX at 801-533-4097, or by Internet E-mail at ggalloway@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2019

AUTHORIZED BY: Ty Howard, Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$2,940	\$2,940	\$2,940
Local Government	\$0	\$0	\$0
Small Businesses	\$420	\$420	\$420
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$3,360	\$3,360	\$3,360
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:	-\$3,360	-\$3,360	-\$3,360

*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 proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures, because there are only two radioactive materials licensees that are affected by the proposed rule change and neither licensee is a "Non-Small Business" entity. One licensee is considered to be a state agency and the other is a small business entity. There are also no manufacturers of the devices affected by the proposed rule change that operate in the state of Utah. Therefore, there are no non-small business entities that are affected by the proposed rule.

The 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.

R313-19. Requirements of General Applicability to Licensing of Radioactive Material.

R313-19-34. Terms and Conditions of Licenses.

(1) Licenses issued pursuant to Rule R313-19 shall be subject to provisions of the Act, now or hereafter in effect, and to all rules, and orders of the Director.

(2)(a) Licenses issued or granted under Rules R313-21 and R313-22 and rights to possess or utilize radioactive material granted by a license issued pursuant to Rules R313-21 and R313-22 shall not be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of a license to a person unless the Director shall, after securing full information find that the transfer is in accordance with the provisions of the Act now or hereafter in effect, and to all rules, and orders of the Director, and shall give his consent in writing.

(b) An application for transfer of license shall include:

(i) The identity, technical and financial qualifications of the proposed transferee; and

(ii) Financial assurance for decommissioning information required by R313-22-35.

(3) Persons licensed by the Director pursuant to Rules R313-21 and R313-22 shall confine use and possession of the material licensed to the locations and purposes authorized in the license.

(4) Licensees shall notify the Director in writing and request termination of the license when the licensee decides to terminate activities involving materials authorized under the license.

(5) Licensees shall notify the Director in writing immediately following the filing of a voluntary or involuntary petition for bankruptcy under any Chapter of Title 11, Bankruptcy, of the United States Code by or against:

(a) the licensee;

(b) an entity, as that term is defined in 11 USC 101(15), controlling the licensee or listing the license or licensee as property of the estate; or

(c) an affiliate, as that term is defined in 11 USC 101(2), of the licensee.

(6) The notification specified in Subsection R313-19-34(5) shall indicate:

(a) the bankruptcy court in which the petition for bankruptcy was filed; and

(b) the date of the filing of the petition.

(7) Licensees required to submit emergency plans pursuant to Subsection R313-22-32(8) shall follow the emergency plan approved by the Director. The licensee may change the approved plan without the Director's approval only if the changes do not decrease the effectiveness of the plan. The licensee shall furnish the change to the Director and to affected off-site response organizations within six months after the change is made. Proposed changes that decrease, or potentially decrease, the effectiveness of the approved emergency plan may not be implemented without prior application to and prior approval by the Director.

(8) Each licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators or rubidium-82 from strontium-82/rubidium-82 generators shall test the generator eluates for molybdenum-99 breakthrough or strontium-82 and strontium-85 contamination, respectively, in accordance with Rule R313-32 (incorporating 10 CFR 35.204 by reference). The licensee shall record the results of each test and retain each record for three years after the record is made. The licensee shall report the results of each test that exceeds the permissible concentration listed in R313-32 (incorporating 10 CFR 35.204(a)) at the time of generator elution, in accordance with R313-32 (incorporating 10 CFR 35.3204).

(9) Each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

(10)(a) Authorization under Subsection R313-22-32(9) to produce Positron Emission Tomography (PET) radioactive drugs for noncommercial transfer to medical use licensees in its consortium does not relieve the licensee from complying with applicable FDA, other Federal, and State requirements governing radioactive drugs.

(b) A licensee authorized under Subsection R313-22-32(9) to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium shall:

(i) Satisfy the labeling requirements in Subsection R313-22-75(9)(a)(iv) for each PET radioactive drug transport radiation shield and each syringe, vial, or other container used to hold a PET radioactive drug intended for noncommercial distribution to members of its consortium.

(ii) Possess and use instrumentation to measure the radioactivity of the PET radioactive drugs intended for noncommercial distribution to members of its consortium and meet the procedural, radioactivity measurement, instrument test, instrument check, and instrument adjustment requirements in Subsection R313-22-75(9)(c).

(c) A licensee that is a pharmacy authorized under Subsection R313-22-32(9) to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium shall require that any individual that prepares PET radioactive drugs shall be:

(i) an authorized nuclear pharmacist that meets the requirements in Subsection R313-22-75(9)(b)(ii); or

(ii) an individual under the supervision of an authorized nuclear pharmacist as specified in Rule R313-32 (incorporating 10 CFR 35.27 by reference).

(d) A pharmacy authorized under Subsection R313-22-32(9) to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium that allows an individual to work as an authorized nuclear pharmacist, shall meet the requirements of Subsection R313-22-75(9)(b)(v).

KEY: licenses, reciprocity, transportation, exemptions
Date of Enactment or Last Substantive Amendment: [~~October 13, 2017~~]**2019**
Notice of Continuation: July 1, 2016
Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-6-104

**Environmental Quality, Waste
 Management and Radiation Control,
 Radiation
 R313-22-75
 Special Requirements for a Specific
 License to Manufacture, Assemble,
 Repair, or Distribute Commodities,
 Products, or Devices Which Contain
 Radioactive Material**

**NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 43809
 FILED: 06/14/2019**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: A change to 10 CFR Part 35 and changes to

related U.S. Nuclear Regulatory Commission (NRC) requirements were adopted by the NRC and published in the 07/16/2018, Federal Register (83 FR 33046). In order to maintain the authority to regulate the use of certain licensed radioactive materials in the state of Utah, the state must maintain rules that are compatible with NRC requirements. The purpose of the proposed rule changes are to maintain compatibility with the NRC requirements. These proposed rule changes maintain compatibility with the changes published for the requirements in 10 CFR 32.72(a)(4), 10 CFR 32.72(b)(5)(i), and 10 CFR 32.72(d).

SUMMARY OF THE RULE OR CHANGE: These proposed rule changes incorporate corresponding federal regulations in 10 CFR 32.72 that clarify the requirements regarding the labeling for radioactive drugs manufactured and prepared by commercial radiopharmacies and manufacturers for distribution to licensees for medical use under Rule R313-32. Additionally, individuals who are certified by an approved specialty board and seek to be named on a radioactive materials license as an Authorized Nuclear Pharmacist (ANP) will no longer be required to submit a written attestation statement regarding their training and experience. (EDITOR'S NOTE: a proposed amendment to Rule R313-32 is under Filing No. 43812 in this issue, July 1, 2019, of the Bulletin.)

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

ANTICIPATED COST OR SAVINGS TO:
 ♦ **THE STATE BUDGET:** There are two commercial radiopharmacies (NAICS# 325412) with radioactive materials licenses operated by the University of Utah that manufacture or prepare radioactive drugs under the supervision of an ANP for transfer or distribution to radioactive materials licensees for medical use under Rule R313-32. Additionally, the Division of Waste Management and Radiation Control, Radiation (Division) has regulatory oversight of the radiopharmacy licensees and reviews the training and experience (qualifications) of individuals who are to be named on the radiopharmacy licenses as an ANP. There are no fees assessed by the proposed rules; therefore, there are no direct or indirect fiscal impacts associated with the proposed rule changes for any state agency, including the commercial radiopharmacies. Additionally, the proposed changes for the labeling requirements are not expected to have direct or indirect non-fiscal impacts on revenues or expenditures for any state agency or the commercial radiopharmacies. This is because the proposed changes clarify the labeling requirements for radioactive drugs manufactured or prepared by the radiopharmacies and require no changes to the labeling or the labeling procedures currently in use by the radiopharmacies. These proposed rule changes also address changes to documentation required to be submitted for individuals who are board certified by an approved specialty board and who are applying to be named as an ANP on a radioactive materials license. There are three potential pathways in the requirements that an individual can use to

qualify to be named as an ANP on a radioactive materials license. Only one of these pathways requires that the individual be board certified by an approved specialty board, but all of the pathways currently require the submission of a written attestation statement. These proposed rule changes remove the submission of the written attestation statement for an application to become an ANP from only one of the three pathways. The written attestation statement will still be required for the other two qualification pathways. The NRC estimates that about 30 % of the individuals that are named on a radioactive materials license as an ANP used the board certification pathway to qualify as an ANP. The employment opportunities for ANPs is very limited. In the state of Utah, there are a total of 10 individuals named as ANPs (seven by state-operated radiopharmacies and three in a small business radiopharmacy). The number of ANPs in the state has remained stable and no positions have been added or lost for a number of years. Given the limited employment opportunities, once an ANP is named on a radioactive materials license, it has been observed that the ANP will remain employed with that entity until they retire. Therefore, in the state of Utah it has been observed that turnover of ANPs rarely occurs; NRC estimates a turnover rate of 10% for ANPs. There is no expectation that one of the seven ANPs employed by the state-operated radiopharmacies will leave employment in the next three years. Because there is no anticipated turnover in the state, the proposed rule changes are not expected to have an actual impact on the radiopharmacies or other state agencies. However, for the purposes of this analysis, it will be assumed that one ANP will leave employment annually and the applicant for the ANP's replacement will be board certified each year. Using these assumptions, there is an expectation that the licensee will experience an estimated direct fiscal benefit of approximately \$55 per year. There is typically no cost associated with obtaining a written attestation since the individuals receive a copy of a written attestation upon completion of their schooling. However, there may be a small cost associated with copying the written attestation statement for inclusion with the submitted ANP application. Assuming a cost of \$ 0.25 per page for copying, there could be a direct fiscal impact of \$0.75. The licensee's Radiation Safety Officer (usually an ANP) and one of the pharmacy technologists would prepare and submit the application for the individual to become an ANP in the same way that an application is presently created and submitted. The only difference would be that the individual would not need to locate the written attestation statement he was given when his training was completed and the licensee would not need to review the attestation and make a copy of the attestation statement to include with the ANP application. The change to completing and reviewing the application would result in an estimated direct fiscal benefit of approximately \$55. This would offset the direct fiscal impact of \$0.75. The application would be submitted to the Division with the oversight of the licensee for ANP review and approval. The review process for the application would proceed in the same manner as presently used by the Division. The difference for the review of the application would be the indirect fiscal benefit realized from

the savings in personnel time related to the review of the written attestation. Therefore, the Division would experience a fiscal benefit estimated to be about \$45 for the review of the ANP application. In total, state agencies would experience an estimated direct fiscal impact of \$0.75, a direct fiscal benefit of approximately \$55, and an estimated indirect fiscal benefit of approximately \$45 for each of the ANP applications to name individuals who are board certified by an approved specialty board on a radioactive materials license as an ANP. Assuming one ANP application is received from a commercial radiopharmacy each year, the above stated estimated would be the annual expected impacts to the state's expenditures and revenues.

◆ **LOCAL GOVERNMENTS:** This rule change is not expected to have any impact on the revenues or expenditures for local governments because it only affects government agencies at a state level. There are no radioactive material licenses issued to local government entities for operation as a commercial radiopharmacy and local governments have no regulatory authority over the use of radioactive materials.

◆ **SMALL BUSINESSES:** There is one commercial radiopharmacy (NAICS# 325412) that qualifies as a small business and has been issued a radioactive materials license that authorizes them to manufacture and prepare radioactive drugs for transfer or distribution to other licensees for medical use under Rule R313-32. As stated under the state budget answer above, there are no fees associated with these proposed changes. The changes to the labeling requirements will have no impact on the small business licensee since the proposed changes clarify the labeling requirements but do not require the licensee to modify the labels or labeling procedures presently used by the licensee. This radiopharmacy employs a total of three ANPs. As stated above, there are only 10 ANPs employed throughout the state of Utah and turnover is very infrequent. There is no expectation that an ANP will be replaced in the next three years; however, an assumption will be made that one ANP per year will be replaced and the individual applying for the position is board certified by an approved specialty board. The licensee will be expected to experience a direct fiscal benefit worth approximately \$55 if not required to submit the written attestation statement with the ANP application. This would offset a direct fiscal impact of \$0.75 for copying the attestation statement. These impacts would be per ANP application submitted; however, since one ANP application is assumed to be submitted each year, these would also be the annual impacts for the licensee.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Since there are no fees associated with the proposed requirements there are no direct or indirect fiscal impacts of the proposed rule changes for the expenditures or revenues of any "person" as defined above. Licensees are responsible for applying to have individuals named on their radioactive materials licenses as ANPs. Therefore, the impact on a person, as defined above, is minimal. The proposed rule changes will impact a person only if the person is board certified by an approved specialty board and is being added to a radioactive materials license as an ANP. The potential

impact for a person would involve the amount of time it would take the person to locate their copy of the written attestation statement they were given upon completion of their training and providing a copy of the attestation statement to the licensee. If it is assumed that the person was paid for the time to gather his attestation statement, bring it to the licensee's facility, make a copy of the statement on the licensee's equipment and provide the copy to the licensee, the person could experience an indirect fiscal benefit worth about \$30. This would be a one-time benefit for the person. If the person was to be added to a different radioactive materials license as an ANP in the future after the initial application has been approved, a different pathway for qualification as an ANP would be used and this benefit would not be available.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These proposed rule changes do not result in additional compliance costs for affected persons other than those stated above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Since the proposed changes to the labeling requirements do not require changes to the current labels or labeling procedures used by radiopharmacy licensees for radioactive drugs that are manufactured or prepared and distributed to other medical use licensees for use under Rule R313-32, this portion of the rule change has no direct or indirect fiscal impact for the affected entities. The other portion of the proposed rule change will only impact a licensee if a new board certified individual is to be added to the licensee's radioactive materials license. There are a number of conditions that would need to be met before this proposed rule change would apply to a licensee or the state agency that would review the qualifications of the proposed ANP. Because all of the conditions would have to be met at the same time for the rule to be applicable, it is highly unlikely that the proposed rule would be applied in the next few years. If the conditions were all met it would be unlikely that more than one ANP would be replaced. Therefore, the potential direct fiscal benefits would be minimal for the savings that would result from not being required to submit a written attestation statement with an application for a new ANP.

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:
♦ Gwyn Galloway by phone at 801-536-4258, by FAX at 801-533-4097, or by Internet E-mail at ggalloway@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2019

AUTHORIZED BY: Ty Howard, Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$0.75	\$0.75	\$0.75
Local Government	\$0	\$0	\$0
Small Businesses	\$0.75	\$0.75	\$0.75
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$1.50	\$1.50	\$1.50
Fiscal Benefits			
State Government	\$100	\$100	\$100
Local Government	\$0	\$0	\$0
Small Businesses	\$55	\$55	\$55
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$155	\$155	\$155
Net Fiscal Benefits:	\$153.50	\$153.50	\$153.50

*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

These proposed rule changes are not expected to have any fiscal impact on non-small businesses revenues or expenditures, because there are

only two radioactive materials licensees that are affected by the proposed rule changes and neither licensee is a "Non-Small Business" entity. Two licensees are considered to be a state agencies and the other is a small business entity (NAICS 325412). There are also no manufacturers of medical devices affected by the proposed rule that operate in the state of Utah. Therefore, there are no non-small business entities that are affected by these proposed rule changes.

The 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.

R313-22. Specific Licenses.

R313-22-75. Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices Which Contain Radioactive Material.

(1) Licensing the introduction of radioactive material in exempt concentrations into products or materials, and transfer of ownership or possession of the products and materials.

(a) The authority to introduce radioactive material in exempt concentrations into equipment, devices, commodities or other products may be obtained only from the Nuclear Regulatory Commission, Washington, D.C. 20555; and

(b) The manufacturer, processor or producer of equipment, devices, commodities or other products containing exempt concentrations of radioactive materials may obtain the authority to transfer possession or control of the equipment, devices, commodities, or other products containing exempt concentrations to persons who are exempt from regulatory requirements only from the Nuclear Regulatory Commission, Washington, D.C. 20555.

(2) Licensing the distribution of radioactive material in exempt quantities. Authority to transfer possession or control by the manufacturer, processor or producer of equipment, devices, commodities or other products containing byproduct material whose subsequent possession, use, transfer, and disposal by other persons who are exempted from regulatory requirements may be obtained only from the Nuclear Regulatory Commission, Washington, D.C. 20555.

(3) Reserved

(4) Licensing the manufacture and distribution of devices to persons generally licensed under Subsection R313-21-22(4).

(a) An application for a specific license to manufacture or distribute devices containing radioactive material, excluding special nuclear material, to persons generally licensed under Subsection R313-21-22(4) or equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State will be approved if:

(i) the applicant satisfies the general requirements of Section R313-22-33;

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide reasonable assurance that:

(A) the device can be safely operated by persons not having training in radiological protection,

(B) under ordinary conditions of handling, storage and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and

it is unlikely that a person will receive in one year, a dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1), and

(C) under accident conditions, such as fire and explosion, associated with handling, storage and use of the device, it is unlikely that a person would receive an external radiation dose or dose commitment in excess of the following organ doses:

TABLE

Whole body; head and trunk; gonads; or lens of eye	active blood-forming organs; 150.0 mSv (15 rems)
Hands and forearms; feet and ankles; localized areas of skin averaged over areas no larger than one square centimeter	2.0 Sv (200 rems)
Other organs	500.0 mSv (50 rems); and

(iii) each device bears a durable, legible, clearly visible label or labels approved by the Director, which contain in a clearly identified and separate statement:

(A) instructions and precautions necessary to assure safe installation, operation and servicing of the device; documents such as operating and service manuals may be identified in the label and used to provide this information,

(B) the requirement, or lack of requirement, for leak testing, or for testing an "on-off" mechanism and indicator, including the maximum time interval for testing, and the identification of radioactive material by radionuclide, quantity of radioactivity, and date of determination of the quantity, and

(C) the information called for in one of the following statements, as appropriate, in the same or substantially similar form:

(I) "The receipt, possession, use and transfer of this device, Model No., Serial No., are subject to a general license or the equivalent, and the regulations of the Nuclear Regulatory Commission or a state with which the Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited." The label shall be printed with the words "CAUTION - RADIOACTIVE MATERIAL" and the name of the manufacturer or distributor shall appear on the label. The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.

(II) "The receipt, possession, use and transfer of this device, Model No., Serial No., are subject to a general license or the equivalent, and the regulations of a Licensing State. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited." The label shall be printed with the words "CAUTION - RADIOACTIVE MATERIAL" and the name of the manufacturer or distributor shall appear on the label. The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.

(iv) Each device having a separable source housing that provides the primary shielding for the source also bears, on the

source housing, a durable label containing the device model number and serial number, the isotope and quantity, the words, "Caution-Radioactive Material," the radiation symbol described in Section R313-15-901, and the name of the manufacturer or initial distributor.

(v) Each device meeting the criteria of Subsection R313-21-22(4)(c)(xiii)(A), bears a permanent label, for example, embossed, etched, stamped, or engraved, affixed to the source housing if separable, or the device if the source housing is not separable, that includes the words, "Caution-Radioactive Material," and, if practicable, the radiation symbol described in Section R313-15-901.

(vi) The device has been registered in the Sealed Source and Device Registry.

(b) In the event the applicant desires that the device be required to be tested at intervals longer than six months, either for proper operation of the "on-off" mechanism and indicator, if any, or for leakage of radioactive material or for both, the applicant shall include in the application sufficient information to demonstrate that a longer interval is justified by performance characteristics of the device or similar devices and by design features which have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the "on-off" mechanism and indicator. In determining the acceptable interval for the test for leakage of radioactive material, the Director will consider information which includes, but is not limited to:

- (i) primary containment, or source capsule;
- (ii) protection of primary containment;
- (iii) method of sealing containment;
- (iv) containment construction materials;
- (v) form of contained radioactive material;
- (vi) maximum temperature withstood during prototype tests;

(vii) maximum pressure withstood during prototype tests;
 (viii) maximum quantity of contained radioactive material;

(ix) radiotoxicity of contained radioactive material; and
 (x) operating experience with identical devices or similarly designed and constructed devices.

(c) In the event the applicant desires that the general licensee under Subsection R313-21-22(4), or under equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State be authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the "on-off" mechanism and indicator, or remove the device from installation, the applicant shall include in the application written instructions to be followed by the general licensee, estimated calendar quarter doses associated with this activity or activities, and basis for these estimates. The submitted information shall demonstrate that performance of this activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive a dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1).

(d)(i) If a device containing radioactive material is to be transferred for use under the general license contained in Subsection R313-21-22(4), each person that is licensed under Subsection R313-22-75(4) shall provide the information specified in Subsections

R313-22-75(4)(d)(i)(A) through (E) to each person to whom a device is to be transferred. This information must be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information must also be provided to the intended user prior to initial transfer to the intermediate person. The required information includes:

(A) a copy of the general license contained in Subsection R313-21-22(4); if Subsections R313-21-22(4)(c)(ii) through (iv) or R313-21-22(4)(c)(xiii) do not apply to the particular device, those paragraphs may be omitted;

(B) a copy of Sections R313-12-51, R313-15-1201, and R313-15-1202;

(C) a list of services that can only be performed by a specific licensee;

(D) Information on acceptable disposal options including estimated costs of disposal; and

(E) An indication that the Director's policy is to issue civil penalties for improper disposal.

(ii) If radioactive material is to be transferred in a device for use under an equivalent general license of the Nuclear Regulatory Commission, an Agreement State, or Licensing State, each person that is licensed under Subsection R313-22-75(4) shall provide the information specified in Subsections R313-22-75(4)(d)(ii)(A) through (D) to each person to whom a device is to be transferred. This information must be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information must also be provided to the intended user prior to initial transfer to the intermediate person. The required information includes:

(A) A copy of an Agreement State's or Licensing State's regulations equivalent to Sections R313-12-51, R313-15-1201, R313-15-1202, and Subsection R313-21-22(4) or a copy of 10 CFR 31.5, 10 CFR 31.2, 10 CFR 30.51, 10 CFR 20.2201, and 10 CFR 20.2202. If a copy of the Nuclear Regulatory Commission regulations is provided to a prospective general licensee in lieu of the Agreement State's or Licensing State's regulations, it shall be accompanied by a note explaining that use of the device is regulated by the Agreement State or Licensing State; if certain paragraphs of the regulations do not apply to the particular device, those paragraphs may be omitted;

(B) A list of services that can only be performed by a specific licensee;

(C) Information on acceptable disposal options including estimated costs of disposal; and

(D) The name or title, address, and phone number of the contact at the Nuclear Regulatory Commission, Agreement State, or Licensing State from which additional information may be obtained.

(iii) An alternative approach to informing customers may be proposed by the licensee for approval by the Director.

(iv) Each device that is transferred after February 19, 2002 must meet the labeling requirements in Subsection R313-22-75(4)(a)(iii).

(v) If a notification of bankruptcy has been made under Section R313-19-34 or the license is to be terminated, each person licensed under Subsection R313-22-75(4) shall provide, upon request, to the Director, the Nuclear Regulatory Commission, or an appropriate Agreement State or Licensing State, records of final disposition required under Subsection R313-22-75(4)(d)(vii)(H).

(vi) Each person licensed under Subsection R313-22-75(4) to initially transfer devices to generally licensed persons shall comply with the requirements of Subsections R313-22-75(4)(d)(vi) and (vii).

(A) The person shall report all transfers of devices to persons for use under the general license under Subsection R313-21-22(4) and all receipts of devices from persons licensed under Subsection R313-21-22(4) to the Director. The report must be submitted on a quarterly basis on Form 653, "Transfers of Industrial Devices Report" as prescribed by the Nuclear Regulatory Commission, or in a clear and legible report containing all of the data required by the form.

(B) The required information for transfers to general licensees includes:

(I) The identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternative address for the general licensee shall be submitted along with information on the actual location of use.

(II) The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(III) The date of transfer;

(IV) The type, model number, and serial number of device transferred; and

(V) The quantity and type of radioactive material contained in the device.

(C) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report must include the same information for both the intended user and each intermediate person, and clearly designate the intermediate persons.

(D) For devices received from a Subsection R313-21-22(4) general licensee, the report must include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(E) If the licensee makes changes to a device possessed by a Subsection R313-21-22(4) general licensee, such that the label must be changed to update required information, the report must identify the general licensee, the device, and the changes to information on the device label.

(F) The report must cover each calendar quarter, must be filed within 30 days of the end of the calendar quarter, and must clearly indicate the period covered by the report.

(G) The report must clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(H) If no transfers have been made to or from persons generally licensed under Subsection R313-21-22(4) during the reporting period, the report must so indicate.

(vii) The person shall report all transfers of devices to persons for use under a general license in the Nuclear Regulatory Commission's, an Agreement State's, or Licensing State's regulations that are equivalent to Subsection R313-21-22(4) and all receipts of devices from general licensees in the Nuclear Regulatory Commission's, Agreement State's, or Licensing State's jurisdiction

to the Nuclear Regulatory Commission, or to the responsible Agreement State or Licensing State agency. The report must be submitted on Form 653, "Transfers of Industrial Devices Report" as prescribed by the Nuclear Regulatory Commission, or in a clear and legible report containing all of the data required by the form.

(A) The required information for transfers to general licensee includes:

(I) The identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternative address for the general licensee shall be submitted along with information on the actual location of use.

(II) The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(III) The date of transfer;

(IV) The type, model number, and serial number of the device transferred; and

(V) The quantity and type of radioactive material contained in the device.

(B) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report must include the same information for both the intended user and each intermediate person, and clearly designate the intermediate persons.

(C) For devices received from a general licensee, the report must include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(D) If the licensee makes changes to a device possessed by a general licensee, such that the label must be changed to update required information, the report must identify the general licensee, the device, and the changes to information on the device label.

(E) The report must cover each calendar quarter, must be filed within 30 days of the end of the calendar quarter, and must clearly indicate the period covered by the report.

(F) The report must clearly identify the specific licensee submitting the report and must include the license number of the specific licensee.

(G) If no transfers have been made to or from a Nuclear Regulatory Commission licensee, or to or from a particular Agreement State or Licensing State licensee during the reporting period, this information shall be reported to the Nuclear Regulatory Commission or the responsible Agreement State or Licensing State agency upon request of the agency.

(H) The person shall maintain all information concerning transfers and receipts of devices that supports the reports required by Subsection R313-22-75(4)(d)(vii). Records required by Subsection R313-22-75(4)(d)(vii)(H) must be maintained for a period of three years following the date of the recorded event.

(5) Special requirements for the manufacture, assembly or repair of luminous safety devices for use in aircraft. An application for a specific license to manufacture, assemble or repair luminous safety devices containing tritium or promethium-147 for use in aircraft for distribution to persons generally licensed under Subsection R313-21-22(5) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the applicant satisfies the requirements of 10 CFR 32.53 through 32.56 (2015) or their equivalent.

(6) Special requirements for license to manufacture or initially transfer calibration sources containing americium-241, plutonium or radium-226 for distribution to persons generally licensed under Subsection R313-21-22(7). An application for a specific license to manufacture calibration and reference sources containing americium-241, plutonium or radium-226 to persons generally licensed under Subsection R313-21-22(7) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the applicant satisfies the requirements of 10 CFR 32.57 through 32.59, and 10 CFR 70.39 (2015), or their equivalent.

(7) Manufacture and distribution of radioactive material for certain in vitro clinical or laboratory testing under general license. An application for a specific license to manufacture or distribute radioactive material for use under the general license of Subsection R313-21-22(9) will be approved if:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the radioactive material is to be prepared for distribution in prepackaged units of:

(i) iodine-125 in units not exceeding 370 kilobecquerel (ten uCi) each;

(ii) iodine-131 in units not exceeding 370 kilobecquerel (ten uCi) each;

(iii) carbon-14 in units not exceeding 370 kilobecquerel (ten uCi) each;

(iv) hydrogen-3 (tritium) in units not exceeding 1.85 megabecquerel (50 uCi) each;

(v) iron-59 in units not exceeding 740.0 kilobecquerel (20 uCi) each;

(vi) cobalt-57 in units not exceeding 370 kilobecquerel (ten uCi) each;

(vii) selenium-75 in units not exceeding 370 kilobecquerel (ten uCi) each; or

(viii) mock iodine-125 in units not exceeding 1.85 kilobecquerel (0.05 uCi) of iodine-129 and 1.85 kilobecquerel (0.05 uCi) of americium-241 each;

(c) prepackaged units bear a durable, clearly visible label:

(i) identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed 370 kilobecquerel (ten uCi) of iodine-125, iodine-131, carbon-14, cobalt-57, or selenium-75; 1.85 megabecquerel (50 uCi) of hydrogen-3 (tritium); 740.0 kilobecquerel (20 uCi) of iron-59; or Mock Iodine-125 in units not exceeding 1.85 kilobecquerel (0.05 uCi) of iodine-129 and 1.85 kilobecquerel (0.05 uCi) of americium-241 each; and

(ii) displaying the radiation caution symbol described in Section R313-15-901 and the words, "CAUTION, RADIOACTIVE MATERIAL", and "Not for Internal or External Use in Humans or Animals";

(d) one of the following statements, as appropriate, or a substantially similar statement which contains the information called for in one of the following statements, appears on a label

affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

(i) "This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of the Nuclear Regulatory Commission or of a state with which the Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority.

.....
Name of Manufacturer"

(ii) "This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of a Licensing State.

.....
Name of Manufacturer"

(e) the label affixed to the unit, or the leaflet or brochure which accompanies the package, contains adequate information as to the precautions to be observed in handling and storing radioactive material. In the case of the Mock Iodine-125 reference or calibration source, the information accompanying the source shall also contain directions to the licensee regarding the waste disposal requirements set out in Section R313-15-1001.

(8) Licensing the manufacture and distribution of ice detection devices. An application for a specific license to manufacture and distribute ice detection devices to persons generally licensed under Subsection R313-21-22(10) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the criteria of 10 CFR 32.61, 32.62, 2015 ed. are met.

(9) Manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing radioactive material for medical use under R313-32.

(a) An application for a specific license to manufacture and distribute radiopharmaceuticals containing radioactive material for use by persons licensed pursuant to Rule R313-32 will be approved if:

(i) the applicant satisfies the general requirements specified in Section R313-22-33;

(ii) the applicant submits evidence that the applicant is at least one of the following:

(A) registered with the U.S. Food and Drug Administration (FDA) as the owner or operator of a drug establishment that engages in the manufacture, preparation, propagation, compounding, or processing of a drug under 21 CFR 207.20(a);

(B) registered or licensed with a state agency as a drug manufacturer;

(C) licensed as a pharmacy by a State Board of Pharmacy; or

(D) operating as a nuclear pharmacy within a medical institution; or

(E) registered with a State Agency as a Positron Emission Tomography (PET) drug production facility.

(iii) the applicant submits information on the radionuclide; the chemical and physical form; the maximum activity per vial, syringe, generator, or other container of the radioactive drug; and the shielding provided by the packaging to show it is appropriate for the safe handling and storage of the radioactive drugs by medical use licensees; and

(iv) the applicant ~~satisfies~~ commits to the following labeling requirements:

(A) A label is affixed to each transport radiation shield, whether it is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL"; the name of the radioactive drug or its abbreviation; and the quantity of radioactivity at a specified date and time. For radioactive drugs with a half life greater than 100 days, the time may be omitted.

(B) A label is affixed to each syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL" and an identifier that ensures that the syringe, vial, or other container can be correlated with the information on the transport radiation shield label.

(b) A licensee described by Subsections R313-22-75(9)(a)(ii)(C) or (D):

(i) May prepare radioactive drugs for medical use, as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference), provided that the radioactive drug is prepared by either an authorized nuclear pharmacist, as specified in Subsections R313-22-75(9)(b)(ii) and (iv), or an individual under the supervision of an authorized nuclear pharmacist as specified in Rule R313-32 (incorporating 10 CFR 35.27 by reference).

(ii) May allow a pharmacist to work as an authorized nuclear pharmacist if:

(A) this individual qualifies as an authorized nuclear pharmacist as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference);

(B) this individual meets the requirements specified in Rule R313-32 (incorporating 10 CFR 35.55(b) and 10 CFR 35.59 by reference) and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist; or

(C) this individual is designated as an authorized nuclear pharmacist in accordance with Subsection R313-22-75(9)(b)(iv).

(iii) The actions authorized in Subsections R313-22-75(9)(b)(i) and (ii) are permitted in spite of more restrictive language in license conditions.

(iv) May designate a pharmacist, as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference), as an authorized nuclear pharmacist if:

(A) The individual was a nuclear pharmacist preparing only radioactive drugs containing accelerator produced radioactive material, and

(B) The individual practiced at a pharmacy at a Government agency or Federally recognized Indian Tribe before November 30, 2007, or at all other pharmacies before August 8, 2009, or an earlier date as noticed by the NRC.

(v) Shall provide to the Director:

(A) a copy of each individual's certification by a specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or Agreement State as specified in Rule R313-32 (incorporating 10 CFR 35.55(a) by reference) ~~with the written attestation signed by a preceptor as required by Rule R313-32 (incorporating 10 CFR 35.55(b)(2) by reference)~~; or

(B) the Nuclear Regulatory Commission or Agreement State license; or

(C) the permit issued by a licensee or Commission master materials permittee of broad scope or the authorization from a commercial nuclear pharmacy authorized to list its own authorized nuclear pharmacist; or

(D) the permit issued by a U.S. Nuclear Commission master materials licensee; or

(E) documentation that only accelerator produced radioactive materials were used in the practice of nuclear pharmacy at a Government agency or Federally recognized Indian Tribe before November 30, 2007 or at all other locations of use before August 8, 2009, or an earlier date as noticed by the NRC; and

(F) a copy of the state pharmacy licensure or registration, no later than 30 days after the date that the licensee allows, pursuant to Subsections R313-22-75(9)(b)(ii)(A) and R313-22-75(9)(b)(ii)(C), the individual to work as an authorized nuclear pharmacist.

(c) A licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha-, beta-, or photon-emitting radioactive drugs prior to transfer for commercial distribution. In addition, the licensee shall:

(i) perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

(ii) check each instrument for constancy and proper operation at the beginning of each day of use.

(d) A licensee shall satisfy the labeling requirements in R313-22-75(9)(a)(iv).

([d]e) Nothing in Subsection R313-22-75(9) relieves the licensee from complying with applicable FDA, or Federal, and State requirements governing radioactive drugs.

(10) Manufacture and distribution of sources or devices containing radioactive material for medical use. An application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed under Rule R313-32 for use as a calibration, transmission, or reference source or for the uses listed in Rule R313-32 (incorporating 10 CFR 35.400, 10 CFR 35.500, 10 CFR 35.600, and 35.1000 by reference) will be approved if:

(a) the applicant satisfies the general requirements in Section R313-22-33;

(b) the applicant submits sufficient information regarding each type of source or device pertinent to an evaluation of its radiation safety, including:

(i) the radioactive material contained, its chemical and physical form and amount,

(ii) details of design and construction of the source or device,

(iii) procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents,

(iv) for devices containing radioactive material, the radiation profile of a prototype device,

(v) details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests,

(vi) procedures and standards for calibrating sources and devices,

(vii) legend and methods for labeling sources and devices as to their radioactive content, and

(viii) instructions for handling and storing the source or device from the radiation safety standpoint, these instructions are to be included on a durable label attached to the source or device or attached to a permanent storage container for the source or device; provided that instructions which are too lengthy for a label may be summarized on the label and printed in detail on a brochure which is referenced on the label;

(c) the label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity and date of assay, and a statement that the source or device is licensed by the Director for distribution to persons licensed pursuant to Rule R313-32 (incorporating 10 CFR 35.18, 10 CFR 35.400, 10 CFR 35.500, and 10 CFR 35.600 by reference) or under equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State; provided that labeling for sources which do not require long term storage may be on a leaflet or brochure which accompanies the source;

(d) the source or device has been registered in the Sealed Source and Device Registry.

(e) in the event the applicant desires that the source or device be required to be tested for leakage of radioactive material at intervals longer than six months, the applicant shall include in the application sufficient information to demonstrate that a longer interval is justified by performance characteristics of the source or device or similar sources or devices and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the source; and

(f) in determining the acceptable interval for test of leakage of radioactive material, the Director shall consider information that includes, but is not limited to:

(i) primary containment or source capsule,

(ii) protection of primary containment,

(iii) method of sealing containment,

(iv) containment construction materials,

(v) form of contained radioactive material,

(vi) maximum temperature withstood during prototype tests,

(vii) maximum pressure withstood during prototype tests,

(viii) maximum quantity of contained radioactive material,

(ix) radiotoxicity of contained radioactive material, and

(x) operating experience with identical sources or devices or similarly designed and constructed sources or devices.

(11) Requirements for license to manufacture and distribute industrial products containing depleted uranium for mass-volume applications.

(a) An application for a specific license to manufacture industrial products and devices containing depleted uranium for use pursuant to Subsection R313-21-21(7) or equivalent regulations of the Nuclear Regulatory Commission or an Agreement State will be approved if:

(i) the applicant satisfies the general requirements specified in Section R313-22-33;

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses and potential hazards of the industrial product or device to provide reasonable assurance that possession, use or transfer of the depleted uranium in the product or device is not likely to cause an individual to receive a radiation dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1); and

(iii) the applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass-volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

(b) In the case of an industrial product or device whose unique benefits are questionable, the Director will approve an application for a specific license under Subsection R313-22-75(11) only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(c) The Director may deny an application for a specific license under Subsection R313-22-75(11) if the end use of the industrial product or device cannot be reasonably foreseen.

(d) Persons licensed pursuant to Subsection R313-22-75(11)(a) shall:

(i) maintain the level of quality control required by the license in the manufacture of the industrial product or device, and in the installation of the depleted uranium into the product or device;

(ii) label or mark each unit to:

(A) identify the manufacturer of the product or device and the number of the license under which the product or device was manufactured, the fact that the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device; and

(B) state that the receipt, possession, use and transfer of the product or device are subject to a general license or the equivalent and the regulations of the Nuclear Regulatory Commission or an Agreement State;

(iii) assure that the uranium before being installed in each product or device has been impressed with the following legend clearly legible through a plating or other covering: "Depleted Uranium";

(iv) furnish to each person to whom depleted uranium in a product or device is transferred for use pursuant to the general license contained in Subsection R313-21-21(5) or its equivalent:

(A) a copy of the general license contained in Subsection R313-21-21(7) and a copy of form DWMRC-12; or

(B) a copy of the general license contained in the Nuclear Regulatory Commission's or Agreement State's regulation equivalent to Subsection R313-21-21(7) and a copy of the Nuclear Regulatory Commission's or Agreement State's certificate, or alternatively, furnish a copy of the general license contained in Subsection R313-21-21(7) and a copy of form DWMRC-12 with a note explaining that use of the product or device is regulated by the Nuclear Regulatory Commission or an Agreement State under requirements substantially the same as those in Subsection R313-21-21(7);

(v) report to the Director all transfers of industrial products or devices to persons for use under the general license in Subsection R313-21-21(7). The report shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the Director and the general licensee, the type and model number of device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty days after the end of the calendar quarter in which the product or device is transferred to the generally licensed person. If no transfers have been made to persons generally licensed under Subsection R313-21-21(7) during the reporting period, the report shall so indicate;

(vi) provide certain other reports as follows:

(A) report to the Nuclear Regulatory Commission all transfers of industrial products or devices to persons for use under the Nuclear Regulatory Commission general license in 10 CFR 40.25 (2010);

(B) report to the responsible state agency all transfers of devices manufactured and distributed pursuant to Subsection R313-22-75(11) for use under a general license in that state's regulations equivalent to Subsection R313-21-21(7);

(C) reports shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the agency and the general licensee, the type and model number of the device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty days after the end of each calendar quarter in which a product or device is transferred to the generally licensed person;

(D) if no transfers have been made to Nuclear Regulatory Commission licensees during the reporting period, this information shall be reported to the Nuclear Regulatory Commission, and

(E) if no transfers have been made to general licensees within a particular Agreement State during the reporting period, this information shall be reported to the responsible Agreement State agency upon the request of that agency; and

(vii) records shall be kept showing the name, address and point of contact for each general licensee to whom the person transfers depleted uranium in industrial products or devices for use pursuant to the general license provided in Subsection R313-21-21(7) or equivalent regulations of the Nuclear Regulatory Commission or an Agreement State. The records shall be maintained for a period of two years and shall show the date of each transfer, the quantity of depleted uranium in the product or device

transferred, and compliance with the report requirements of Subsection R313-22-75(11).

KEY: specific licenses, decommissioning, broad scope, radioactive materials

Date of Enactment or Last Substantive Amendment: [~~October 13, 2017~~]2019

Notice of Continuation: July 1, 2016

Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-6-104

Environmental Quality, Waste Management and Radiation Control, Radiation **R313-32** Medical Use of Radioactive Material

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 43812

FILED: 06/14/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these rule changes are to update the medical use of radioactive material requirements which were last updated in their entirety in 2002. The proposed changes address technological advances, changes to medical procedures, and enhance patient safety. The changes are proposed in order to maintain compatibility with U.S. Nuclear Regulatory Commission (NRC) requirements. To maintain authority to regulate certain licensed radioactive materials in the state of Utah, the state must maintain rules that are compatible with NRC requirements. Recent changes to 10 CFR Part 35 and related NRC requirements were adopted by the NRC and published in the 07/16/2018 Federal Register (83 FR 33046). These proposed rule changes maintain compatibility with the changes published for the requirements in 10 CFR Part 35 by incorporating the 2019 version of 10 CFR Part 35 by reference. An additional change is being requested to Rule R313-32 to allow licensees to hold radioactive wastes with half-lives less than 175 days to be disposed using the decay in storage method so that the materials will not be required to be disposed as low level radioactive waste.

SUMMARY OF THE RULE OR CHANGE: These proposed rule changes address the removal of the requirement for a written attestation statement from proposed authorized users who are board certified by approved specialty boards, adds the ability for licensees to have Associate Radiation Safety Officers, clarifies requirements for the use of sealed sources in diagnostic procedures, clarifies training and experience requirements for unsealed radioactive materials requiring the use of a written directive, includes additional requirements for

testing and reporting requirements for the use of generators used for obtaining specific isotopes, includes changes to the medical event requirements, and adds specific medical event reporting requirements for permanent brachytherapy implants. In addition to the above changes to adopt the NRC revisions, a change is being proposed to add a new subsection, as stated in Subsection R313-32-2(5), to include specific requirements for holding radioactive waste for "decay-in-storage" (DIS) if the radioactive material has a half-life of greater than 120 days, but less than 175 days. Currently, radioactive waste containing materials with half-lives greater than 120 days is required to be disposed as low-level radioactive waste (LLRW). Recently, a new radioactive drug using Lutetium-177 (Lu-177) was introduced into use at medical facilities in the state of Utah. It has been determined that this drug contains a very small quantity of a radioactive impurity that has a half-life of about 161 days. If the impurity is detected in the radioactive waste, the waste created from the administration of Lu-177 is required to be disposed as LLRW unless a variance from the Board is requested and approved. In anticipation of the increased use of this radioactive drug, the proposed change will allow the Director to approve an amendment for the DIS of radioactive waste containing materials with half-lives greater than 120 days but less than 175 days on a case-by-case basis. For approval, the licensee would be required to demonstrate that the waste will be secured and safely stored, that the additional waste would not exceed the licensee's storage capacity, and that the licensee will meet the survey criteria required for DIS waste with half-lives of 120 days or less.

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

MATERIALS INCORPORATED BY REFERENCE:

- ◆ Updates 10 CFR Part 35, published by GPO, 01/01/2019

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The following are very rough estimates of the possible costs and benefits associated with the proposed changes. The implementation of these proposed requirements is dependent on the uses of radioactive materials by each separate licensee. Licensees in the state that use radioactive materials only for diagnostic purposes may not choose or be required to implement any of the proposed changes or may choose to implement just a few of the proposed changes. Licensees using radioactive materials for the therapeutic treatment of patients will be required to implement certain of the proposed changes, but may choose not to implement other proposed changes. Since each licensee is not required to implement all of the proposed rule changes, licensees may choose to avail themselves of some of the proposed requirements that benefit licensees multiple times in a year, may not implement any of the proposed changes or may implement the proposed changes in a myriad of combinations, an estimate of the costs and benefits to licensees and state agencies is difficult to determine. However, rough estimates were made for the

proposed changes. For the rough estimates, it was assumed that the 45 medical use licensees could simplistically be separated into businesses that provide both diagnostic and therapeutic treatments with radioactive materials and those licensees that provide only diagnostic services using radioactive materials. It was also assumed that each group would use each of the proposed rule changes possibly applicable to their operations at least once in a year. As an example, it was assumed that businesses performing only diagnostic scans would have no need to add an Associate Radiation Safety Officer (ARSO) to their radioactive materials license since the types of radioactive materials used at these facilities would be limited. Also, since the requirements of Rule R313-32 (incorporating 10 CFR 35.490 or 10 CFR 35.690 by reference) apply only to the therapeutic use of radioactive materials, these requirements would not be applicable to those businesses that only provide diagnostic services. Lastly, for determining the costs or benefits associated with the proposed requirements, all estimates for the number of licensees affected by the proposed requirement was rounded up to the next whole number when calculating the number of impacted licensees. There are currently 45 licensees authorized to medically use radioactive materials pursuant to Rule R313-32. Therefore, the DWMRC provides regulatory oversight for 45 medical use licensees. Of these, four are operated by a state-owned and operated entity. One of these four licensees provides both diagnostic and therapeutic treatments for patients while the other three licensees limit their practices to diagnostic services. There are no fees associated with the proposed rule changes. The proposed rule changes will result in both direct fiscal costs and direct fiscal benefits in the form of personnel costs and savings to the state licensees. Using the NRC's regulatory impact analysis associated with the federal regulatory changes to 10 CFR Part 35 (ML16124B034, Secy-16-0080; Enclosure 2) as guidance and using the assumptions stated above, for the four licensees there may be an estimated direct fiscal cost for the implementation of these requirements of approximately \$2,963.96. In addition, the four licensees could experience an annual direct fiscal cost of approximately \$1,064.49 and a direct fiscal benefit of approximately \$2,102.45. In addition to the direct fiscal costs and benefits, the state may also experience indirect fiscal cost and benefits related to the regulatory oversight of the licensees. These costs and savings are based on personnel costs and savings and are related to the processing of requests to add authorized users and other changes to the radioactive materials licenses, as well as, responses to reports made to the state due to the proposed changes. The state will incur a one-time indirect fiscal cost of about \$6,480 to implement the proposed changes and an annual ongoing indirect fiscal cost of about \$971.10 for the regulatory oversight of the proposed changes. In addition to the stated indirect fiscal costs, the state could also experience indirect fiscal benefits of about \$3,870.00 annually. These licensees will also be impacted by the requirement proposed for the disposal of certain materials. This requirement will result in a direct benefit to the licensees; however, the benefit cannot be analyzed at this time. The radioactive material in question is from a new

medical treatment for certain cancers and it is unknown how many facilities will provide this treatment to patients or how much waste will be created from its use. Therefore, this direct fiscal benefit cannot be estimated. In total, the state may experience one-time direct fiscal implementation costs of about \$2,963.96 and experience ongoing direct fiscal costs of about \$1,064.49. Additionally, the state may experience one-time indirect fiscal implementation costs of about \$6,480 and indirect fiscal costs of about \$971.10 annually. The state may also experience direct fiscal benefits of approximately \$2,102.45 and indirect fiscal benefits of about \$3,870 annually.

◆ **LOCAL GOVERNMENTS:** These proposed rule changes are not expected to have any impact on the revenues or expenditures for local governments because it only affects government agencies at a state level. There are no radioactive material licenses for the medical use of radioactive materials issued to a local government entity. Additionally, local governments have no regulatory authority for the possession and use of radioactive materials.

◆ **SMALL BUSINESSES:** There are 12 small businesses in the state of Utah that have radioactive materials licenses authorizing the medical use of radioactive materials (NAICS # 622111). Of the 12 licensees, 5 of the licensees provide only diagnostic services to their patients. The remaining 7 licensees provide treatment for various cancers and other therapeutic treatments. There are no fees associated with the proposed rule changes. The referenced information and noted assumptions stated under the state budget answer above were also used to develop the analysis for this section. As stated above, licensees may experience both one-time and ongoing (annual) direct fiscal impacts associated with the implementation of the proposed requirements. The 5 licensees limited to providing diagnostic treatments may experience one-time direct fiscal impacts of about \$906.75 and ongoing direct fiscal impacts of about \$525.92. Additionally, these licensees may experience annual direct fiscal benefits of approximately \$1,450.80. The remaining 7 small business licensees, who provide both diagnostic and therapeutic treatments to patients, may incur direct fiscal impacts of about \$7,846.12 to implement the proposed changes and annual direct fiscal impacts of about \$1,904.18. Licensees providing both diagnostic and therapeutic services using radioactive materials may also experience direct fiscal benefits of about \$4,532.30 annually. In total, the licensees considered to be small businesses may experience one-time direct fiscal implementation costs of about \$17,846.05 and annual direct fiscal costs of about \$2,430.10. The small business licensees may also experience annual direct fiscal benefits of approximately \$5,983.10.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** It is difficult to determine how many persons as defined above will be impacted by these proposed rule changes. An individual will only be affected by the proposed rule changes regarding applications to be named on a license as an authorized user or an authorized medical physicist if the individual is board certified and has not previously been named on a radioactive materials license. This information

cannot be determined until the information is received. The NRC determined that there is about a 3% turnover rate for licensees, but this includes individuals leaving employment at one facility and beginning practice on a different license. Assuming that each licensee has approximately four unique physicians named on the license and there are eight medical physicists in the state, there are about 200 individuals named on the 45 medical licenses. If a 3% turnover is assumed, 6 of the individuals would leave employment. If those individuals are replaced by physicians that have never been named on a license, it is assumed that 30% of those individuals would be certified by one of the approved specialty boards. Therefore, it is possible that two individuals might benefit from the proposed changes to the requirements. This would be an indirect fiscal benefit in that the individuals will save the time necessary from collecting the written attestation statements that they were provided when completing their schooling and providing it to their new employer (the licensee) for the licensee to request that the individual be added to the license. It is estimated that this would save each individual about one half hour of time spent to locate the paperwork they were previously given. Therefore, each individual may experience a direct fiscal benefit of about \$64.25 or a total of about \$128.50 for both individuals. Note that this is a one-time benefit unless the individual requests to expand their radioactive material authorizations to add additional radioactive materials approvals for materials that they have not used before.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Small business licensees providing diagnostic services may incur one-time direct fiscal cost of \$181.35 and ongoing (annual) fiscal cost of about \$105.18 per licensee to implement the proposed changes. These direct fiscal costs will be offset by the potential direct fiscal benefits of about \$290.16 that may be experience by each of these licensees. Small business licensees providing both diagnostic and therapeutic services may experience one-time direct fiscal cost of about \$2,419.90 and ongoing (annual) direct fiscal cost of approximately \$272.03 per licensee. Additionally, each of these licensees may experience direct fiscal benefit of about \$647.47 per license. Non-small business licensees providing diagnostic services may incur one-time direct fiscal cost of \$181.35 and ongoing (annual) fiscal cost of about \$217.62 per licensee to implement the proposed changes. These direct fiscal costs may be offset by the potential direct fiscal benefit of \$435.24 that could be experienced by each of these licensees. Non-small business licensees providing both diagnostic and therapeutic services may experience one-time direct fiscal cost of about \$2,419.90 and ongoing (annual) direct fiscal cost of approximately \$285.10 per licensee. Additionally, each of these licensees could experience direct fiscal benefit of about \$560.97 per license to offset the costs associated with the proposed changes. Individuals who are approved by an authorized specialty board and work for a licensee who wishes to add the individual to the licensee's radioactive materials license may save approximately one half hour of their time to locate the written attestation statement that they

were provided upon completion of their training. Therefore, each individual may save about \$64.25.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed requirements are being adopted to remain compatible with the US Nuclear Regulatory Commission requirements and to include specific requirements for holding radioactive waste for "decay-in-storage" (DIS) if the radioactive material has a half-life of greater than 120 days but less than 175 days. Although rough estimates of the possible costs and benefits to these entities are provided above, the numbers may not be very accurate for each separate licensee. Many of the proposed changes may or may not be implemented by a licensee depending on the types of radioactive materials used. Additionally, many of the proposed requirements could be used many times within a year. For example, if the licensee is adding multiple authorized users for radioactive materials listed in Rule R313-32 (incorporating 10 CFR 35.100 by reference), the licensee may experience the possible direct fiscal benefit associated with the proposed changes for each board approved individual that is being added to their license. It is also possible that the licensee will not experience a benefit from the addition of any individual to the license if the individuals are not board certified or were previously named on another radioactive materials license. Licensees may implement the proposed changes in a myriad of combinations or may not implement any of the proposed changes. Because of this, there is a wide range of potential costs and benefits associated with the proposed changes for each licensee. The reported costs and benefits assume that each licensee would implement the proposed changes applicable to the two main categories of services provided at least once, unless the proposed changes were not applicable to the facilities within the state. For example, although the proposed changes add a requirement to test the breakthrough concentration for each eluate of a Mo-99/Tc-99m medical generator, there are no medical use licensees that possess one of these generators therefore, the costs associate with the testing of the generator were not addressed in the estimate. The possible direct fiscal benefits associated with the addition of the requirement regarding the disposal of certain radioactive waste were also not included in the estimate. The radioactive materials address by the requirement added by the DWMRC are new to the market and there is no data available for its use in Utah.

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:

♦ Gwyn Galloway by phone at 801-536-4258, by FAX at 801-533-4097, or by Internet E-mail at ggalloway@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2019

AUTHORIZED BY: Ty Howard, Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$9,443.96	\$3,166.94	\$3,166.94
Local Government	\$0	\$0	\$0
Small Businesses	\$20,276.22	\$2,430.10	\$2,430.10
Non-Small Businesses	\$65,805.97	\$8,515.89	\$8,515.89
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$95,526.15	\$14,112.93	\$14,112.93
Fiscal Benefits			
State Government	\$5,972.45	\$5,972.45	\$5,972.45
Local Government	\$0	\$0	\$0
Small Businesses	\$5,983.10	\$5,983.10	\$5,983.10
Non-Small Businesses	\$16,819.57	\$16,819.57	\$16,819.57
Other Persons	\$128.51	\$128.51	\$128.51
Total Fiscal Benefits:	\$28,903.63	\$28,903.63	\$28,903.63
Net Fiscal Benefits:	-\$66,623	\$14,790.70	\$14,790.70

*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

There are 32 non-small business entities (NAICS #622110, NAICS # 622111) that hold radioactive materials licenses for use of radioactive materials under the provisions of Rule R313-32 and that are not owned or operated by a state agency. The implementation of these proposed requirements is dependent on the uses of radioactive materials authorized for use by each separate licensee. Those licensees that use radioactive materials only for diagnostic purposes may not implement any of the proposed changes, may implement just a few of the proposed changes or may implement all of the proposed changes that could be applicable to their operations. Licensees using radioactive materials for the therapeutic treatment of patients will be required to implement certain of the proposed changes; however, may not implement all proposed changes. Since each licensee is not required to implement all of the proposed rule changes, may avail themselves of some of the proposed requirements that benefit licensees multiple times in a year, or may choose not to implement any of the proposed changes, an estimate of the costs and benefits to licensees and state agencies is difficult to determine. However, as before, it was assumed that the 32 non-small business medical use licensees could simplistically be separated into businesses that provide therapeutic treatments with radioactive materials and those licensees that perform diagnostic scans using radioactive materials. Although it is quite unlikely, each licensee was assumed to implement all proposed changes that could apply to their operations one time each year. Therefore, the provided estimates are likely to overestimate the costs and benefits that may be experienced by the licensees. As an example, businesses performing only diagnostic scans would have no need to write, document, and implement procedures to verify the post-implant source positions within 60 days from the date that the sources were implanted since this is a therapeutic procedure. However, there are also numerous businesses that provide therapeutic services to patients that are not authorized to permanently implant the sources to which this requirement would apply.

Only nine of the 32 licensees qualifying as large businesses restrict their services to diagnostic services while the remaining 23 licensees provide both diagnostic and therapeutic services using radioactive materials. There are no fees associated with the proposed changes and no fees charged for amendments to the radioactive materials licenses. The costs and benefits for each group of licensees are direct fiscal impacts for the licensee and are based on estimated savings and costs due to personnel time that will be used or saved and the average wage for the personnel performing the task or duty delineated by the proposed change. Those licensees providing only diagnostic services may experience an initial one-time direct fiscal impact of about \$1,632.15 and ongoing direct fiscal impacts (annual) of about \$1,958.59. These licensees may also experience a direct fiscal benefit of about \$3,917.16 annually.

The remaining 23 licensees of the 32 non-small business licensees provide both diagnostic and therapeutic services using radioactive materials. These licensees may experience an initial one-time direct fiscal impact of approximately \$55,657.93 and on-going (annual) direct fiscal impact of about \$6,557.30. Additionally, these licensees may experience direct fiscal benefit of about \$12,902.41 annually. These licensees will also be impacted by the requirement proposed for the disposal of certain materials.

The impact of the requirement proposed by the DWRC that is not contained in 10 CFR Part 35 was not included in this analysis. This requirement will result in a direct benefit to the licensees; however, the benefit cannot be analyzed at this time. The radioactive material in question is from a new medical treatment for certain cancers and it is unknown how many facilities will provide this treatment to patients or how much waste will be created from its use. Therefore, this direct fiscal benefit cannot be estimated.

In total, the non-small business licensees may experience one-time direct fiscal implementation costs of about \$57,290.08 and annual direct fiscal costs of about \$8,515.89. These licensees may also experience annual direct fiscal benefit of approximately \$16,819.57.

The 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.**R313-32. Medical Use of Radioactive Material.****R313-32-1. Purpose and Authority.**

(1) The purpose of this rule is to prescribe requirements and provisions for the medical use of radioactive material and for issuance of specific licenses authorizing the medical use of this material. These requirements and provisions provide for the protection of the public health and safety. The requirements and provisions of Rule R313-32 are in addition to, and not in substitution for, other sections of Title R313.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(7).

R313-32-2. Clarifications or Exceptions.

For the purposes of Rule R313-32, 10 CFR 35.2 through 35.7; 35.10(d) through 35.10(f); 35.11(a) through 35.11(b); 35.12; and 35.13(b) through ~~[35.3067]~~35.3204 (~~[2010]~~2019) are incorporated by reference with the following clarifications or exceptions:

(1) The exclusion of the following:

(a) In 10 CFR 35.2, exclude definitions for "Address of Use," "Agreement State," "Area of Use," "Dentist," "Pharmacist," "Physician," "Podiatrist," and "Sealed Source"; ~~and~~

(b) In 10 CFR 35.19, exclude "or the common defense and security";

~~(b)(c)~~ (c) In 10 CFR 35.3067, exclude "_with a copy to the Director, Office of Nuclear Material Safety and Safeguards[-]";

(d) In 10 CFR 35.3045(d), 10 CFR 3047(d), 10 CFR 35.3067, and 10 CFR 35.3204(b), exclude "By an appropriate method listed in Sec. 30.6(a) of this chapter."

(2) The substitution of the following date references:

(a) "May 13, 2005" for "October 24, 2002"; and

(b) ["May 10, 2006" for "April 29, 2005.]" "December 31, 2019" for "January 14, 2019";

(3) The substitution of the following rule references:

(a) "Rules R313-32 and R313-15" for reference to "this part and 10 CFR Part 20" in 10 CFR 35.61(a);

(b) "Rule R313-15[or]" for reference to "Part 20 of this chapter" in 10 CFR 35.70(a) and 10 CFR 35.80(a)(4);

(b)(c) "Rules R313-19 and R313-22" for reference to "Part 30 of this chapter" in 10 CFR 35.18(a)(4);

(d) "Rules R313-19 and R313-22 or equivalent Nuclear Regulatory Commission or Agreement State requirements for reference to "10 CFR Part 30 or the equivalent requirements of an Agreement State" in 10 CFR 35.49(c)[except for the reference to "Part 30 of this chapter" found in 10 CFR 35.65(d)];

(e)(c) "10 CFR Part 30" for reference to "Part 30 of this chapter" as found in 10 CFR 35.65[~~(b)~~](a)(4);

(e)(f) "Rules R313-15[and], R313-19, and R313-22" for reference to "parts 20 and 30 of this chapter" as found in 10 CFR 35.63(e)(1);

(e)(g) "Section R313-12-110" for reference to "Sec. 30.6 of this chapter" as found in 10 CFR 35.14(c).[or for reference to "Sec. 30.6(a)" or for reference to "Sec. 30.6(a) of this chapter";

(e)(h) "Section R313-15-101" for reference to "Sec. 20.1101 of this chapter" as found in 10 CFR 35.24(a);

~~(g)~~(i) "Subsection R313-15-301(1)(a)" for reference to "Sec. 20.1301(a)(1) of this chapter" as found in 10 CFR 35.310(a)(2)(i) and 10 CFR 35.410(a)(4)(i);

~~(h)~~(j) "Subsection R313-15-301(1)(c)" for reference to "Sec. 20.1301(c) of this chapter" as found in 10 CFR 35.310(a)(2)(ii) and 10 CFR 35.410(a)(4)(ii);

~~(i)~~(k) "Section R313-15-501" for reference to "Sec. 20.1501 of this chapter" as found in 10 CFR 35.652(a);

~~(j)~~(l) "Section R313-18-12" for reference to "Sec. 19.12 of this chapter" as found in 10 CFR 35.27(a)(1), 10 CFR 35.27(b)(1), 10 CFR 35.310, and 10 CFR 35.410;

~~(k)~~(m) "Rules R313-19, R313-22 and Subsection R313-22-75(10) or equivalent U.S. Nuclear Regulatory Commission or Agreement State ~~regulations~~ requirements" for reference to "10 CFR Part 30 and Sec. 32.74 of this chapter or equivalent requirements of an Agreement State;" as found in 10 CFR 35.65(b)49(a);

~~(l)~~(n) "Subsection R313-22-75(10) or equivalent Nuclear Regulatory Commission or Agreement State requirements" ~~[for reference to "10 CFR 32.74 of this chapter," or for reference to "Sec. 32.74 of this chapter" except for the reference to "Sec. 32.74 of this chapter" found in 10 CFR 35.65(b)]~~ for references to "Sec. 32.74 of this chapter or equivalent Agreement State regulations" found in 10 CFR 35.65(a)(1) and 10 CFR 35.65(a)(2);

~~(m)~~(o) "Rule R313-70" for reference to "Part 170 of this chapter";

~~(n)~~(p) "Subsection R313-19-34(2)" for reference to "Sec. 30.34(b) of this chapter" as found in 10 CFR 35.14(b)(4);

~~(o)~~(q) "[~~Rule~~]Section R313-22-50" for reference to "Part 33 of this chapter" in 10 CFR 35.15;

~~(p)~~(r) "Subsection R313-22-50(2)" for reference to "Sec. 33.13 of this chapter" in 10 CFR 35.12(e);

~~(q)~~(s) "Subsection R313-22-75(9)(b)(iv)" for reference to "Sec. 32.72(b)(4)" in 10 CFR 35.2 for the definition of Authorized Nuclear Pharmacist;

~~(r)~~(t) "Subsection R313-22-75(9) or equivalent Nuclear Regulatory Commission or Agreement State requirements;" ~~10 CFR 32.72,~~ for reference to "Sec. 32.72 of this chapter or equivalent Agreement State requirements" as found in 10 CFR 35.63(b)(2)(i), 10 CFR 35.63(c)(3)(i), 10 CFR 35.100(a)(1), 10 CFR 35.200(a)(1), and 10 CFR 35.300(a)(1);

~~(s)~~ "Subsection R313-22-75(9)(b)(v)" for reference to "Sec. 32.72(b)(5)";

~~(t)~~ "(e)(1) or (e)(2)" for reference to "(e)(1)" in 10 CFR 35.50(d);

~~(u)~~ "35.600 or 35.1000" for reference to "35.600" in 10 CFR 35.41(b)(1); and

~~(v)~~(u) "Subsection R313-22-32(9)" ~~10 CFR 30.32(j),~~ or equivalent Nuclear Regulatory Commission or Agreement State requirements" for reference to "Sec. 30.32(j) of this chapter or equivalent Agreement State requirements" as found in 10 CFR 35.63(b)(2)(iii), 10 CFR 35.63(c)(3)(ii), 10 CFR 35.100(a)(2), 10 CFR 35.200(a)(2), or 10 CFR 35.300(a)(2).

(4) The substitution of the following terms:

(a) "radioactive material" for reference to "byproduct material";

(b) [~~"original" for "original and one copy";~~] "a Director, a Nuclear Regulatory Commission, or Agreement State" for reference

to "an NRC or Agreement State" in 10 CFR 35.63(b)(2)(ii), 10 CFR 35.100(c), 10 CFR 35.200(c), or 10 CFR 35.300(c);

(c) "Director is (801) 536-0200 or after hours, (801) 536-4123" for "NRC Operations Center is (301) 816-5100[954-0550]" as found in the footnote included for 10 CFR 35.3045(c);

(d) "Form DWMRC-01, 'Application for Radioactive Material License-~~Application~~'" for reference to "NRC Form 313, 'Application for Material License'" as found in 10 CFR 35.12(b)(1), 10 CFR 35.12(c)(1)(i) and 10 CFR 35.18(a)(1);

(e) "Form DWMRC-01" for reference to "NRC Form 313" as found in 10 CFR 35.12(c)(1)(ii);

~~(e)~~(f) "[~~State of Utah radioactive materials~~]medical use license issued by the Director" for reference to "NRC medical use license" in 10 CFR 35.6(c);

~~(f)~~(g) "[~~the~~]Director, the U.S. Nuclear Regulatory Commission, or an Agreement State" for reference to "[~~the~~] Commission or Agreement State" in 10 CFR 35.2 for the definitions of Authorized Medical Physicist (2)(i), Authorized Nuclear Pharmacist (2)(iii) and Radiation Safety Officer (2)(i), in 10 CFR 35.57(b)(1) (first instance), 10 CFR 35.57(b)(2) (first instance), 10 CFR 35.433(a)(2)(i); or for references to "[the]Commission or an Agreement State" in 10 CFR 35.2 for the definitions of Associate, Radiation Safety Officer (2)(i) and Ophthalmic Physicist (2)(i), 10 CFR 35.11(a), in 10 CFR 35.50(a), 10 CFR 35.50(a)(2)(ii)(A), 10 CFR 35.50(c)(1), 10 CFR 35.51(a), 10 CFR 35.51(a)(2)(i), 10 CFR 35.55(a), 10 CFR 35.190(a), 10 CFR 35.290(a), 10 CFR 35.390(a), 10 CFR 35.392(a), 10 CFR 35.394(a), 10 CFR 35.396(a)(3), 10 CFR 35.433(a)(2)(i), 10 CFR 35.490(a), 10 CFR 35.590(a), 10 CFR 35.605(a), 10 CFR 35.605(b), 10 CFR 35.605(c), 10 CFR 35.655(b) and 10 CFR 35.690(a);

~~(g)~~(h) "[~~an~~]Director, [~~the~~]a U.S. Nuclear Regulatory Commission, or an Agreement State" for references to "[~~a~~] Commission or Agreement State" in 10 CFR 35.2 for the definitions of Authorized Medical Physicist (2)(iii), Authorized Nuclear Pharmacist (2)(i), Authorized User (2)(i), Authorized User (2)(iii) and Ophthalmic Physicist (2)(ii), in 10 CFR 13(b)(4)(ii), 10 CFR 35.14(a)(2)(second instance), 10 CFR 35.57(a)(1)(second instance), 10 CFR 35.57(b)(1)(second instance), 10 CFR 35.57(b)(2)(second instance), 10 CFR 35.433(a)(2)(ii)(second instance); or for references to "Commission or an Agreement State" in 10 CFR 35.50(c)(2)(second instance);

~~(h)~~(i) [~~"Equivalent U.S. Nuclear Regulatory Commission or Agreement State"~~]license issued by the Director, the Nuclear Regulatory Commission, or the Agreement State" for reference to [~~"equivalent Agreement State"~~]Commission or Agreement State license" [as found] in 10 CFR 35.14(a)(2)(first instance)[63(b)(2)(i), 10 CFR 35.63(e)(3), 10 CFR 35.65(a), 10 CFR 35.100(a), 10 CFR 35.200(a), and 10 CFR 35.300(a);

~~(i)~~(j) "Director" for reference to "NRC Operations Center" in 10 CFR 35.3045(c), ~~and~~ 10 CFR 35.3047(c), and 10 CFR 35.3204(a);

(k) "license issued by the Director, the Nuclear Regulatory Commission or an Agreement State" for reference to "Commission or Agreement State license" in 10 CFR 35.13(b)(4)(i), 10 CFR 35.14(a)(2)(first instance), 10 CFR 35.50(b)(1)(ii) or for reference to "Commission or an Agreement State license" in 10 CFR 35.50(b)(1)(ii), 10 CFR 35.50(c)(2), and 10 CFR 35.57(a)(2);

~~[(j)]~~ "Utah Division of Waste Management and Radiation Control" for reference to "NRC Operations Center" in Footnote 3 to 10 CFR 35.3045;

~~[(k)]~~ ~~[(l)]~~ "Director at the address specified in Section R313-12-110" for reference to "appropriate NRC Regional Office listed in Sec. 30.6 of this chapter" in 10 CFR 35.3045(d), 10 CFR 35.3047(d), 10 CFR 35.3067, and 10 CFR 35.3204(b);

~~[(h)]~~ ~~[(m)]~~ "[Utah Waste Management and Radiation Control] Board" for reference to "Commission" in 10 CFR 35.18(a)(3)(second instance) and 10 CFR 35.19;

~~[(n)]~~ ~~[(n)]~~ "Director" for reference to "Commission" in ~~[40 CFR 35.10(b),]~~ 10 CFR 35. ~~[12(d)(2)]~~ 12(d)(4), 10 CFR 35.14(a) ~~[(first instance)]~~, 10 CFR 35.14(b), 10 CFR 35.18(a), 10 CFR 35.18(a)(3)(first instance), 10 CFR 35.18(b), 10 CFR 35.24(a)(1), 10 CFR 35.24(c), 10 CFR 35.26(a), and 10 CFR 35.1000(b);

~~[(o)]~~ ~~[(o)]~~ "[the] Director" for reference to "NRC" in ~~[40 CFR 35.13(b)(4)(i),]~~ 10 CFR 35.3045(g)(1), ~~[and]~~ 10 CFR 35.3047(f)(1), and 10 CFR 35.3204(a)(second instance);

~~[(p)]~~ ~~[(p)]~~ "[the U.S. Nuclear Regulatory Commission or an Agreement State" for reference to "an Agreement State" in 10 CFR 35.49(a) and 10 CFR 35.49(e)] "Nuclear Regulatory Commission" for reference to "Commission" in 10 CFR 35.67(b)(2);

~~[(q)]~~ ~~[(q)]~~ "[Director, a U.S. Nuclear Regulatory Commission, or Agreement State]" "Director" for reference to ~~["NRC or Agreement State]"~~ "NRC" in 10 CFR 35. ~~[63(b)(2)(ii)]~~ 3045(g)(1), 10 CFR 35. ~~[100(e)]~~ 3047(f)(1), ~~[40 CFR 35.200(e),]~~ and 10 CFR 35. ~~[300(e)]~~ 35.3204(a)(second instance); and

~~[(r)]~~ ~~[(r)]~~ ~~[In 10 CFR 35.75(a) "Footnote 1", substitute "The current version of NUREG-1556, Vol. 9" for "NUREG-1556 Vol. 9;]~~ "the Director" for reference to "NRC" in 10 CFR 35.13(b)(4)(i);

(s) "licenses issued by the Director" for reference to "NRC licenses" in 10 CFR 35.57(c);

(t) "Director, the Nuclear Regulatory Commission, or an Agreement State" for reference to "NRC" in 10 CFR 35.13(b)(5), 10 CFR 35.14(a)(2), 10 CFR 35.57(b)(3), and 10 CFR 35.57(a)(4);

(u) "(c)" for reference to "(b)" in 10 CFR 35.92.

(5) The addition of the following to 10 CFR 35.92:

(b) The Director may approve a radioactive material with a physical half-life of greater than 120 days but less than 175 days for decay-in-storage before disposal without regard to its radioactivity on a case by case basis if the licensee:

(1) Requests an amendment to the licensee's radioactive materials license for the approval;

(2) Can demonstrate that the radioactive waste will be safely stored, and accounted for during the decay-in-storage period and that the additional radioactive waste will not exceed the licensee's radioactive waste storage capacity; and

(3) Commits to monitor the waste before disposal as stated in paragraphs (a)(1) and (a)(2) of this section before the waste is disposed."

KEY: radioactive materials, radiopharmaceutical, brachytherapy, nuclear medicine

Date of Enactment or Last Substantive Amendment: ~~[October 13, 2010]~~ 2019

Notice of Continuation: July 1, 2016

Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-6-107

Governor, Economic Development R357-15 Enterprise Zone Tax Credit

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43814

FILED: 06/14/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule filing is to clarify the requirements for a business entity to qualify for an enterprise zone tax credit.

SUMMARY OF THE RULE OR CHANGE: Section R357-15-2 creates and updates definitions that are used to administer the program. Section R357-15-4 is updated to more accurately reflect the documentation and verification requirement for participation in the program. Section R357-15-5 is updated to more accurately reflect the application review and authorization process to receive an enterprise zone tax credit.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63J-2-213(6)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget. These changes merely codify the procedures the Office of Economic Development (Office) under the Governor's office has historically used.

◆ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to local governments. These changes merely codify the procedures the Office has historically used.

◆ **SMALL BUSINESSES:** There is no aggregate anticipated cost or savings to small businesses. These changes merely codify the procedures the Office has historically used.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities. These changes merely codify the procedures the Office has historically used.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. These changes merely codify the procedures the Office has historically used.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These rule changes will not result in fiscal impact to businesses. These changes merely codify the procedures the Office has historically used to administer the program.