State of Utah

SPENCER J. COX
Governor

DEIDRE HENDERSON
Lieutenant Governor

Department of
Environmental Quality

Kimberly D. Shelley
Executive Director

DIVISION OF WASTE MANAGEMENT
AND RADIATION CONTROL

Douglas J. Hansen
Director

A meeting of the Waste Management and Radiation Control Board has been scheduled for September 9, 2021 at 1:30 pm at the Utah Department of Environmental Quality, (Multi-Agency State Office Building) Conference Room #1015, 195 North 1950 West, SLC.

(Board members and interested persons may participate electronically/telephonically.)
Join via the Internet: meet.google.com/gad-sxsd-uvs
Join via the Phone: (US) +1 978-593-3748 PIN: 902 672 356#

Agenda

I. Call to Order.

II. Public Comments on Agenda Items.

III. Declarations of Conflict of Interest.

IV. Approval of the Meeting Minutes for the July 8, 2021 Board Meeting (**Board Action Item**)..... Tab 1

V. Underground Storage Tanks Update ..... Tab 2

VI. Final adoption on proposed rule changes to UAC R311-200, 201, 203, 204, 205, 206, 207, 208, 209, and 212 of the Underground Storage Tank Rules (**Board Action Item**)..... Tab 3

VII. Administrative Rules ..... Tab 4

A. Approval to proceed with formal rulemaking and public comment period on proposed rule changes to R315-260, 261, 264, 265, 268, 270, and 273 of the Hazardous Waste Rules to incorporate federal regulatory changes promulgated by the Environmental Protection Agency (EPA) and published in the Federal Register on December 9, 2019 (84 FR 67202) (**Board Action Item**).

B. Approval to proceed with formal rulemaking and public comment period on proposed rule changes to R313-16-290 of the Radiation Control Rules to amend the inspection frequency found in Table I of Subsection R315-16-260(2) for facilities using fluoroscopic or computed tomography units to include veterinary facilities (**Board Action Item**).

(Over)

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C. Final adoption of proposed rule changes to R313-19-100 of the Radiation Control Rules to incorporate changes requested by the Nuclear Regulatory Commission (NRC) to maintain the compatibility of Utah Radiation Control Rules with the federal regulations (**Board Action Item**).

VIII. Low-Level Radioactive Waste Section..... Tab 5

A. Energy*Solutions* request for a one-time site-specific treatment variance from the Utah Hazardous Waste Management Rules. Energy*Solutions* seeks authorization to receive ash contaminated with dioxins and furans as UHCs for treatment and disposal (**Board Action Item**).

B. Approval of Proposed Stipulation and Consent Order between the Division Director and Energy*Solutions* (**Board Action Item**).

IX. Other Business.

A. Director's Report.
B. Miscellaneous Informational Items.
C. Discussion of rescheduling the November 11, 2021 Board meeting (Veterans Day Observed).
D. Scheduling of the next Board meeting (October 14, 2021).

X. Adjourn.

In compliance with the Americans with Disabilities Act, individuals with special needs (including auxiliary communicative aids and services) should contact Larene Wyss, Office of Human Resources at (801) 536-4284, Telecommunications Relay Service 711, or by email at "lwyss@utah.gov".

Waste Management and Radiation Control Board Meeting
Utah Department of Environmental Quality
Multi-Agency State Office Building, (Conf. Room #1015)
195 North 1950 West, SLC
July 8, 2021
1:30 p.m.

Board Members participating at Anchor Location:
Brett Mickelson (Chair), Dennis Riding (Vice-Chair), Richard Codell, Danielle Endres, Mark Franc, Vern Rogers, Kim Shelley, Shane Whitney

Board Members Excused: Steve McIff, Nathan Rich

UDEQ staff members participating at Anchor Location:
Doug Hansen, Brent Everett, Tom Ball, Theron Blatter, Tyler Hegburg, Arlene Lovato, Connie Nakahara, Deborah Ng, Rick Page, Elisa Smith, Boyd Swenson, Otis Willoughby

Others attending at Anchor Location:
Steve Gurr, Tyson Hone, Tim Orton, Dan Shrum, William Simmons

Other UDEQ employees, and interested members of the general public also participated either electronically or telephonically.

I. Call to Order.

Chairman Mickelson called the meeting to order at 1:30 pm; roll call of Board members was conducted (see above).

II. Public Comments on Agenda Items – None.

III. Declarations of Conflict of Interest.

Shane Whitney declared a conflict of interest and abstained from voting on Agenda Item VI. A. (Approval of Proposed Stipulation and Consent Order between the Division Director and Clean Harbors Aragonite LLC.)

IV. Approval of the Meeting Minutes for the June 10, 2021 Board Meeting (Board Action Item).

It was moved by Dennis Riding and seconded by Danielle Endres and UNANIMOUSLY CARRIED to approve the June 10, 2021 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 May 2021, is $20,715,654.00. The preliminary estimate of the cash balance of the PST Trust Fund for the end of June 2021, is $21,470,860.00. The DERR continues to watch the balance of the PST Trust Fund closely to ensure sufficient cash is available to provide coverage of qualified claims for releases.

Mr. Everett stated that the formal rule making process for rule changes to R-311 that have recently come before the Board, has begun. The public comment period began on July 1, 2021. No comments have been received yet. The public comment period is open until August 2, 2021. A public hearing will be held on July 15, 2021, at 2:00 pm in the DEQ Board Room for additional comments to be received.

Mr. Everett informed the Board that the DERR holds a quarterly Underground Storage Tank (UST) Advisory Task Force meeting. This is a task force of stakeholders within the UST industry including owners and operators of facilities, State of Utah Fleet Services, trade and merchant associations, consultants, and other interested parties. The next quarterly meeting will be held July 13, 2021, at 2:00 pm. Discussion topics will include the rule making that is in process as well as steps the DERR is taking for the new aboveground storage tank program. This task force has had good results and works well together. Mr. Everett invited any interested Board members to attend.

VI. Hazardous Waste Section.

A. Approval of Proposed Stipulation and Consent Order between the Division Director and Clean Harbors Aragonite, LLC (Board Action Item).

Rick Page, Environmental Engineer, Division of Waste Management and Radiation Control, provided an overview of the proposed Stipulation and Consent Order (SCO), No. 2004048, to resolve Notice of Violation (NOV) No. 2001004, issued to Clean Harbors Aragonite on April 8, 2020.

The NOV was based on information documented during an inspection at the facility on September 9--26, 2019, and several self-reported notices of noncompliance for the time period of October 1, 2018, to September 30, 2019 (fiscal year 2019). With the exception of violation 7 (relating to generic profiles), the violations have been resolved. Due to overlap with a current US EPA enforcement action, we are postponing enforcement of violation 7. The SCO includes a penalty of $80,630.00

A 30-day public comment period was held from June 7, 2021, through July 6, 2021. No comments were received. As a Board Action Item, the Director recommends approval of the proposed SCO. Copies of the NOV, the SCO, and the supporting paperwork were included in the Board's June 10, 2021 Board packet.

It was moved by Mark Franc and seconded by Richard Codell and UNANIMOUSLY CARRIED to approve the proposed Stipulation and Consent Order between the Division Director and Clean Harbors Aragonite, LLC. (Shane Whitney abstained from voting.)

VII. Administrative Rules.

A. Five Year Review of Rule R315-319 of the Utah Administrative Code (Information Item).

Tom Ball, Planning and Technical Support Section Manager of the Division of Waste Management and Radiation Control informed the Board that Solid Waste Rule R315-319 of the Utah Administrative Code is due for a five-year review. If this rule is to continue, a Notice of Continuation (Five-Year Review) must be filed prior to the anniversary of the last five-year review. The anniversary date for this rule is September 1, 2021.

The Utah Administrative Rulemaking Act (Utah Code §63G-3-305) requires state agencies to review each of their administrative rules within five years of the rule's original effective date or the last five-year review. The purpose of the review is to provide agencies with an opportunity to evaluate the rules to assess if the rules should be continued. In performing a five-year review, an agency may consider the need to amend or repeal rules that are archaic in form, are no longer used, are not based on existing statutory authority, or are otherwise unnecessary. If an agency determines that a rule needs to be amended or repealed, this is done in a separate action. To retain a rule as part of the Utah Administrative Code, a "Five-Year Notice of Review and Statement of Continuation" must be filed with the Office of Administrative Rules before the rule's five-year anniversary date. The form provided by the Office of Administrative Rules requires the following information: 1. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize the rule; 2. A summary of written comments received during and since the last five-year review of the rule from interested persons supporting or opposing the rule; and, 3. A reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any. Completing the form provided by the Office of Administrative Rules and filing it before the five-year review date satisfies the provisions of the Administrative Rulemaking

Act with respect to a five-year review. The completed forms and a copy of the rule along with an Executive Summary were included in the Board's July 8, 2021 Board packet.

The Division is providing this information to keep the Board informed of Five-Year Reviews that have been conducted and are being submitted to the Office of Administrative Rules. Board action is not required.

Richard Codell stated that this rule specifically deals with power plant coal waste and questioned if in Utah any problematic sites exist. Specifically, are there any facilities bankrupt or in poor repair that would be affected by this rule? Mr. Ball did not have an answer to this question but stated that he would obtain the answer and report back at the next meeting.

VIII. X-Ray Program.

A. X-ray Registration and Inspection Fee Increases (Information Item).

Tom Ball, Planning and Technical Support Section Manager of the Division of Waste Management and Radiation Control informed the Board that in an effort to better serve Utah's x-ray facilities and improve registration and inspection timeliness, the Division is proposing to increase x-ray tube registration and inspection fees.

Currently, the state of Utah fee for x-ray tube registration is $35 per tube (Utah's fee is one of the lowest nationwide). This fee is charged annually. Inspection fees include fees for inspections conducted by state inspectors or Qualified Experts ranging from $15 up to $105; this fee is determined by the type of facility being inspected. All inspections are conducted in accordance with frequencies that are set in rule, see R313-16-290. The frequencies are 1, 2, 3, and 5 years. Fees have not been raised since 2004.

The Division has two inspectors in the x-ray program that currently have a backlog of inspections that are 90-days or more past due. After looking at all options for reducing the backlog, the Division has determined that it is not possible for two inspectors to keep up with the required inspections. Therefore, the Division needs to hire a third inspector. The Division has determined that a fee increase of $10 per tube and $10 per inspection will provide enough funds to maintain the program and allow for the hiring of another inspector. Utah Code Section 19-3-104 requires the registration of ionizing radiation producing machines and requires the Division to assess fees for registration and inspection of these machines.

Two stakeholder meetings have been scheduled, Tuesday, July 20, 2021(Virtual Meeting) from 12:00 pm to 1:30 pm and Thursday, July 29, 2021 (In-person Meeting) from 11:00 am to 12:30 pm. These meetings will address any concerns regarding raising x-ray registration and inspection fees. Letters informing stakeholders of the proposed fee increase and inviting them to the meetings were sent out the first week of June and a notice has been posted on the Division's main web page and the x-ray program web page.

Danielle Endres asked if the number of x-ray tubes is relatively stable or are they expected to increase in the future. Mr. Ball stated that the number of x-ray tubs is relatively stable (annually registrants is between 2,900 to 3,000 with approximately 9,000 x-ray tubes registered) and the fee increase has been calculated for future potential increase in registrants and x-ray tubes. Mr. Ball also informed the Board the fees for these services charged by the surrounding states.

IX. Low-Level Radioactive Waste Section.

A. Energy*Solutions* request for a one-time site-specific treatment variance from the Utah Hazardous Waste Management Rules. Energy*Solutions* seeks authorization to receive ash contaminated with dioxins and furans as UHCs for treatment and disposal (Information Item).

Otis Willoughby, Low-Level Radioactive Waste (LLRW) Section Manager, Division of Waste Management and Radiation Control (DWMRC), introduced Tyler Hegburg, new Environmental Scientist in the LLRW Section, DWMRC.

Mr. Hegburg informed the Board that on June 16, 2021, Energy*Solutions,* LLC submitted a request to the Director of the Division of Waste Management and Radiation Control for a one-time site-specific treatment variance from the Utah Hazardous Waste Management Rules.

A 30-day notice for public comment was published in the *Salt Lake Tribune*, the *Deseret News* and the *Tooele County Transcript Bulletin.* The comment period began July 12, 2021 and ended on August 10, 2021. The Director will provide a recommendation following the public comment period at the next Board meeting.

Tim Orton, Energy*Solutions* representative, reviewed the request for a variance.

Energy*Solutions* seeks authorization to receive ash contaminated with dioxins and furans as UHCs for treatment and disposal. EnergySolutions requests approval to receive ash from incinerator and metal recycling processes that contains dibenzo-p-dioxin and dibenzofuran UHCs above their respective treatment standards denoted with the Universal Treatment Standards (UTS) in R315-268-48. All other required treatment standards associated with the waste will be met prior to disposal. Requiring the waste to meet the dioxin and furan treatment standards is inappropriate based on the processes that generate the waste. Because of the waste generation processes, all the ash waste contains dioxins and furans; however, in accordance with regulations, only a portion of the waste needs to be treated for those contaminants. The generator has previously analyzed each container of ash for metals contamination. If metals were below the toxicity characteristic concentrations described in 40 CFR 261.24 (R315-261-24), the waste would be shipped to the Clive facility as Low-Level Radioactive Waste (LLRW) and disposed in the Class A Embankment. If metals were above the Toxicity Characteristic concentrations, then the waste would need to be treated for those metals as well as all UHCs, including dioxins and furans. It is inappropriate to require treatment of dioxin and furan contaminants in instances where characteristic metals are found in the waste when treatment is not required if metals are below characteristic concentrations in the waste. Furthermore, the stabilized ash was re-incinerated in an attempt to reduce the concentration of dioxins and furans in the ash. Re-incineration resulted in very little reduction in the concentrations. It is inappropriate to require this additional incineration in order to attempt to meet the standards. Final disposal of the waste will occur in the Mixed Waste Disposal Cell at the EnergySolutions Mixed Waste Facility.

Dennis Riding stated that in the past, the US EPA has determined that this is an appropriate way to treat this waste through a variance request and asked if that determination is valid for this request. Mr. Orton explained that EnergySolutions requested this same variance previous from the Board and explained the advantages to utilizing this process. This variance is being requested for approximately 50 tons of ash that will be received throughout this next year.

B. Proposed Stipulation and Consent Order between the Division Director and Energy*Solutions* (Information Item).

Otis Willoughby, Low-Level Radioactive Waste Section Manager, Division of Waste Management and Radiation Control, reviewed the proposed Stipulation and Consent Order (SCO), No. 2105037, to resolve Notice of Violation (NOV) No. 2007067, issued to Energy*Solutions*, LLC on April 3, 2020.

The NOV was based on self-reported violations documented in letters from the facility dated April 27, 2020 and May 1, 2020. Both notifications dealt with MACRO treatment (macroencapsulation process) issues. The SCO includes a penalty of $51,181.00. Copies of the NOV, the SCO, and the penalty narrative worksheet were included in the Board's July 8, 2021 Board packet.

§19-6-104 of the Utah Solid and Hazardous Waste Act authorizes the Board to issue orders and approve or disapprove settlements negotiated by the Director with a civil penalty over $25,000.

This is an informational item. A 30-day public comment period began on July 5, 2021 and ended on August 3, 2021. Following the comment period, this matter will be brought before the Board for action in a future meeting.

Danielle Endres asked for clarification regarding the multiple penalty of 43 individual occurrences where application of bonding agent was not applied as required, was it one batch/one day/time etc.?
Mr. Willoughby stated the occurrences happened on separate days and as soon as management was aware they took action. Mark Franc asked for clarification specifically related to the impact of not using the bonding agent and did the Division evaluate this matter to see what the long-term impact is for not using a bonding agent? Mr. Willoughby stated that this matter was reviewed and is addressed in the potential for harm factor in the calculation worksheets provided. Mr. Willoughby further stated that to their credit, Energy*Solutions* has the most robust macro encapsulation process. The rules simply state substantially reduce leachate (basically Saran Wrap would work for a day). Mr. Willoughby reviewed the whole process of macroencapsulation and the likelyhood of this causing a substantial concern.

Vern Rogers commented that Energy*Solutions* self-identified/self-reported the violations and questioned if a company does self-identify/self-report violations are there any incentives to do so? Mr. Willoughby replied that the Division generally calculates a reduction in penalty for self-reported violations.

Mark Franc asked for clarification if the final determination by the Division on this matter was that no remediation was necessary for these violations, essentially that the waste will be left the way it is.
Mr. Willoughby stated yes, otherwise they will have to destroy multiple layers and break everything up.

X. Other Business.

A. Miscellaneous Informational Items – None.
B. Scheduling of next Board meeting.

The August Board meeting was cancelled. The next Board meeting is scheduled for September 9, 2021.

XI. Adjourn.

The meeting adjourned at 2:00 p.m.

UST STATISTICAL SUMMARY

August 1, 2020 -- July 31, 2021

PROGRAM

	August	September	October	November	December	January	February	March	April	May	June	July	(+/-) OR Total
Regulated Tanks	4,128	4,135	4,130	4,127	4,130	4,144	4,144	4,145	4,136	4,146	4,139	4,142	**14**
Tanks with Certificate of Compliance	4,029	4,027	4,027	4,039	4,044	4,051	4,051	4,053	4,058	4,063	4,067	4,065	**36**
Tanks without COC	99	108	103	88	86	93	93	92	78	83	72	77	**(22)**
Cumulative Facilitlies with Registered A Operators	1,250	1,084	1,104	1,108	1,111	1,252	1,252	1,256	1,251	1,250	1,291	1,294	**98.48%**
Cumulative Facilitlies with Registered B Operators	1,287	1,142	1,147	1,150	1,147	1,285	1,285	1,292	1,253	1,251	1,295	1,295	**98.55%**
New LUST Sites	11	5	8	8	8	5	5	10	5	2	10	8	**85**
Closed LUST Sites	6	3	7	2	6	4	4	16	3	4	17	6	**78**
Cumulative Closed LUST Sites	5301	5302	5310	5315	5323	5329	5329	5350	5352	5356	5374	5378	**77**

FINANCIAL

	August	September	October	November	December	January	February	March	April	May	June	July	(+/-)
Tanks on PST Fund	2,661	2,657	2,654	2,666	2,667	2,666	2,666	2,666	2,663	2,664	2,664	2,662	**1**
PST Claims (Cumulative)	685	687	688	688	688	688	688	689	690	693	696	701	**16**
Equity Balance	-$7,373,152	-$7,311,417	-$10,201,999	-$9,462,843	-$9,547,189	-$8,950,746	$8,633,383	-$8,709,493	-$8,272,438	-$7,719,626	-$6,964,420	$6,684,027	**$14,057,179**
Cash Balance	$18,745,128	$18,806,863	$18,233,281	$18,972,437	$18,888,091	$19,484,534	$19,801,897	$19,725,787	$20,162,842	$20,715,654	$21,470,860	$21,751,253	**$3,006,125**
Loans	0	0	0	0	0	0	0	0	0	0	0	0	**0**
Cumulative Loans	121	121	121	121	121	121	121	121	121	121	121	121	**0**
Cumulative Amount	$4,738,367	$4,738,367	$4,738,367	$4,738,367	$4,738,367	$4,738,367	$4,738,367	$4,738,367	$4,738,367	$4,738,367	$4,738,367	$4,738,367	**$0**
Defaults/Amount	2	2	2	2	2	2	2	2	2	2	2	2	**0**

	August	September	October	November	December	January	February	March	April	May	June	July	TOTAL
Speed Memos	38	95	72	73	42	48	48	75	42	81	76	82	**772**
Compliance Letters	18	32	30	9	14	15	15	18	13	8	7	15	**194**
Notice of Intent to Revoke	0	0	0	0	0	0	0	0	1	0	0	0	**1**
Orders	2	1	2	1	0	0	0	1	0	1	0	0	**8**

Utah Waste Management and Radiation Control Board Action Item
Proposed changes to R311, Utah Underground Storage Tank Rules
Final Adoption and Change in Proposed Rule

What is the issue before the Board?

The Division of Environmental Response and Remediation (DERR) requests that the Utah Waste Management and Radiation Control Board approve proposed changes to the Utah Underground Storage Tank (UST) rules for final adoption. The Board approved the proposed changes for publication and public comment during its June meeting.

Background:

The proposed changes include the incorporation of the "Cost Guidelines for Utah Underground Storage Tank Sites". This document establishes the framework for a standardized and consistent approach for work done by State Contractors and for PST Trust Fund reimbursements. In addition, we removed the requirement for PST Fund participants to periodically test the interstice of tanks or piping to receive credit as double-walled for purposes of the environmental assurance fee rebate model. Other changes were proposed to simplify the state rules and remove wording that is redundant or no longer applicable.

The rules to be amended are:
R311-200, Underground Storage Tanks: Definitions.
R311-201, Underground Storage Tanks: Certification Programs and UST Operator Training.
R311-203, Underground Storage Tanks: Technical Standards.
R311-204, Underground Storage Tanks: Closure and Remediation.
R311-205, Underground Storage Tanks: Site Assessment Protocol.
R311-206, Underground Storage Tanks: Certificate of Compliance and Financial Assurance Mechanisms.
R311-207, Accessing the Petroleum Storage Tank Trust Fund for Leaking Petroleum Storage Tanks.
R311-208, Underground Storage Tank Penalty Guidance.
R311-209, Petroleum Storage Tank Cleanup Fund and State Cleanup Appropriation.
R311-212, Administration of the Petroleum Storage Tank Loan Program.

Notice of the proposed changes and the public comment period was sent to UST owner/operators, certified individuals, and other persons interested in UST rulemaking, and was published in major newspapers throughout the state. The proposed changes were published in the *Utah State Bulletin* on July 1, 2021. The public comment period was held July 1, 2021 to August 2, 2021, and a public hearing to receive comments on the proposed changes was held on July 15, 2021. No comments were received during the public comment period.

What is the governing statutory or regulatory citation?

The Board is authorized under Subsection 19-6-403(1)(a) to make rules that provide for the administration of the petroleum storage tank program and under subsection 19-6-403(2) to make rules necessary to implement the Underground Storage Tank Act. The proposed rule changes also meet existing DEQ and state rulemaking procedures.

Is Board action required?

Yes, Board action is required for final adoption of the rule changes published in the Utah State Bulletin and to set an effective date of September 13, 2021.

What is the Division Director's recommendation?

The Director recommends that the Board adopt the rule changes published in the July 1, 2021 issue of the Utah State Bulletin and set an effective date of September 13, 2021.

Where can more information be obtained?

For questions or additional information visit https://deq.utah.gov/environmental-response-and-remediation/proposed-changes-to-r311-underground-storage-tank-rules or contact David Wilson (385) 251-0893, djwilson@utah.gov.

WASTE MANAGEMENT AND RADIATION CONTROL BOARD

Executive Summary

Public Comment -- Proposed Rule Changes
Hazardous Waste Rules R315-260, R315-261, R315-264, R315-265, R315-268, R315-270, and R315-273

September 9, 2021

What is the issue before the Board?	Approval from the Board to proceed with formal rulemaking and public comment on a proposed changes to R315-260, R315-261, R315-264, R315-265, R315-268, R315-270, and 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 on December 9, 2019 (84 FR 67202). A copy of the Federal Register follows this Executive Summary.
What is the historical background or context for this issue?	The final rule published in the December 9, 2019 Federal Register adds hazardous waste aerosol cans to the universal waste program under the Federal Resource Conservation and Recovery Act (RCRA) regulations. Utah is one of several states where aerosol cans were already included as a universal waste and therefore the proposed action is to amend the Utah rules to keep them equivalent to the federal regulations. The major changes being made by this amendment include: • Amending the definition of "aerosol can" so that it is consistent with the DOT definition. • Universal waste aerosol cans that show evidence of leakage must be packaged in a separate closed container or overpacked with absorbents or be immediately punctured and drained. • Generators of universal waste aerosol cans may sort can by type, consolidate intact cans in larger containers, and remove actuators to reduce the risk of accidental release. • Empty, punctured aerosol can are required to be recycled. • Separation of specific types of intact aerosol cans whose contents may pose an incompatibility risk is no longer required because the fact that the cans are intact will ensure the contents of these cans will not mix and therefore will not pose incompatibility risks. • Containers where universal waste aerosol cans are being accumulated are required to be protected from sources of heat. • Generators that puncture aerosol cans are required to maintain a copy of the puncturing device manufacturers instructions on site and ensure employees are trained on the use of the device. Puncturing of cans must be done in a manner designed to prevent fires and the release of the aerosol can contents to the environment. Equipment must be located on a solid, flat surface in a well-ventilated area. There must be a written spill cleanup procedure and a spill cleanup kit. • Pesticides in aerosol cans can be managed as universal waste aerosol cans instead of universal waste pesticides. • Aerosol cans that meet the standard for empty containers are exempt from being managed as universal waste.

	• Some re-numbering of R315-273 was required so that the numbering corresponded to the numbering in the federal regulations. These rule changes became effective at the Federal level on February 7, 2020. In addition to the changes listed above the Division has amended the definition of antifreeze contained in Rule R315-273. The definition is being expanded to include not only antifreeze used as an engine coolant, but antifreeze used in electronics cooling applications, winterizing equipment, and used in heating, ventilating and air conditioning units. In addition to the proposed changes detailed above, the Division at the request of the Governor's Office, is correcting typographical and formatting errors found in the rules. Additionally, the Division has incorporated 40 CFR 265.1100 through 40 CFR 265.1102 as R315-265-1100 through R315-265-1102 as part of an ongoing effort to update Rule R315-265. The proposed changes to R315-260, R315-261, R315-264, R315-265, R315-268, R315-270, and R315-273 follow this Executive Summary. Major changes are highlighted in yellow.
What is the governing statutory or regulatory citation?	The Board is authorized under Subsection 19-6-105(1)(c) to make rules governing generators and transporters of hazardous waste and owners and operators of hazardous waste treatment, storage and disposal facilities. The rule changes also meet existing DEQ and state rulemaking procedures.
Is Board action required?	Yes. Board approval is necessary to begin the formal rulemaking process by filing the appropriate documents with the Office of Administrative Rules for publishing the proposed rule changes in the *Utah State Bulletin* and conducting a public comment period.
What is the Division Director's recommendation?	The Director recommends the Board approve proceeding with formal rulemaking and public comment by publishing in the October 1, 2021, *Utah State Bulletin* the proposed changes to UAC R315-260, R315-261, R315-264, R315-265, R315-268, R315-270, and R315-273 and conducting a public comment period from October 1 to November 1, 2021.
Where can more information be obtained?	Please contact Tom Ball by email at tball@utah.gov or by phone at (801) 536-0251.

State of Utah
Administrative Rule Analysis
Revised June 2021

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New ___; Amendment __X_; Repeal ___; Repeal and Reenact ___		
	Title No. - Rule No. - Section No.	
Utah Admin. Code Ref (R no.):	**R315-260-10**	**Filing ID (Office Use Only)**
Changed to Admin. Code Ref. (R no.):	**R**	

Agency Information

1. Department:	Environmental Quality	
Agency:	Waste Management and Radiation Control	
Room no.:		
Building:	MASOB	
Street address:	195 N. 1950 W.	
City, state and zip:	Salt Lake City, Utah 84116	
Mailing address:	PO Box 144880	
City, state and zip:	Salt Lake City, Utah 84114-4880	
Contact person(s):		
Name:	**Phone:**	**Email:**
Tom Ball	801-536-0251	tball@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R315-260-10, Hazardous Waste Management System, Definitions.

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

EPA published a Final Rule entitled, Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations, in the Federal Register on December 9, 2019 (84 FR 67202). With this publication EPA added aerosol cans as a regulated universal waste in 40 CFR 273. The final rule also amended other parts of 40 CFR as necessary. Aerosol cans were already regulated as a universal waste in Utah in R315-273 of the Utah Administrative Code prior to EPA taking this action. The purpose of this change is to amend the Utah hazardous waste rules in accordance with the final rule published by EPA so that the Utah hazardous waste rules remain equivalent to the federal regulations and ensure that Utah maintains its primacy for the hazardous waste program in Utah.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

The change to Rule R315-260-10 is the addition of the definition of Aerosol Can and an update to the definition of Universal Waste. In addition, the division has corrected typographical and formatting errors in the rule.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

It is not anticipated that there will be any measurable cost or savings to the state budget due to this rule amendment because the amendment does not change how the division will oversee the rule. Additionally, because Rule R315-273 is an optional rule it is unknown how many, if any, state agencies are complying with the rule so it is not possible to determine the cost or savings that might be experienced within the state budget. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

B) Local governments:

It is not anticipated that there will be any measurable cost or savings to the budgets of local governments due to this rule amendment. Rule R315-273 is an optional rule and therefore it is unknown how many, if any, local government agencies are complying with the rule so it is not possible to determine the cost or savings that might be experienced within local government budgets. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

It is not anticipated that there will be any measurable cost or savings to small businesses due to this rule amendment. Rule R315-273 is an optional rule and therefore it is unknown how many small businesses are complying with the rule so it is not possible to determine the cost or savings that might be experienced by small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

It is not anticipated that there will be any measurable cost or savings to non-small businesses due to this rule amendment. Rule R315-273 is an optional rule and therefore it is unknown how many non-small businesses are complying with the rule so it is not possible to determine the cost or savings that might be experienced by non-small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

It is not anticipated that there will be any measurable cost or savings to persons other than small businesses due to this rule amendment. Rule R315-273 is an optional rule and therefore it is unknown how many persons other than small businesses are complying with the rule so it is not possible to determine the cost or savings that might be experienced by persons other than small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

Because this is an amendment to an existing rule and the changes to the rule do not significantly change how aerosol cans are managed under the rule it is not anticipated that the compliance costs for affected persons will change due to the rule amendments.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

It is not anticipated that this rule amendment will have any additional fiscal impact on any businesses that are currently complying with the rule beyond the current costs of compliance. The changes are being made to keep the hazardous waste management program in the State of Utah compatible with the federal program.
Kimberly D. Shelley, Executive Director

6. A) Regulatory Impact Summary Table (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 will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The head of the Department of Environmental Quality, Kimberly D. Shelley, has reviewed and approved this fiscal analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

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

40 CFR 271.4		

Incorporations by Reference Information

(If this rule incorporates more than two items by reference, please include additional tables.)

8. A) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*)**:**	
	First Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

B) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*)**:**	
	Second Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)		
A) Comments will be accepted until (mm/dd/yyyy)**:**		11/01/2021
B) A public hearing (optional) will be held:		
On (mm/dd/yyyy)**:**	**At** (hh:mm AM/PM)**:**	**At** (place)**:**

10. This rule change MAY become effective on (mm/dd/yyyy)**:**	12/13/2021
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin* and delaying the first possible effective date.			
Agency head or designee, and title:	Douglas J. Hansen, Division Director	**Date** (mm/dd/yyyy)**:**	

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

R315-260-10. Definitions.

(a) Terms used in Rules R315-15, R315-260 through R315-266, 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 R315-266, 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) "Aerosol can" means a non-refillable receptacle containing a gas compressed, liquefied or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.

([~~5~~]6) "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.

([~~6~~]7) "Airbag waste" means any hazardous waste airbag modules or hazardous waste airbag inflators.

([~~7~~]8) "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.

([~~8~~]9) "Airbag waste handler" means any person, by site, who generates airbag waste that is subject to regulation under Rules R315-260 through R315-266, R315-268, R315-270, and R315-273.

([~~9~~]10) "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.

([~~10~~]11) "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.

([~~11~~]12) "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.

([~~12~~]13) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit[~~, i.e.,~~] that is part of a facility, [~~e.g.~~]for example, the plant manager, superintendent or person of equivalent responsibility.

([~~13~~]14) "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.

([~~14~~]15) "Boiler" means an enclosed device using controlled flame combustion and having the following characteristics:

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

(B) [~~T~~]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) [~~W~~]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) [~~T~~]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) [~~T~~]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.

([~~15~~]16) "Carbon dioxide stream" means carbon dioxide that has been captured from an emission source, [~~e.g.,~~]for example a 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.

([~~16~~]17) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

([~~17~~]18) "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.

([~~18~~]19) "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 R315-262-216 is also subject to Section R315-262-211 [~~when~~]if accumulating unwanted material or hazardous waste, or both.

([~~19~~]20) "Certification" means a statement of professional opinion based upon knowledge and belief.

([~~20~~]21) "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~~]any applicable closure requirements. See also "active portion" and "inactive portion".

([~~21~~]22) "Component" means either the tank or ancillary equipment of a tank system.

([~~22~~]23) "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.

([~~23~~]24) "Contained" means held in a unit, including a land-based unit as defined in Section R315-260-10, that meets the following criteria:

(i) [~~T~~]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) [~~T~~]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) [~~T~~]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) [~~H~~]hazardous secondary materials in units that meet the applicable requirements of Rules R315-264 or R315-265 are presumptively contained.

([~~24~~]25) "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

([~~25~~]26) "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 R315-264-1102 or [~~40 CFR~~]Subsections R315-265[~~.~~]-1100 through R315-265-1102[~~, which are adopted and incorporated by reference~~].

([~~26~~]27) "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.

([~~27~~]28) "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.

([~~28~~]29) "CRT collector" means a person who receives used, intact CRTs for recycling, repair, resale, or donation.

([~~29~~]30) "CRT glass manufacturer" means an operation or part of an operation that uses a furnace to manufacture CRT glass.

([~~30~~]31) "CRT processing" means conducting [~~all~~]each of the following activities:

(i) [~~R~~]receiving broken or intact CRTs; and

(ii) [~~I~~]intentionally breaking intact CRTs or further breaking or separating broken CRTs; and

(iii) [~~S~~]sorting or otherwise managing glass removed from CRT monitors.

([~~31~~]32) "Designated facility" means:

(i) [~~A~~]a hazardous waste treatment, storage, or disposal facility which:

(A) [~~H~~]has received a permit, or interim status, in accordance with the requirements of Rule R315-270 and R315-124;

(B) [~~H~~]has received a permit, or interim status, from a State authorized in accordance with 40 CFR 271; or

(C) [~~I~~]is regulated under Subsection R315-261-6(c)(2) or Section R315-266-70; and

(D) [~~T~~]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).

(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.

([~~32~~]33) "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.

([~~33~~]34) "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.

([~~34~~]35) "Dioxins and furans (D/F)" means tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

([~~35~~]36) "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.

([~~36~~]37) "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.

([~~37~~]38) "Division" means the Division of Waste Management and Radiation Control.

([~~38~~]39) "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~~]40) "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.

([~~40~~]41) "Elementary neutralization unit" means a device which:

(i) [~~T~~]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 R315-261-35 only for this reason; and

(ii) [~~M~~]meets the definition of tank, tank system, container, transport vehicle, or vessel in Sections R315-260-10.

([~~41~~]42) "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.

([~~42~~]43) "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.

([~~43~~]44) "EPA hazardous waste number" means the number assigned by EPA to each hazardous waste listed in Sections R315-261-30 through R315-261-35 and to each characteristic identified in Sections R315-261-20 through R315-261-24.

([~~44~~]45) "EPA identification number" means the number assigned by EPA to each generator, transporter, and treatment, storage, or disposal facility.

([~~45~~]46) "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.

([~~46~~]47) "Equivalent method" means any testing or analytical method approved by the Director under Sections R315-260-20 and R315-260-21.

([~~47~~]48) "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) [~~T~~]the owner or operator has obtained the Federal, State and local approvals or permits necessary to begin physical construction; and either

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

(B) [~~T~~]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.

([~~48~~]49) "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.

([~~49~~]50) "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~~]any 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.

([~~50~~]51) "Facility" means:

(i) [~~All~~]Any 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.~~]for example, one or more landfills, surface impoundments, or combinations of them.

(ii) For the purpose of implementing corrective action under Section R315-264-101, [~~all~~]any 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.

([~~51~~]52) "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.

([~~52~~]53) "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, rules, regulations or ordinances.

([~~53~~]54) "Final closure" means the closure of [~~all~~]each hazardous waste management unit[~~s~~] at the facility in accordance with [~~all~~]any applicable closure requirements so that hazardous waste management activities under Rules R315-264 and R315-265 are no longer conducted at the facility unless subject to the provisions in Section R315-262-34.

([~~54~~]55) "Food-chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

([~~55~~]56) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

([~~56~~]57) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

([~~57~~]58) "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.

([~~58~~]59) "Ground water" means water below the land surface in a zone of saturation.

([~~59~~]60) "Hazard class" means:

(i) [~~T~~]the DOT hazard class identified in 49 CFR 172; and

(ii) [~~I~~]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 R315-261-24.

([~~60~~]61) "Hazardous secondary material" means a secondary material, [~~e.g.~~]for example, spent material, by-product, or sludge, [~~that,~~]which [~~when~~]if discarded, would be identified as hazardous waste under Rule R315-261.

([~~61~~]62) "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~~]any 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.

([~~62~~]63) "Hazardous waste constituent" means a constituent that caused the Board to list the hazardous waste in Sections R315-261-30 through R315-261-35, or a constituent listed in table 1 of Section R315-261-24.

([~~63~~]64) "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.

([~~64~~]65) "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

([~~65~~]66) "Inactive portion" means that portion of a facility which is not operated after November 19, 1980. See also "active portion" and "closed portion".

([~~66~~]67) "Incinerator" means any enclosed device that:

(i) [~~U~~]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) [~~M~~]meets the definition of infrared incinerator or plasma arc incinerator.

([~~67~~]68) "Incompatible waste" means a hazardous waste which is unsuitable for:

(i) [~~P~~]placement in a particular device or facility because it may cause corrosion or decay of containment materials, [~~e.g.~~]for example, container inner liners or tank walls; or

(ii) [~~C~~]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.

([~~68~~]69) "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.

([~~69~~]70) "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) [~~C~~]cement kilns;

(ii) [~~L~~]lime kilns;

(iii) [~~A~~]aggregate kilns;

(iv) [~~P~~]phosphate kilns;

(v) [~~C~~]coke ovens;

(vi) [B]blast furnaces;

(vii) [~~S~~]smelting, melting and refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machine, roasters, and foundry furnaces;

(viii) [~~T~~]titanium dioxide chloride process oxidation reactors;

(ix) [~~M~~]methane reforming furnaces;

(x) [~~P~~]pulping liquor recovery furnaces;

(xi) [~~C~~]combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(xii) [~~H~~]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[~~.~~]; and

(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) [~~T~~]the design and use of the device primarily to accomplish recovery of material products;

(B) [~~T~~]the use of the device to burn or reduce raw materials to make a material product;

(C) [~~T~~]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) [~~T~~]the use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;

(E) [~~T~~]the use of the device in common industrial practice to produce a material product; and

(F) [~~O~~]other factors, as appropriate.

([~~70~~]71) "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.

([~~71~~]72) "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.

([~~72~~]73) "Injection well" means a well into which fluids are injected. See also "underground injection".

([~~73~~]74) "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.

([~~74~~]75) "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.

([~~75~~]76) "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~~]hazardous secondary material.

([~~76~~]77) "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

([~~77~~]78) "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.

([~~78~~]79) "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.

([~~79~~]80) "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.

([~~80~~]81) "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.

([~~81~~]82) "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~~]these facilities are disposal facilities if the waste will remain after closure.

([~~82~~]83) "Large quantity generator" is a generator who generates any of the following amounts in a calendar month:

(i) [~~G~~]greater than or equal to 1,000 kilograms, [~~(~~]2,200 lbs[~~)~~], of non-acute hazardous waste; or

(ii) [~~G~~]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) [~~G~~]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).

([~~83~~]84) "Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

([~~84~~]85) "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.,~~]for example 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.

([~~85~~]86) "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.

([~~86~~]87) "Management" or "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

([~~87~~]88) "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 R315-265.

([~~88~~]89) "Manifest tracking number" means: The alphanumeric identification number[~~, i.e.,~~] that is a unique three letter suffix

preceded by nine numerical digits, which is pre-printed in Item 4 of the Manifest by a registered source.

([~~89~~]90) "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.

([~~90~~]91) "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.

([~~91~~]92) "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.

([~~92~~]93) "Monitoring" means [~~all~~]any 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.

([~~93~~]94) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

([~~94~~]95) "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".

([~~95~~]96) "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), 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) 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."

([~~96~~]97) "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.

([~~97~~]98) "Non-acute hazardous waste" means [~~all~~]any hazardous wastes that are not acute hazardous waste, as defined in Section R315-260-10.

([~~98~~]99) "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.

([~~99~~]100) "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~~]a 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.

([~~100~~]101) "Open burning" means the combustion of any material without the following characteristics:

(i) [~~C~~]control of combustion air to maintain adequate temperature for efficient combustion,

(ii) [~~C~~]containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and

(iii) [~~C~~]control of emission of the gaseous combustion products. See also "incineration" and "thermal treatment".

([~~101~~]102) "Operator" means the person responsible for the overall operation of a facility.

([~~102~~]103) "Owner" means the person who owns a facility or part of a facility.

([~~103~~]104) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of Rules R315-264 and R315-265 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.

([~~104~~]105) "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~~]the substance. PCB and PCBs as contained in PCB items are defined in Section R315-260-10. For any purposes under Rules R315-260 through R315-266, R315-268, R315-270, R315-273, 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.

([~~105~~]106) "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.

([~~106~~]107) "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;

([~~107~~]108) "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.

([~~108~~]109) "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.

([~~109~~]110) "Personnel" or "facility personnel" means [~~all~~]any person[~~s~~] who works at, or oversees 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 R315-265.

([~~110~~]111) "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) [~~I~~]is a new animal drug under FFDCA section 201(w), or

(ii) [~~I~~]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) [~~I~~]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).

([~~111~~]112) "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.

([~~112~~]113) "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.

([~~113~~]114) "POHC's" means principle organic hazardous constituents.

([~~114~~]115) "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.

([~~115~~]116) "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 R315-261-24, it qualifies as "precipitation run-off" if the water does not exhibit any of the characteristics identified in Section R315-261-20 through R315-261-24. If the precipitation run-off has been in contact with a waste listed in Sections R315-261-30 through R315-261-35, 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".

([~~116~~]117) "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.

([~~117~~]118) "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.

([~~118~~]119) "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~~]120) "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.

([~~120~~]121) "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.

([~~121~~]122) "Remediation waste" means [~~all~~]any solid and hazardous wastes, and[~~all~~] any media, including ground water, surface water, soils, and sediments, and debris, that are managed for implementing cleanup.

([~~122~~]123) "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.

([~~123~~]124)(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.

([~~124~~]125) "Representative sample" means a sample of a universe or whole, [~~e.g.~~]for example, waste pile, lagoon, ground water, which can be expected to exhibit the average properties of the universe or whole.

([~~125~~]126) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

([~~126~~]127) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

([~~127~~]128) "Saturated zone" or "zone of saturation" means that part of the earth's crust in which [~~all~~]each void[~~s are~~]is filled with water.

([~~128~~]129) "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.

([~~129~~]130) "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[~~/~~] per lb of sludge treated on a wet-weight basis.

([~~130~~]131) "Small Quantity Generator" is a generator who generates the following amounts in a calendar month:

(i) [~~G~~]greater than 100 kilograms, [~~(~~]220 lbs[~~)~~], but less than 1,000 kilograms, [~~(~~]2,200 lbs[~~)~~], of non-acute hazardous waste; and

(ii) [~~L~~]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) [~~L~~]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).

([~~131~~]132) "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~~]These units include any area at a facility at which solid wastes have been routinely and systematically released.

([~~132~~]133) "Solvent-contaminated wipe" means:

(i) A wipe [~~that~~]which, after use or after cleaning up a spill, [~~either~~]meets one or more of the following criteria:

(A) [~~C~~]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) [~~E~~]exhibits a hazardous characteristic found in Sections R315-261-20 through R315-261-24 when that characteristic results from a solvent listed in Rule R315-261[~~; and/or~~]

(C) [~~E~~]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).

([~~133~~]134) "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

([~~134~~]135) "Sorb" means to either adsorb or absorb, or both.

([~~135~~]136) 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.

([~~136~~]137) "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.

([~~137~~]138) "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.

([~~138~~]139) "State" means the state of Utah.

([~~139~~]140) "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.

([~~140~~]141) "Sump" means any pit or reservoir that meets the definition of tank and those troughs[~~,~~] or 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.

([~~141~~]142) "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.

([~~142~~]143) "Tank" means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials, [~~e.g.~~]for example, wood, concrete, steel, plastic, which provide structural support.

([~~143~~]144) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

([~~144~~]145) "TEQ" means toxicity equivalence, the international method of relating the toxicity of various dioxin[~~,~~] or furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

([~~145~~]146) "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".

([~~146~~]147) "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).

([~~147~~]148) "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.

([~~148~~]149) "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.

([~~149~~]150) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body[~~;~~], for example, trailer[~~,~~] or railroad freight car,[~~ etc.;~~] is a separate transport vehicle.

([~~150~~]151) Transportation" is defined in Subsection 19-6-102(21) and includes the movement of hazardous waste by air, rail, highway, or water.

([~~151~~]152) "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

([~~152~~]153)(i) "Treatability study" means a study in which a hazardous waste is subjected to a treatment process to determine:

(A) [~~W~~]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.

([~~153~~]154) "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~~]the waste, or so as to recover energy or material resources from the waste, or so as to render [~~such~~]the waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

([~~154~~]155) "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

([~~155~~]156) "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".

([~~156~~]157) "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.

([~~157~~]158) "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.

([~~158~~]159) "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.

([~~159~~]160) "Universal waste" means any of the following hazardous wastes that are managed under the universal waste requirements of Rule R315-273:

(i) [~~B~~]batteries as described in Section R315-273-2;

(ii) [~~P~~]pesticides as described in Section R315-273-3;

(iii) [~~M~~]mercury-containing equipment as described in Section R315-273-4;

(iv) [~~L~~]lamps as described in Section R315-273-5;

(v) [~~Antifreeze~~]aerosol cans as described in [~~Subsection~~]Section R315-273-6[~~(a)~~]; and

(vi) [~~Aerosol cans~~]antifreeze as described in [~~Subsection~~]Section R315-273-[~~6(b)~~]7.

([~~160~~]161) Universal waste handler

(i) Means:

(A) [~~A~~]a generator of universal waste; or

(B) [~~T~~]the owner or operator of a facility, including [~~all~~]any 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~~]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, except under Subsection R315-273-13(f) or R315-273-33(f), universal waste; or

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

([~~161~~]162) "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

([~~162~~]163) "Unsaturated zone" or "zone of aeration" means the zone between the land surface and the water table.

([~~163~~]164) "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.

([~~164~~]165) Used oil is defined in Subsection 19-6-703(19).

([~~165~~]166) "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) [~~I~~]is required to use a manifest to comply with:

(A) [~~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) [~~A~~]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) [~~E~~]elects to use the system to obtain, complete and transmit an electronic manifest format supplied by the EPA electronic manifest system, or

(iii) [~~E~~]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). These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

([~~166~~]167) "Very small quantity generator" is a generator who generates less than or equal to the following amounts in a calendar

month:

(i) [~~100~~]one hundred kilograms, [~~(~~]220 lbs[~~)~~], of non-acute hazardous waste; and

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

(iii) [~~100~~]one hundred 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).

([~~167~~]168) "Vessel" includes [~~every~~]any description of watercraft, used or capable of being used as a means of transportation on the water.

([~~168~~]169) "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.

([~~169~~]170) "Wastewater treatment unit" means a device which:

(i) [~~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) [~~R~~]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) [~~M~~]meets the definition of tank or tank system in Section R315-260-10.

([~~170~~]171) "Water, bulk shipment" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

([~~171~~]172) "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.

([~~172~~]173) "Well injection": See "underground injection"

([~~173~~]174) "Wipe" means a woven or non-woven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

([~~174~~]175) "Zone of engineering control" means an area under the control of the owner[~~/~~] or operator [~~that~~]which, 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.

KEY: hazardous waste
Date of Enactment or Last Substantive Amendment: April 13, 2020
Notice of Continuation: January 14, 2021
Authorizing, and Implemented or Interpreted Law: 19-1-301; 19-6-105; 19-6-106

State of Utah
Administrative Rule Analysis
Revised June 2021

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New ___; Amendment _X__; Repeal ___; Repeal and Reenact ___		
	Title No. - Rule No. - Section No.	
Utah Admin. Code Ref (R no.):	**R315-261-9**	**Filing ID (Office Use Only)**
Changed to Admin. Code Ref. (R no.):	**R**	

Agency Information

1. Department:	Environmental Quality	
Agency:	Waste Management and Radiation Control	
Room no.:		
Building:	MASOB	
Street address:	195 N. 1950 W.	
City, state and zip:	Salt Lake City, Utah 84116	
Mailing address:	PO Box 144880	
City, state and zip:	Salt Lake City, Utah 84114-4880	
Contact person(s):		
Name:	**Phone:**	**Email:**
Tom Ball	801-536-0251	tball@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R315-261-9 General Requirements - Identification and Listing of Hazardous Waste, Requirements for Universal Waste.

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

EPA published a Final Rule entitled, Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations, in the Federal Register on December 9, 2019 (84 FR 67202). With this publication EPA added aerosol cans as a regulated universal waste in 40 CFR 273. The final rule also amended other parts of 40 CFR as necessary. Aerosol cans were already regulated as a universal waste in Utah in R315-273 of the Utah Administrative Code prior to EPA taking this action. The purpose of this change is to amend the Utah hazardous waste rules in accordance with the final rule published by EPA so that the Utah hazardous waste rules remain equivalent to the federal regulations and ensure that Utah maintains its primacy for the hazardous waste program in Utah.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

This change updates the rule citations for aerosol cans and antifreeze found in Rule R315-261 that were changed in Rule R315-273 because of amendments made to Rule R315-273 in accordance with the final federal regulation. In addition, the division has corrected typographical and formatting errors in the rule.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

It is not anticipated that there will be any measurable cost or savings to the state budget due to this rule amendment because the amendment does not change how the division will oversee the rule. Additionally, because Rule R315-273 is an optional rule it is unknown how many, if any, state agencies are complying with the rule so it is not possible to determine the cost or savings that might be experienced within the state budget. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

B) Local governments:

It is not anticipated that there will be any measurable cost or savings to the budgets of local governments due to this rule amendment. Rule R315-273 is an optional rule and therefore it is unknown how many, if any, local government agencies are complying with the rule so it is not possible to determine the cost or savings that might be experienced within local government budgets. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

It is not anticipated that there will be any measurable cost or savings to small businesses due to this rule amendment. Rule R315-273 is an optional rule and therefore it is unknown how many small businesses are complying with the rule so it is not possible to determine the cost or savings that might be experienced by small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

It is not anticipated that there will be any measurable cost or savings to non-small businesses due to this rule amendment. Rule R315-273 is an optional rule and therefore it is unknown how many non-small businesses are complying with the rule so it is not possible to determine the cost or savings that might be experienced by non-small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

It is not anticipated that there will be any measurable cost or savings to persons other than small businesses due to this rule amendment. Rule R315-273 is an optional rule and therefore it is unknown how many persons other than small businesses are complying with the rule so it is not possible to determine the cost or savings that might be experienced by persons other than small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

Because this is an amendment to an existing rule and the changes to the rule do not significantly change how aerosol cans are managed under the rule it is not anticipated that the compliance costs for affected persons will change due to the rule amendments.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

It is not anticipated that this rule amendment will have any additional fiscal impact on any businesses that are currently complying with the rule beyond the current costs of compliance. The changes are being made to keep the hazardous waste management program in the State of Utah compatible with the federal program.
Kimberly D. Shelley, Executive Director

6. A) Regulatory Impact Summary Table (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 will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The head of the Department of Environmental Quality, Kimberly D. Shelley, has reviewed and approved this fiscal

analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
19-6-104	19-6-105	19-6-106
40 CFR 271.4		

Incorporations by Reference Information

(If this rule incorporates more than two items by reference, please include additional tables.)

8. A) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*)**:**	
	First Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

B) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*)**:**	
	Second Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)		
A) Comments will be accepted until (mm/dd/yyyy)**:**		
B) A public hearing (optional) will be held:		
On (mm/dd/yyyy)**:**	**At** (hh:mm AM/PM)**:**	**At** (place)**:**

10. This rule change MAY become effective on (mm/dd/yyyy)**:**	
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin* and delaying the first possible effective date.			
Agency head or designee, and title:	Douglas J. Hansen, Division Director	**Date** (mm/dd/yyyy)**:**	

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

R315-261-9. Requirements for Universal Waste.

The wastes listed in Section R315-261-9 are exempt from regulation under Rules R315-262 through R315-270 except as specified in Rule R315-273 and, therefore are not fully regulated as hazardous waste. The wastes listed in Section R315-261-9 are subject to regulation under Rule R315-273:

(a) [~~B~~]batteries as described in Section R315-273-2;
(b) [~~P~~]pesticides as described in Section R315-273-3;
(c) [~~M~~]mercury-containing equipment as described in Section R315-273-4;[~~and~~]
(d) [~~L~~]lamps as described in Section R315-273-5[~~.~~];
(e) [~~Antifreeze~~]aerosol cans as described in Subsection R315-273-6[~~(a).~~]; and
(f) [~~Aerosol cans~~]antifreeze as described in Subsection R315-273-[~~6(b)~~]7.

KEY: hazardous waste
Date of Enactment or Last Substantive Amendment: September 14, 2020
Notice of Continuation: January 14, 2021
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

State of Utah
Administrative Rule Analysis
Revised June 2021

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New ___; Amendment _X__; Repeal ___; Repeal and Reenact ___		
	Title No. - Rule No. - Section No.	
Utah Admin. Code Ref (R no.):	**R315-264-1**	**Filing ID (Office Use Only)**
Changed to Admin. Code Ref. (R no.):	**R**	

Agency Information

1. Department:	Environmental Quality	
Agency:	Waste Management and Radiation Control	
Room no.:		
Building:	MASOB	
Street address:	195 N. 1950 W.	
City, state and zip:	Salt Lake City, Utah 84116	
Mailing address:	PO Box 144880	
City, state and zip:	Salt Lake City, Utah 84114-4880	
Contact person(s):		
Name:	**Phone:**	**Email:**
Tom Ball	801-536-0251	tball@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R315-264-1 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, General - Purpose, Scope and Applicability.

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

EPA published a Final Rule entitled, Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations, in the Federal Register on December 9, 2019 (84 FR 67202). With this publication EPA added aerosol cans as a regulated universal waste in 40 CFR 273. The final rule also amended other parts of 40 CFR as necessary. Aerosol cans were already regulated as a universal waste in Utah in R315-273 of the Utah Administrative Code prior to EPA taking this action. The purpose of this change is to amend the Utah hazardous waste rules in accordance with the final rule published by EPA so that the Utah hazardous waste rules remain equivalent to the federal regulations and ensure that Utah maintains its primacy for the hazardous waste program in Utah.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

This change updates the rule citations for aerosol cans and antifreeze found in Rule R315-264 that were changed in Rule R315-273 because of amendments made to Rule R315-273 in accordance with the final federal regulation. In addition, the division has corrected typographical and formatting errors in the rule.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

It is not anticipated that there will be any measurable cost or savings to the state budget due to this rule amendment because the amendment does not change how the division will oversee the rule. Additionally, because Rule R315-273 is an optional rule it is unknown how many, if any, state agencies are complying with the rule so it is not possible to determine the cost or savings that might be experienced within the state budget. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

B) Local governments:

It is not anticipated that there will be any measurable cost or savings to the budgets of local governments due to this rule amendment. Rule R315-273 is an optional rule and therefore it is unknown how many, if any, local government agencies are complying with the rule so it is not possible to determine the cost or savings that might be experienced within local government budgets. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

It is not anticipated that there will be any measurable cost or savings to small businesses due to this rule amendment. Rule R315-273 is an optional rule and therefore it is unknown how many small businesses are complying with the rule so it is not possible to determine the cost or savings that might be experienced by small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

It is not anticipated that there will be any measurable cost or savings to non-small businesses due to this rule amendment. Rule R315-273 is an optional rule and therefore it is unknown how many non-small businesses are complying with the rule so it is not possible to determine the cost or savings that might be experienced by non-small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

It is not anticipated that there will be any measurable cost or savings to persons other than small businesses due to this rule amendment. Rule R315-273 is an optional rule and therefore it is unknown how many persons other than small businesses are complying with the rule so it is not possible to determine the cost or savings that might be experienced by persons other than small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

Because this is an amendment to an existing rule and the changes to the rule do not significantly change how aerosol cans are managed under the rule it is not anticipated that the compliance costs for affected persons will change due to the rule amendments.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

It is not anticipated that this rule amendment will have any additional fiscal impact on any businesses that are currently complying with the rule beyond the current costs of compliance. The changes are being made to keep the hazardous waste management program in the State of Utah compatible with the federal program.
Kimberly D. Shelley, Executive Director

6. A) Regulatory Impact Summary Table (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 will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The head of the Department of Environmental Quality, Kimberly D. Shelley, has reviewed and approved this fiscal

analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
19-6-104	19-6-105	19-6-106
40 CFR 271.4		

Incorporations by Reference Information

(If this rule incorporates more than two items by reference, please include additional tables.)

8. A) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*)**:**	
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Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

B) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*)**:**	
	Second Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)		
A) Comments will be accepted until (mm/dd/yyyy)**:**		
B) A public hearing (optional) will be held:		
On (mm/dd/yyyy)**:**	**At** (hh:mm AM/PM)**:**	**At** (place)**:**

10. This rule change MAY become effective on (mm/dd/yyyy)**:**	
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin* and delaying the first possible effective date.			
Agency head or designee, and title:	Douglas J. Hansen, Division Director	**Date** (mm/dd/yyyy)**:**	

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.
R315-264-1. General -- Purpose, Scope and Applicability.

(a) The purpose of Rule R315-264 is to establish minimum standards that define the acceptable management of hazardous waste.

(b) The standards in Rule R315-264 apply to each owner and operator of facilities that treat, store, or dispose of hazardous waste, except as specifically provided otherwise in Rules R315-264 or R315-261.

(c) Reserved

(d) The requirements of Rule R315-264 apply to a person disposing of hazardous waste by means of underground injection subject to a permit issued under an Underground Injection Control (UIC) program approved or promulgated under the Safe Drinking Water Act only to the extent they are required by 40 CFR 144.14. Rule R315-264 applies to the above-ground treatment or storage of hazardous waste before it is injected underground.

(e) The requirements of Rule R315-264 apply to each owner or operator of a POTW that treats, stores, or disposes of hazardous waste only to the extent they are included in a RCRA permit by rule granted to such a person under Rule R315-270.

(f) Reserved

(g) The requirements of Rule R315-264 do not apply to the following:

(1) 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 R315-264 by Section R315-262-14.

(2) The owner or operator of a facility managing recyclable materials described in Subsections R315-261-6(a)(2), R315-261-6(a)(3), and R315-261-6(a)(4), except to the extent they are referred to in Rule R315-15 or Sections R315-266-20 through R315-266-23, R315-266-70, R315-266-80, or R315-266-100 through R315-266-112.

(3) A generator accumulating waste on site in compliance with Section R315-262-14, R315-262-15, R315-262-16, or R315-262-17.

(4) A farmer disposing of waste pesticides from his own use in compliance with Section R315-262-70.

(5) The owner or operator of a totally enclosed treatment facility, as defined in Section R315-260-10.

(6) 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, or reactive (D003) waste, to remove the characteristic before land disposal, the owner or operator shall comply with the requirements set out in Subsection R315-264-17(b).

(7) Reserved.

(8)(i) Except as provided in Subsection R315-264-1(g)(8)(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 hazardous waste; or

(C) a discharge of a material that, if discharged, becomes a hazardous waste.

(ii) An owner or operator of a facility otherwise regulated by Rule R315-264 shall comply with the applicable requirements of Sections R315-264-30 through R315-264-35, R315-264-37 and R315-264-50 through R315-264-56.

(iii) Any person who is covered by Subsection R315-264-1(g)(8)(i) and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to the applicable requirements of Rule R315-264 and 40 CFR 122 and 123 and Rule R315-124 for those activities.

(iv) In the case of an explosives or munitions emergency response, if a Federal, State, Tribal or local official acting within the scope of his or her official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit shall retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(9) 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.

(10) The addition of absorbent material to waste in a container, as defined in Section R315-260-10, or the addition of waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container; and Subsections R315-264-17(b), R315-264-171, and R315-264-172 are complied with.

(11) 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, if handling the following 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;

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

(v) [~~antifreeze~~]aerosol cans as described in Subsection R315-272-6[~~(a)~~]; and

(vi) [~~aerosol cans~~]antifreeze as described in Subsection R315-273-[~~6(b)~~]7.

(12) Reserved.

(13) Reverse distributors accumulating potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste

pharmaceuticals, as defined in Section R315-266-500. Reverse distributors are subject to regulation under Sections R315-266-500 through R315-266-510 in lieu of Rule R315-264 for the accumulation of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals.

(h) The requirements of Rule R315-264 apply to each owner or operator of facilities that treat, store, or dispose of hazardous wastes referred to in Rule R315-268.

(i) Reserved.

(j) The requirements of Sections R315-264-10 through R315-264-19, R315-264-30 through R315-264-37, R315-264-50 through R315-264-56, and R315-264-101 do not apply to remediation waste management sites. However, some remediation waste management sites may be a part of a facility that is subject to a traditional hazardous waste permit because the facility is also treating, storing or disposing of hazardous wastes that are not remediation wastes. In these cases, Sections R315-264-10 through R315-264-19, R315-264-30 through R315-264-37, R315-264-50 through R315-264-56, and R315-264-101 do apply to the facility subject to the traditional hazardous waste permit. Instead of the requirements of Sections R315-264-10 through R315-264-19, R315-264-30 through R315-264-37, and R315-264-50 through R315-264-56, owners or operators of remediation waste management sites shall do the following:

(1) Obtain an EPA identification number by applying to the Director using EPA Form 8700-12.

(2) Obtain a detailed chemical and physical analysis of a representative sample of the hazardous remediation wastes to be managed at the site. At a minimum, the analysis shall contain the information which shall be known to treat, store or dispose of the waste according to Rules R315-264 and R315-268, and shall be kept accurate and up to date.

(3) Prevent people who are unaware of the danger from entering, and minimize the possibility for unauthorized people or livestock to enter onto the active portion of the remediation waste management site, unless the owner or operator can demonstrate to the Director that:

(i) physical contact with the waste, structures, or equipment within the active portion of the remediation waste management site shall not injure people or livestock who may enter the active portion of the remediation waste management site; and

(ii) disturbance of the waste or equipment by people or livestock who enter onto the active portion of the remediation waste management site, shall not cause a violation of the requirements of Rule R315-264.

(4) Inspect the remediation waste management site for malfunctions, deterioration, operator errors, and discharges that may be causing, or may lead to, a release of hazardous waste constituents to the environment, or 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, and shall remedy the problem before it leads to a human health or environmental hazard. Where a hazard is imminent or has already occurred, the owner or operator shall take remedial action immediately.

(5) Provide personnel with classroom or on-the-job training on how to perform their duties in a way that ensures the remediation waste management site complies with the requirements of Rule R315-264, and on how to respond effectively to emergencies.

(6) Take precautions to prevent accidental ignition or reaction of ignitable or reactive waste, and prevent threats to human health and the environment from ignitable, reactive and incompatible waste.

(7) For remediation waste management sites subject to regulation under Sections R315-264-170 through R315-264-179, R315-264-190 through R315-264-200, R315-264-220 through R315-264-232, R315-264-250 through R315-264-259, R315-264-270 through R315-264-283, R315-264-300 through R315-264-317, R315-264-340 through R315-264-351, and R315-264-600 through R315-264-603, the owner or operator shall design, construct, operate, and maintain a unit within a 100-year floodplain to prevent washout of any hazardous waste by a 100-year flood, unless the owner or operator can meet the demonstration of Subsection R315-264-18(b).

(8) Not place any non-containerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave.

(9) Develop and maintain a construction quality assurance program for each surface impoundment, waste pile and landfill unit that are required to comply with Subsections R315-264-221(c) and R315-264-221(d), R315-264-251(c) and R315-264-251(d), and R315-264-301(c) and R315-264-301(d) at the remediation waste management site, according to the requirements of Section R315-264-19.

(10) Develop and maintain procedures to prevent accidents and a contingency and emergency plan to control accidents that occur. These procedures shall address proper design, construction, maintenance, and operation of remediation waste management units at the site. The goal of the plan shall be to minimize the possibility of, and the hazards from a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. The plan shall explain specifically how to treat, store and dispose of the hazardous remediation waste in question, and shall be implemented immediately whenever a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

(11) Designate at least one employee, either on the facility premises or on call, that is, available to respond to an emergency by reaching the facility quickly, to coordinate emergency response measures. This emergency coordinator shall be thoroughly familiar with the facility's contingency plan, operations and activities at the facility, the location and characteristics of waste handled, the location of the 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.

(12) Develop, maintain and implement a plan to meet the requirements in Subsections R315-264-1(j)(2) through R315-264-1(j)(6) and R315-264-1(j)(9) through R315-264-1(j)(10).

(13) Maintain records documenting compliance with Subsections R315-264-1(j)(1) through R315-264-1(j)(12).

KEY: hazardous waste, TSD facilities
Date of Enactment or Last Substantive Amendment: September 14, 2020
Notice of Continuation: January 14, 2021

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

State of Utah
Administrative Rule Analysis
Revised June 2021

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New ___; Amendment _X__; Repeal ___; Repeal and Reenact ___		
	Title No. - Rule No. - Section No.	
Utah Admin. Code Ref (R no.):	**R315-265**	**Filing ID (Office Use Only)**
Changed to Admin. Code Ref. (R no.):	**R**	

Agency Information

1. Department:	Environmental Quality	
Agency:	Waste Management and Radiation Control	
Room no.:		
Building:	MASOB	
Street address:	195 N. 1950 W.	
City, state and zip:	Salt Lake City, Utah 84116	
Mailing address:	PO Box 144880	
City, state and zip:	Salt Lake City, Utah 84114-4880	
Contact person(s):		
Name:	**Phone:**	**Email:**
Tom Ball	801-536-0251	tball@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R315-265 Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

EPA published a Final Rule entitled, Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations, in the Federal Register on December 9, 2019 (84 FR 67202). With this publication EPA added aerosol cans as a regulated universal waste in 40 CFR 273. The final rule also amended other parts of 40 CFR as necessary. Aerosol cans were already regulated as a universal waste in Utah in R315-273 of the Utah Administrative Code prior to EPA taking this action. The purpose of this change is to amend the Utah hazardous waste rules in accordance with the final rule published by EPA so that the Utah hazardous waste rules remain equivalent to the federal regulations and ensure that Utah maintains its primacy for the hazardous waste program in Utah.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

This change updates the rule citations for aerosol cans and antifreeze found in Rule R315-265 that were changed in Rule R315-273 because of amendments made to Rule R315-273 in accordance with the final federal regulation. In addition, the division has incorporated 40 CFR 265.1100 through 40 CFR 265.1102 as R315-265-1100 through R315-265-1102 as part of an ongoing effort to update Rule R315-265. The division also corrected typographical and formatting errors in the rule.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

It is not anticipated that there will be any measurable cost or savings to the state budget due to this rule amendment because the amendment does not change how the division will oversee the rule. Additionally, because Rule R315-273 is an optional rule it is unknown how many, if any, state agencies are complying with the rule so it is not possible to determine the cost or savings that might be experienced within the state budget. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

B) Local governments:

It is not anticipated that there will be any measurable cost or savings to the budgets of local governments due to this rule amendment. Rule R315-273 is an optional rule and therefore it is unknown how many, if any, local government agencies are complying with the rule so it is not possible to determine the cost or savings that might be experienced within local government budgets. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

It is not anticipated that there will be any measurable cost or savings to small businesses due to this rule amendment. Rule R315-273 is an optional rule and therefore it is unknown how many small businesses are complying with the rule so it is not possible to determine the cost or savings that might be experienced by small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

It is not anticipated that there will be any measurable cost or savings to non-small businesses due to this rule amendment. Rule R315-273 is an optional rule and therefore it is unknown how many non-small businesses are complying with the rule so it is not possible to determine the cost or savings that might be experienced by non-small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

It is not anticipated that there will be any measurable cost or savings to persons other than small businesses due to this rule amendment. Rule R315-273 is an optional rule and therefore it is unknown how many persons other than small businesses are complying with the rule so it is not possible to determine the cost or savings that might be experienced by persons other than small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

Because this is an amendment to an existing rule and the changes to the rule do not significantly change how aerosol cans are managed under the rule it is not anticipated that the compliance costs for affected persons will change due to the rule amendments.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

It is not anticipated that this rule amendment will have any additional fiscal impact on any businesses that are currently complying with the rule beyond the current costs of compliance. The changes are being made to keep the hazardous waste management program in the State of Utah compatible with the federal program.
Kimberly D. Shelley, Executive Director

6. A) Regulatory Impact Summary Table (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 will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The head of the Department of Environmental Quality, Kimberly D. Shelley, has reviewed and approved this fiscal

analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
19-6-104	19-6-105	19-6-106
40 CFR 271.4		

Incorporations by Reference Information

(If this rule incorporates more than two items by reference, please include additional tables.)

8. A) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*)**:**	
	First Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

B) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*)**:**	
	Second Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)		
A) Comments will be accepted until (mm/dd/yyyy)**:**		
B) A public hearing (optional) will be held:		
On (mm/dd/yyyy)**:**	**At** (hh:mm AM/PM)**:**	**At** (place)**:**

10. This rule change MAY become effective on (mm/dd/yyyy)**:**	
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin* and delaying the first possible effective date.			
Agency head or designee, and title:	Douglas J. Hansen, Division Director	**Date** (mm/dd/yyyy)**:**	

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, 265.1050 through 265.1064, [~~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, are adopted and incorporated by reference except that "Director" is substituted for references to "Regional Administrator", and for references to "EPA" or "Environmental Protection Agency" except for references to "EPA identification number" and [~~where~~]when EPA is used in reference to actions under Subsection R315-268-42(b) and in Subsection R315-265-71(a)(3).

(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 Subsection R315-265-1080(b), 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 R315-270-10(g), or both. These standards apply to treatment, storage and disposal of hazardous waste at these facilities after the effective date of these rules, 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, which are 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 the following:

(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: Rule R315-265 does 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 that treats, stores, or disposes of hazardous waste.

Comment: The owner or operator of a facility under Subsections R315-265-1(c)(1) through R315-265-1(c)(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), R315-261-6(a)(3), and R315-261-6(a)(4), except to the extent they are referred to in Rule R315-15 or Sections R315-266-20 through R315-266-23, R315-266-70, R315-266-80, or R315-266-100 through R315-266-112.

(7) A generator accumulating waste on site in compliance with applicable conditions for exemption in Sections R315-262-14 through R315-262-17 and Sections R315-262-200 through R315-262-216 and R315-262-230 through R315-262-233, 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.

(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 or 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; or

(C) a discharge of a material that, if discharged, becomes a hazardous waste.

(ii) An owner or operator of a facility otherwise regulated by this Rule R315-265 shall comply with the applicable requirements of Sections R315-265-30 through R315-265-37 and Sections R315-265-50 through R315-265-56.

(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 the applicable requirements of 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 R315-265-172 are complied with.

(14) Universal waste handlers and universal waste transporters, as defined in Section R315-260-10, handling the wastes listed [~~below~~]in Subsections R315-265-1(c)(14) (i) through (vi). These handlers are subject to regulation under Rule R315-273, if handling the following 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;

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

(v) [~~antifreeze~~]aerosol cans as described in Subsection R315-273-6[~~(a)~~]; and

(vi) [~~aerosol cans~~]antifreeze as described in Subsection R315-273-[~~6(b)~~]7.

(15) Reserved

(16) Reverse distributors accumulating potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals, as defined in Section R315-266-500. Reverse distributors are subject to regulation under Sections R315-266-500 through R315-266-510 in lieu of Rule R315-265 for the accumulation of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals.

(d) The following hazardous wastes shall not be managed at facilities subject to regulation under Rule R315-265.

(1) EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, or F027 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 other applicable requirements of Sections R315-265-250 through R315-265-260;

(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 and incorporated by reference.

(e) The requirements of Rule R315-265 apply to owners or operators of 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.

R315-265-1100. Containment Buildings -- Applicability.

The requirements of Sections R315-265-1100 through R315-265-1102 apply to owners or operators who store or treat hazardous waste in units designed and operated under Section R315-265-1101. The owner or operator is not subject to the definition of land disposal in RCRA section 3004(k) provided that the unit:

(a) is a completely enclosed, self-supporting structure that is designed and constructed of manmade materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the units, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed, climatic conditions, and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of that equipment with containment walls;

(b) has a primary barrier that is designed to be sufficiently durable to withstand the movement of personnel and handling equipment within the unit;

(c) if the unit is used to manage liquids, has:

(1) a primary barrier designed and constructed of materials to prevent migration of hazardous constituents into the barrier;

(2) a liquid collection system designed and constructed of materials to minimize the accumulation of liquid on the primary barrier; and

(3) a secondary containment system designed and constructed of materials to prevent migration of hazardous constituents into the barrier, with a leak detection and liquid collection system capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest possible time, unless the unit has been granted a variance from the secondary containment system requirements under Subsection R315-265-1101(b)(4);

(d) has controls as needed to prevent fugitive dust emissions; and

(e) is designed and operated to ensure containment and prevent the tracking of materials from the unit by personnel or equipment.

R315-265-1101. Containment Buildings -- Design and Operating Standards.

(a) Each containment building shall comply with the following design standards.

(1) The containment building shall be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, for example, precipitation, wind, run-on, and to assure containment of managed wastes.

(2) The floor and containment walls of the unit, including the secondary containment system if required by Subsection R315-265-1101(b), shall be designed and constructed of materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed, climatic conditions, and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of that equipment with containment walls. The unit shall be

designed so that it has sufficient structural strength to prevent collapse or other failure. Each surface to be in contact with hazardous wastes shall be chemically compatible with those wastes. The director will consider standards established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) and the American Society of Testing Materials (ASTM) in judging the structural integrity requirements of Subsection R315-265-1101(a)(2). If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light-weight doors and windows that meet these criteria:

(i) they provide an effective barrier against fugitive dust emissions in accordance with Subsection R315-265-1101(c)(1)(iv); and

(ii) the unit is designed and operated in a fashion that assures that wastes will not actually come in contact with these openings.

(3) Incompatible hazardous wastes or treatment reagents shall not be placed in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.

(4) A containment building shall have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.

(b) For a containment building used to manage hazardous wastes containing free liquids or treated with free liquids, the presence of which is determined by the paint filter test, a visual examination, or other appropriate means, the owner or operator shall include.

(1) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier, for example, a geomembrane covered by a concrete wear surface.

(2) A liquid collection and removal system to prevent the accumulation of liquid on the primary barrier of the containment building:

(i) the primary barrier shall be sloped to drain liquids to the associated collection system; and

(ii) liquids and waste shall be collected and removed to minimize hydraulic head on the containment system at the earliest practicable time that protects human health and the environment.

(3) A secondary containment system including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system that is capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practicable time.

(i) The requirements of the leak detection component of the secondary containment system are satisfied by installation of a system that is, at a minimum:

(A) constructed with a bottom slope of 1 percent or more; and

(B) constructed of a granular drainage material with a hydraulic conductivity of 1×10^{-2} cm per sec or more and a thickness of 12 inches, 30.5 cm, or more, or constructed of synthetic or geonet drainage materials with a transmissivity of 3×10^{-5} m^2 per sec or more.

(ii) If treatment is to be conducted in the building, an area in which treatment will be conducted shall be designed to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building.

(iii) The secondary containment system shall be constructed of materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building. Containment buildings may serve as secondary containment systems for tanks placed within the building under certain conditions. A containment building may serve as an external liner system for a tank, provided it meets the requirements of Subsection R315-265-193(e)(1). In addition, the containment building shall meet the requirements of Subsections R315-265-193 (b) and (c) to be considered an acceptable secondary containment system for a tank.

(4) For existing units other than 90-day generator units, the director may delay the secondary containment requirement for up to two years, based on a demonstration by the owner or operator that the unit substantially meets the standards of Sections R315-265-1100 through R315-265-1102. In making this demonstration, the owner or operator shall:

(i) provide written notice to the director of their request by February 18, 1993. This notification shall describe the unit and its operating practices with specific reference to the performance of existing containment systems, and specific plans for retrofitting the unit with secondary containment;

(ii) respond to any comments from the director on these plans within 30 days; and

(iii) fulfill the terms of the revised plans, if those plans are approved by the director.

(c) Owners or operators of containment buildings shall comply with the following.

(1) Use controls and practices to ensure containment of the hazardous waste within the unit, and, at a minimum:

(i) maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier;

(ii) maintain the level of the stored or treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded;

(iii) take measures to prevent the tracking of hazardous waste out of the unit by personnel or by equipment used in handling the waste. An area shall be designated to decontaminate equipment and any rinsate shall be collected and properly managed; and

(iv) take measures to control fugitive dust emissions so that any openings, doors, windows, vents, cracks, exhibit no visible emissions. In addition, each associated particulate collection device, for example, fabric filter, electrostatic precipitator, shall be operated and maintained with sound air pollution control practices. This state of no visible emissions shall be maintained effectively at any time during normal operating conditions, including when vehicles and personnel are entering and exiting the unit.

(2) Obtain and keep on-site a certification by a qualified Professional Engineer that the containment building design meets the requirements of Subsections R315-265-1101(a), (b), and (c).

(3) Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, the owner or operator shall repair the condition promptly, in accordance with the following

procedures.

(i) Upon detection of a condition that has led to a release of hazardous waste, for example, upon detection of leakage from the primary barrier, the owner or operator shall:

(A) enter a record of the discovery in the facility operating record;

(B) immediately remove the portion of the containment building affected by the condition from service;

(C) determine what steps shall be taken to repair the containment building, remove any leakage from the secondary collection system, and establish a schedule for accomplishing the cleanup and repairs; and

(D) within 7 days after the discovery of the condition, notify the director of the condition, and within 14 working days, provide a written notice to the director with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work.

(ii) The director will review the information submitted, make a determination regarding whether the containment building shall be removed from service completely or partially until repairs and cleanup are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

(iii) Upon completing the repairs and cleanup the owner or operator shall notify the director in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with Subsection R315-265-1101(c)(3)(i)(D).

(4) Inspect and record in the facility's operating record at least once each seven days data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

(d) For a containment building that contains both areas with and without secondary containment, the owner or operator shall:

(1) design and operate each area in accordance with the requirements enumerated in Subsections R315-265-1101(a) through (c);

(2) take measures to prevent the release of liquids or wet materials into areas without secondary containment; and

(3) maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

(e) Notwithstanding any other provision of Sections R315-265-1100 through R315-265-1102, the director may waive requirements for secondary containment for a permitted containment building if the owner or operator demonstrates that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and if containment of managed wastes and liquids may be assured without a secondary containment system.

R315-265-1102. Containment Buildings -- Closure and Post-Closure Care.

(a) At closure of a containment building, the owner or operator shall remove or decontaminate any waste residues, contaminated containment system components, liners, contaminated subsoils, and structures and equipment contaminated with waste and leachate, 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 containment buildings shall meet the requirements specified in Sections R315-265-110 through R315-265-120 and R315-265-140 through R315-265-148.

(b) If, after removing or decontaminating any residues and making reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in Subsection R315-265-1102(a), the owner or operator finds that contaminated subsoils cannot 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, 40 CFR 265.310. In addition, for the purposes of closure, post-closure, and financial responsibility, such a containment building is then considered to be a landfill, and the owner or operator shall meet the requirements for landfills specified in Sections R315-265-110 through R315-265-120 and R315-265-140 through R315-265-148.

KEY: hazardous waste, TSD facilities, interim status
Date of Enactment or Last Substantive Amendment: September 14, 2020
Notice of Continuation: January 14, 2021
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

State of Utah
Administrative Rule Analysis
Revised June 2021

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New ___; Amendment _X__; Repeal ___; Repeal and Reenact ___		
	Title No. - Rule No. - Section No.	
Utah Admin. Code Ref (R no.):	**R315-268-1**	**Filing ID (Office Use Only)**
Changed to Admin. Code Ref. (R no.):	**R**	

Agency Information

1. Department:	Environmental Quality	
Agency:	Waste Management and Radiation Control	
Room no.:		
Building:	MASOB	
Street address:	195 N. 1950 W.	
City, state and zip:	Salt Lake City, Utah 84116	
Mailing address:	PO Box 144880	
City, state and zip:	Salt Lake City, Utah 84114-4880	
Contact person(s):		
Name:	**Phone:**	**Email:**
Tom Ball	801-536-0251	tball@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R315-268-1 Land Disposal Restrictions, Land Disposal Restrictions - Purpose, Scope, and Applicability

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

EPA published a Final Rule entitled, Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations, in the Federal Register on December 9, 2019 (84 FR 67202). With this publication EPA added aerosol cans as a regulated universal waste in 40 CFR 273. The final rule also amended other parts of 40 CFR as necessary. Aerosol cans were already regulated as a universal waste in Utah in R315-273 of the Utah Administrative Code prior to EPA taking this action. The purpose of this change is to amend the Utah hazardous waste rules in accordance with the final rule published by EPA so that the Utah hazardous waste rules remain equivalent to the federal regulations and ensure that Utah maintains its primacy for the hazardous waste program in Utah.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

The change adds aerosol cans to the list of universal wastes that are exempt from being regulated under Sections R315-268-7 and R315-268-50. In addition, the division has corrected typographical and formatting errors in the rule.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

It is not anticipated that there will be any measurable cost or savings to the state budget due to this rule amendment because the amendment does not change how the division will oversee the rule. Additionally, because Rule R315-273 is an optional rule it is unknown how many, if any, state agencies are complying with the rule so it is not possible to determine the cost or savings that might be experienced within the state budget. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

B) Local governments:

It is not anticipated that there will be any measurable cost or savings to the budgets of local governments due to this rule amendment. Rule R315-273 is an optional rule and therefore it is unknown how many, if any, local government agencies are complying with the rule so it is not possible to determine the cost or savings that might be experienced within local government budgets. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

It is not anticipated that there will be any measurable cost or savings to small businesses due to this rule amendment. Rule R315-273 is an optional rule and therefore it is unknown how many small businesses are complying with the rule so it is not possible to determine the cost or savings that might be experienced by small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

It is not anticipated that there will be any measurable cost or savings to non-small businesses due to this rule amendment. Rule R315-273 is an optional rule and therefore it is unknown how many non-small businesses are complying with the rule so it is not possible to determine the cost or savings that might be experienced by non-small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

It is not anticipated that there will be any measurable cost or savings to persons other than small businesses due to this rule amendment. Rule R315-273 is an optional rule and therefore it is unknown how many persons other than small businesses are complying with the rule so it is not possible to determine the cost or savings that might be experienced by persons other than small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

Because this is an amendment to an existing rule and the changes to the rule do not significantly change how aerosol cans are managed under the rule it is not anticipated that the compliance costs for affected persons will change due to the rule amendments.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

It is not anticipated that this rule amendment will have any additional fiscal impact on any businesses that are currently complying with the rule beyond the current costs of compliance. The changes are being made to keep the hazardous waste management program in the State of Utah compatible with the federal program.
Kimberly D. Shelley, Executive Director

6. A) Regulatory Impact Summary Table (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 will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The head of the Department of Environmental Quality, Kimberly D. Shelley, has reviewed and approved this fiscal analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

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

40 CFR 271.4		

Incorporations by Reference Information

(If this rule incorporates more than two items by reference, please include additional tables.)

8. A) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*)**:**	
	First Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

B) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*)**:**	
	Second Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)		
A) Comments will be accepted until (mm/dd/yyyy)**:**		
B) A public hearing (optional) will be held:		
On (mm/dd/yyyy)**:**	**At** (hh:mm AM/PM)**:**	**At** (place)**:**

10. This rule change MAY become effective on (mm/dd/yyyy)**:**	
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin* and delaying the first possible effective date.			
Agency head or designee, and title:	Douglas J. Hansen, Division Director	**Date** (mm/dd/yyyy)**:**	

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

R315-268. Land Disposal Restrictions.

R315-268-1. Land Disposal Restrictions -- Purpose, Scope, and Applicability.

(a) Rule R315-268 identifies hazardous wastes that are restricted from land disposal and defines those limited circumstances under which an otherwise prohibited waste may continue to be land disposed.

(b) Except as specifically provided otherwise in Rule R315-268 or Rule R315-261, the requirements of Rule R315-268 apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities.

(c) Restricted wastes may continue to be land disposed as follows:

(1) [~~W~~]where persons have been granted an extension to the effective date of a prohibition under Sections R315-268-20 through R315-268-39 or pursuant to Section R315-268-5, with respect to those wastes covered by the extension;

(2) [~~W~~]where persons have been granted an exemption from a prohibition pursuant to a petition under Section R315-268-6, with respect to those wastes and units covered by the petition;

(3) [~~W~~]wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited under Rule R315-268, or 40 CFR 148, are not prohibited if the wastes:

(i) [~~A~~]are disposed into a nonhazardous or hazardous injection well as defined under 40 CFR 146.6(a); and

(ii) [~~D~~]do not exhibit any prohibited characteristic of hazardous waste identified in Sections R315-261-20 through R315-261-24, at the point of injection.

(4) Wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited under Rule R315-268, are not prohibited if the wastes meet any of the following criteria, unless the wastes are subject to a specified method of treatment other than DEACT in Section R315-268-40, or are D003 reactive cyanide:

(i) [~~T~~]the wastes are managed in a treatment system [~~which~~]that subsequently discharges to waters of the U.S. pursuant to a permit issued under section 402 of the Clean Water Act; or

(ii) [~~T~~]the wastes are treated for purposes of the pretreatment requirements of section 307 of the Clean Water Act; or

(iii) [~~T~~]the wastes are managed in a zero discharge system engaged in Clean Water Act-equivalent treatment as defined in Subsection R315-268-37(a); and

(iv) [~~T~~]the wastes no longer exhibit a prohibited characteristic at the point of land disposal, i.e., placement in a surface impoundment.

(d) The requirements of Rule R315-268 shall not affect the availability of a waiver under section 121(d)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

(e) The following hazardous wastes are not subject to any provision of Rule R315-268:

(1) [~~W~~]waste generated by very small quantity generators, as defined in Section R315-260-10;

(2) [~~W~~]waste pesticides that a farmer disposes of pursuant to Section R315-262-70;

(3) [~~W~~]wastes identified or listed as hazardous after November 8, 1984 [~~for which~~]that EPA has not promulgated land disposal prohibitions or treatment standards; and

(4) De minimis losses of characteristic wastes to wastewaters are not considered to be prohibited wastes and are defined as losses from normal material handling operations, [~~e.g.~~]for example, spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials; minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; and relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; rinsate from empty containers or from containers that are rendered empty by that rinsing; and laboratory wastes not exceeding one per cent of the total flow of wastewater into the facility's headworks on an annual basis, or with a combined annualized average concentration not exceeding one part per million in the headworks of the facility's wastewater treatment or pretreatment facility.

(f) Universal waste handlers and universal waste transporters, as defined in Section R315-260-10, are exempt from Sections R315-268-7 and R315-268-50 for the hazardous wastes listed [~~below~~]in Subsections R315-268-1(f)(1) through (5). These handlers are subject to regulation under Rule R315-273[~~.~~] if handling the following universal wastes:

(1) [~~B~~]batteries as described in Section R315-273-2;

(2) [~~P~~]pesticides as described in Section R315-273-3;

(3) [~~M~~]mercury-containing equipment as described in Section R315-273-4;[~~and~~]

(4) [~~L~~]lamps as described in Section R315-273-5[~~.~~]; and

(5) aerosol cans as described in Section R315-273-6.

KEY: hazardous waste, land disposal restrictions
Date of Enactment or Last Substantive Amendment: September 14, 2020
Notice of Continuation: January 14, 2021
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

State of Utah
Administrative Rule Analysis
Revised June 2021

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New ___; Amendment _X__; Repeal ___; Repeal and Reenact ___		
	Title No. - Rule No. - Section No.	
Utah Admin. Code Ref (R no.):	**R315-270-1**	**Filing ID (Office Use Only)**
Changed to Admin. Code Ref. (R no.):	**R**	

Agency Information

1. Department:	Environmental Quality	
Agency:	Waste Management and Radiation Control	
Room no.:		
Building:	MASOB	
Street address:	195 N. 1950 W.	
City, state and zip:	Salt Lake City, Utah 84116	
Mailing address:	PO Box 144880	
City, state and zip:	Salt Lake City, Utah 84114-4880	
Contact person(s):		
Name:	**Phone:**	**Email:**
Tom Ball	801-536-0251	tball@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R315-270-1 Hazardous Waste Permit Program, Hazardous Waste Permit Program - Purpose and Scope of These Rules.

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

EPA published a Final Rule entitled, Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations, in the Federal Register on December 9, 2019 (84 FR 67202). With this publication EPA added aerosol cans as a regulated universal waste in 40 CFR 273. The final rule also amended other parts of 40 CFR as necessary. Aerosol cans were already regulated as a universal waste in Utah in R315-273 of the Utah Administrative Code prior to EPA taking this action. The purpose of this change is to amend the Utah hazardous waste rules in accordance with the final rule published by EPA so that the Utah hazardous waste rules remain equivalent to the federal regulations and ensure that Utah maintains its primacy for the hazardous waste program in Utah.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

The change to this rule adds aerosol cans to the list of universal wastes that handlers and haulers are not required to obtain a hazardous waste permit to manage. In addition, the division has corrected typographical and formatting errors in the rule.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

It is not anticipated that there will be any measurable cost or savings to the state budget due to this rule amendment because the amendment does not change how the division will oversee the rule. Additionally, because Rule R315-273 is an optional rule it is unknown how many, if any, state agencies are complying with the rule so it is not possible to determine the cost or savings that might be experienced within the state budget. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

B) Local governments:

It is not anticipated that there will be any measurable cost or savings to the budgets of local governments due to this rule amendment. Rule R315-273 is an optional rule and therefore it is unknown how many, if any, local government agencies are complying with the rule so it is not possible to determine the cost or savings that might be experienced within local government budgets. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

It is not anticipated that there will be any measurable cost or savings to small businesses due to this rule amendment. Rule R315-273 is an optional rule and therefore it is unknown how many small businesses are complying with the rule so it is not possible to determine the cost or savings that might be experienced by small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

It is not anticipated that there will be any measurable cost or savings to non-small businesses due to this rule amendment. Rule R315-273 is an optional rule and therefore it is unknown how many non-small businesses are complying with the rule so it is not possible to determine the cost or savings that might be experienced by non-small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

It is not anticipated that there will be any measurable cost or savings to persons other than small businesses due to this rule amendment. Rule R315-273 is an optional rule and therefore it is unknown how many persons other than small businesses are complying with the rule so it is not possible to determine the cost or savings that might be experienced by persons other than small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

Because this is an amendment to an existing rule and the changes to the rule do not significantly change how aerosol cans are managed under the rule it is not anticipated that the compliance costs for affected persons will change due to the rule amendments.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

It is not anticipated that this rule amendment will have any additional fiscal impact on any businesses that are currently complying with the rule beyond the current costs of compliance. The changes are being made to keep the hazardous waste management program in the State of Utah compatible with the federal program.
Kimberly D. Shelley, Executive Director

6. A) Regulatory Impact Summary Table (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 will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The head of the Department of Environmental Quality, Kimberly D. Shelley, has reviewed and approved this fiscal analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

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

40 CFR 271.4		

Incorporations by Reference Information

(If this rule incorporates more than two items by reference, please include additional tables.)

8. A) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*)**:**	
	First Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

B) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*)**:**	
	Second Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)		
A) Comments will be accepted until (mm/dd/yyyy)**:**		
B) A public hearing (optional) will be held:		
On (mm/dd/yyyy)**:**	**At** (hh:mm AM/PM)**:**	**At** (place)**:**

10. This rule change MAY become effective on (mm/dd/yyyy)**:**	
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin* and delaying the first possible effective date.			
Agency head or designee, and title:	Douglas J. Hansen, Division Director	**Date** (mm/dd/yyyy)**:**	

Rule Text Example (Delete this line after entering your rule text)

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-270. Hazardous Waste Permit Program.
R315-270-1. Hazardous Waste Permit Program -- Purpose and Scope of These Rules.

(a) No person shall own, construct, modify, or operate any facility for the purpose of treating, storing, or disposing of hazardous waste without first submitting, and receiving the approval of the [~~D~~]director for, a hazardous waste permit for that facility. However, any person owning or operating a facility on or before November 19, 1980, who has given timely notification as required by section 3010 of the

Resource Conservation and Recovery Act (RCRA) of 1976, 42 U.S.C., section 6921, et seq., and who has submitted a proposed hazardous waste permit as required by Section R315-270-1 and Section 19-6-108 for that facility, may continue to operate that facility without violating Section R315-270-1 until [~~such time as~~]the permit is approved or disapproved pursuant to Section R315-270-1.

(b)(1) The [~~D~~]director shall review each proposed hazardous waste permit application to determine whether the application will be in accord with Rules R315-260 through R315-266, R315-268, R315-270, and R315-273, and Section 19-6-108 and, on that basis, shall approve or disapprove the application within the applicable time period specified in Section 19-6-108. If, after the receipt of plans, specifications, or other information required under Rule R315-270 and Section 19-6-108 and within the applicable time period of Section 19-6-108, the [~~D~~]director determines that the proposed construction, installation or establishment or any part of it will not be in accord with the requirements of Rule R315-270 or other applicable rules, he shall issue an order prohibiting the construction, installation or establishment of the proposal in whole or in part. The date of submission shall be deemed to be the date that the required information is provided to the [~~D~~]director as required by Rule R315-270.

(2) Any permit application that does not meet the requirements of Rules R315-260 through R315-266, R315-268, R315-270, and R315-273 shall be disapproved within the applicable time period specified in Section 19-6-108. If within the applicable time period specified in Section 19-6-108 the [~~D~~]director fails to approve or disapprove the permit application or to request the submission of any additional information or modification to the application, the application shall not be deemed approved but the applicant may petition the [~~D~~]director for a decision or seek judicial relief requiring a decision of approval or disapproval.

(3) An application for approval of a hazardous waste permit consists of two parts, part A and part B. For an existing facility, the requirement is satisfied by submitting only part A of the application until the date the [~~D~~]director sets for each individual facility for submitting part B of the application, which date shall be in no case less than six months after the [~~D~~]director gives notice to a particular facility that it shall submit part B of the application.

(c) Scope of the hazardous waste permit requirement. Section 19-6-108 requires a permit for the "treatment," "storage," and "disposal" of any "hazardous waste" as identified or listed in Rule R315-261. The terms "treatment," "storage," "disposal," and "hazardous waste" are defined in Section R315-270-2. Owners and operators of hazardous waste management units shall have permits during the active life, including the closure period, of the unit. Owners and operators of surface impoundments, landfills, land treatment units, and waste pile units that received waste after July 26, 1982, or that certified closure, in accordance with Section R315-265-115, after January 26, 1983, shall have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under Subsections R315-270-1(c)(5) and R315-270-1(c)(6), or obtain an enforceable document in lieu of a post-closure permit, as provided under Subsection R315-270-1(c)(7). If a post-closure permit is required, the permit shall address applicable Rule R315-264 groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under Section R315-270-1.

(1) Specific inclusions. Owners and operators of certain facilities require hazardous waste permits as well as permits under other programs for certain aspects of the facility operation. Hazardous waste permits are required for the following:

(i) [~~I~~]injection wells that dispose of hazardous waste, and associated surface facilities that treat, store or dispose of hazardous waste. However, the owner and operator with a Utah or Federal UIC permit, shall be deemed to have a "permit by rule" for the injection well itself if they comply with the requirements of Subsection R315-270-60(b)[~~.~~]; and

(ii) [~~T~~]treatment, storage, or disposal of hazardous waste at facilities requiring an NPDES permit. However, the owner and operator of a publicly owned treatment works receiving hazardous waste shall be deemed to have a "permit by rule" for that waste if they comply with the requirements of [~~Section~~]Subsection R315-270-60(c).

(2) Specific exclusions and exemptions. The following are not required to obtain a hazardous waste permit[~~:~~].

(i) A generator who accumulates hazardous waste on-site in compliance with the conditions for exemption provided in Sections R315-262-14, R315-262-15, R315-262-16, and R315-262-17.

(ii) A farmer who disposes of hazardous waste pesticides from their own use as provided in Section R315-262-70.

(iii) A person who owns or operates facilities solely for the treatment, storage or disposal of hazardous waste excluded from regulation under Rule R315-270 by Section R315-261-4 or Section R315-262-14, very small quantity generator exemption.

(iv) An owner or operator of totally enclosed treatment facilities as defined in Section R315-260-10.

(v) An owner and operator of one or more elementary neutralization units or wastewater treatment units as defined in Section R315-260-10.

(vi) 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.

(vii) A person adding absorbent material to waste in a container, as defined in Section R315-260-10, and a person adding waste to absorbent material in a container, [~~provided that~~]these actions shall occur at the time waste is first placed in the container[~~;~~], and Subsection R315-264-17(b) and Sections R315-264-171, and R315-264-172 are complied with.

(viii) Universal waste handlers and universal waste transporters, as defined in Section R315-260-10, managing the wastes listed [~~below~~]in Subsections R315-270-1(c)(2)(viii)(A) through (E). These handlers are subject to regulation under Rule R315-273 if handling the following universal wastes[~~;~~]:

(A) batteries as described in Section R315-273-2;

(B) pesticides as described in Section R315-273-3;

(C) mercury-containing equipment as described in Section R315-273-4;[~~ and~~]

(D) lamps as described in Section R315-273-5[~~.~~]; and

(E) aerosol cans as described in Section R315-273-6.

(ix) Reverse distributors accumulating potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals, as defined in Section R315-266-500. Reverse distributors are subject to regulation under Sections R315-266-500 through

R315-266-510 for the accumulation of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals.

(3) Further exclusions.

(i) A person is not required to obtain a permit for treatment or containment activities taken 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 hazardous waste; or

(C) a discharge of a material that, if discharged, becomes a hazardous waste.

(ii) Any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to the applicable requirements of Rule R315-270 for those activities.

(iii) In the case of emergency responses involving military munitions, the responding military emergency response specialist's organizational unit shall retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(4) Permits for less than an entire facility. The [~~D~~]director may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to each of the units at the facility. The interim status of any unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.

(5) Closure by removal. Owners or operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under Rule R315-265 standards shall obtain a post-closure permit unless they can demonstrate to the [~~D~~]director that the closure met the standards for closure by removal or decontamination in Section R315-264-228, Subsection R315-264-280(e), or Section R315-264-258, respectively. The demonstration may be made in the following ways[~~:~~].

(i) If the owner or operator has submitted a part B application for a post-closure permit, the owner or operator may request a determination, based on information contained in the application, that Rule R315-264 closure by removal standards were met. If the [~~D~~]director believes that Rule R315-264 standards were met, the [~~D~~]director shall notify the public of this proposed decision, allow for public comment, and reach a final determination according to the procedures in Subsection R315-270-1(c)(6).

(ii) If the owner or operator has not submitted a part B application for a post-closure permit, the owner or operator may petition the [~~D~~]director for a determination that a post-closure permit is not required because the closure met the applicable Rule R315-264 closure standards.

(A) The petition shall include data demonstrating that closure by removal or decontamination standards of Rule R315-264 were met.

(B) The [~~D~~]director shall approve or deny the petition according to the procedures outlined in Subsection R315-270-1(c)(6).

(6) Procedures for closure equivalency determination.

(i) If a facility owner or operator seeks an equivalency demonstration under Subsection R315-270-1(c)(5), the [~~D~~]director shall provide the public, through a newspaper notice, the opportunity to submit written comments on the information submitted by the owner or operator within 30 days from the date of the notice. The [~~D~~]director shall also, in response to a request or at the [~~D~~]director's discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the equivalence of the Rule R315-265 closure to a Rule R315-264 closure. The [~~D~~]director shall give public notice of the hearing at least 30 days before it occurs. Public notice of the hearing may be given at the [~~same~~]time [~~as~~]that notice of the opportunity for the public to submit written comments is given, and the two notices may be combined.

(ii) The [~~D~~]director shall determine whether the Rule R315-265 closure met the Rule R315-264 closure by removal or decontamination requirements within 90 days of its receipt. If the [~~D~~]director finds that the closure did not meet the applicable Rule R315-264 standards, the [~~D~~]director shall provide the owner or operator with a written statement of the reasons why the closure failed to meet Rule R315-264 standards. The owner or operator may submit additional information in support of an equivalency demonstration within 30 days after receiving [~~such~~]the written statement. The [~~D~~]director shall review any additional information submitted and make a final determination within 60 days.

(iii) If the [~~D~~]director determines that the facility did not close in accordance with Rule R315-264 closure by removal standards, the facility is subject to post-closure permitting requirements.

(7) Enforceable documents for post-closure care. At the discretion of the [~~D~~]director, an owner or operator may obtain, in lieu of a post-closure permit, an enforceable document imposing the requirements of Section R315-265-121. "Enforceable document" means an order, a permit, or other document issued by the [~~D~~]director including, but not limited to, a corrective action order issued by EPA under section 3008(h), a CERCLA remedial action, or a closure or post-closure permit.

KEY: hazardous waste
Date of Enactment or Last Substantive Amendment: September 14, 2020
Notice of Continuation: January 14, 2021
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

State of Utah
Administrative Rule Analysis
Revised June 2021

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New ___; Amendment _X__; Repeal ___; Repeal and Reenact ___		
	Title No. - Rule No. - Section No.	
Utah Admin. Code Ref (R no.):	**R315-273**	**Filing ID (Office Use Only)**
Changed to Admin. Code Ref. (R no.):	**R**	

Agency Information

1. Department:	Environmental Quality	
Agency:	Waste Management and Radiation Control	
Room no.:		
Building:	MASOB	
Street address:	195 N. 1950 W.	
City, state and zip:	Salt Lake City, Utah 84116	
Mailing address:	PO Box 144880	
City, state and zip:	Salt Lake City, Utah 84114-4880	
Contact person(s):		
Name:	**Phone:**	**Email:**
Tom Ball	801-536-0251	tball@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R315-273 Standards for Universal Waste Management

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

EPA published a Final Rule entitled, Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations, in the Federal Register on December 9, 2019 (84 FR 67202). With this publication EPA added aerosol cans as a regulated universal waste in 40 CFR 273. The final rule also amended other parts of 40 CFR as necessary. Aerosol cans were already regulated as a universal waste in Utah in R315-273 of the Utah Administrative Code prior to EPA taking this action. The purpose of this change is to amend the Utah hazardous waste rules in accordance with the final rule published by EPA so that the Utah hazardous waste rules remain equivalent to the federal regulations and ensure that Utah maintains its primacy for the hazardous waste program in Utah.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

The amended rule allows aerosol cans containing pesticides to be managed as aerosol can universal waste. The rule renumbers Section R315-273-6 to R315-273-7 and creates a new Section R315-273-6 Standards for Universal Waste Management - Applicability - Aerosol Cans and moves the aerosol can subsection from the new Section R315-273-7 to the new Section R315-273-6. The rule amends the definition of aerosol can so that it is consistent with the DOT definition of aerosol can. The amend rule will allow handlers to sort aerosol cans by type, consolidate intact aerosol cans in larger containers, and remove actuators to reduce the risk of accidental release. The amended rule no longer requires handlers to separate aerosol cans whose contents may be incompatible but requires containers being used to accumulate aerosol cans be protected from sources of heat. Citations to Section R315-262-34 which no longer exits are updated to the proper, current citations. The rule amends the labeling and marking requirements for containers of universal waste aerosol cans. The amended rule contains a requirement that handlers who puncture aerosol cans must maintain a copy of the puncturing device manufacturers instructions and ensure that employees are trained. It also requires empty, punctured aerosol cans to be recycled. The rule also exempts aerosol cans that meet the standard for empty containers from being managed as universal waste.

In addition to the changes being made for consistency with the federal regulations for management of aerosol cans as universal waste the division has amended the definition of antifreeze contained in Rule R315-273. The definition is being expanded to include not only antifreeze used as an engine coolant, but antifreeze used in electronics cooling applications, winterizing equipment and used in heating, ventilating and air conditioning units.

The division has corrected typographical and formatting errors in the rule in addition to the changes discussed above.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

It is not anticipated that there will be any measurable cost or savings to the state budget due to this rule amendment because the amendment does not change how the division will oversee the rule. Additionally, because Rule R315-273 is an optional rule it is unknown how many, if any, state agencies are complying with the rule so it is not possible to determine the cost or savings that might be experienced within the state budget. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

B) Local governments:

It is not anticipated that there will be any measurable cost or savings to the budgets of local governments due to this rule amendment. Rule R315-273 is an optional rule and therefore it is unknown how many, if any, local government agencies are complying with the rule so it is not possible to determine the cost or savings that might be experienced within local government budgets. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

It is not anticipated that there will be any measurable cost or savings to small businesses due to this rule amendment. Rule R315-273 is an optional rule and therefore it is unknown how many small businesses are complying with the rule so it is not possible to determine the cost or savings that might be experienced by small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

It is not anticipated that there will be any measurable cost or savings to non-small businesses due to this rule amendment. Rule R315-273 is an optional rule and therefore it is unknown how many non-small businesses are complying with the rule so it is not possible to determine the cost or savings that might be experienced by non-small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

It is not anticipated that there will be any measurable cost or savings to persons other than small businesses due to this rule amendment. Rule R315-273 is an optional rule and therefore it is unknown how many persons other than small businesses are complying with the rule so it is not possible to determine the cost or savings that might be experienced by persons other than small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under the rule.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

Because this is an amendment to an existing rule and the changes to the rule do not significantly change how aerosol cans are managed under the rule it is not anticipated that the compliance costs for affected persons will change due to the rule amendments.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

It is not anticipated that this rule amendment will have any additional fiscal impact on any businesses that are currently complying with the rule beyond the current costs of compliance. The changes are being made to keep the hazardous waste management program in the State of Utah compatible with the federal program.
Kimberly D. Shelley, Executive Director

6. A) Regulatory Impact Summary Table (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 will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0

Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The head of the Department of Environmental Quality, Kimberly D. Shelley, has reviewed and approved this fiscal analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

19-6-104	19-6-105	19-6-106
40 CFR 271.4		

Incorporations by Reference Information

(If this rule incorporates more than two items by reference, please include additional tables.)

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

	First Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

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

	Second Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until (mm/dd/yyyy)**:**		
B) A public hearing (optional) will be held:		
On (mm/dd/yyyy)**:**	**At** (hh:mm AM/PM)**:**	**At** (place)**:**

10. This rule change MAY become effective on (mm/dd/yyyy)**:**	

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin* and delaying the first possible effective date.			
Agency head or designee, and title:	Douglas J. Hansen, Division Director	**Date** (mm/dd/yyyy)**:**	

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-273. Standards for Universal Waste Management.
R315-273-1. Standards for Universal Waste Management -- Scope.

(a) Rule R315-273 establishes requirements for managing the following:
(1) [~~B~~]batteries as described in Section R315-273-2;
(2) [~~P~~]pesticides as described in Section R315-273-3;
(3) [~~M~~]mercury-containing equipment as described in Section R315-273-4;
(4) [~~L~~]lamps as described in Section R315-273-5;
(5) [~~Antifreeze~~]aerosol cans as described in [~~Subsection~~]Section R315-273-6[~~(a)~~]; and
(6) [~~Aerosol cans~~]antifreeze as described in [~~Subsection~~]Section R315-273-[~~6(b)~~]7.

(b) Rule R315-273 provides an alternative set of management standards in lieu of regulation under Rules R315-260 through R315-266, R315-268, and R315-270. If a waste handler chooses to manage its universal waste under the Rule R315-273, but fails to meet requirements in this rule, the waste handler remains subject to, and shall comply with, [~~all~~]the applicable requirements of Rules R315-260 through R315-266, R315-268, R315-270 and R315-124.

Note: Only wastes that are hazardous, [~~i.e.,~~]meaning wastes that are listed or exhibit one or more characteristics of hazardous waste, are subject to the Rule R315-273 universal waste [~~regulations~~]rules. Compliance with the reduced set of Rule R315-273 requirements is an option that waste handlers may choose for managing their universal wastes, batteries, pesticides, mercury-containing devices, aerosol cans, lamps, and antifreeze. If universal waste handlers wish, they may instead continue to manage these hazardous wastes under the full hazardous waste [~~regulations~~]rules for generators, transporters, and treatment, storage, and disposal facilities.

R315-273-3. Standards for Universal Waste Management -- Applicability-Pesticides.

(a) Pesticides covered under Rule R315-273. The requirements of Rule R315-273 apply to persons managing pesticides, as described in Section R315-273-9, meeting the following conditions, except those listed in Subsection R315-273-3(b):
(1) [~~R~~]recalled pesticides that are:
(i) [~~S~~]stocks of a suspended and canceled pesticide that are part of a voluntary or mandatory recall under FIFRA [~~S~~]section 19(b), including, but not limited to those owned by the registrant responsible for conducting the recall; or
(ii) [~~S~~]stocks of a suspended or cancelled pesticide, or a pesticide that is not in compliance with FIFRA, that are part of a voluntary recall by the registrant.
(2) [~~S~~]stocks of other unused pesticide products that are collected and managed as part of a waste pesticide collection program.

(b) Pesticides not covered under Rule R315-273. The requirements of Rule R315-273 do not apply to persons managing the following pesticides:
(1) [~~R~~]recalled pesticides described in Subsection R315-273-3(a)(1), and unused pesticide products described in Subsection R315-273-3(a)(2), that are managed by farmers in compliance with Section R315-262-70. Section R315-262-70 addresses pesticides disposed of on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label, providing the container is triple rinsed in accordance with Subsection R315-261-7(b)(3);
(2) [~~P~~]pesticides not meeting the conditions set forth in Subsection R315-273-3(a). These pesticides shall be managed in compliance with the hazardous waste [~~regulations~~]rules in Rules R315-260 through R315-266, R315-268, and R315-270, except that aerosol cans as defined in Section R315-273-9 that contain pesticides may be managed as aerosol can universal waste in accordance with Subsections R315-273-13(f) or R315-273-33(f);
(3) [~~P~~]pesticides that are not wastes under Rule R315-261, including those that do not meet the criteria for waste generation in Subsection R315-273-3(c) or those that are not wastes as described in Subsection R315-273-3(d); and
(4) [~~P~~]pesticides that are not hazardous waste. A pesticide is a hazardous waste if it is listed in Sections R315-261-30 through R315-261-35 or if it exhibits one or more of the characteristics identified in Sections R315-261-20 through R315-261-24.

(c) When a pesticide becomes a waste.
(1) A recalled pesticide described in Subsection R315-273-3(a)(1) becomes a waste on the first date on which both of the following conditions apply:
(i) [~~T~~]the generator of the recalled pesticide agrees to participate in the recall; and
(ii) [~~T~~]the person conducting the recall decides to discard, [~~e.g.~~]for example, burn the pesticide for energy recovery.
(2) An unused pesticide product described in Subsection R315-273-3(a)(2) becomes a waste on the date the generator decides to discard it.

(d) Pesticides that are not wastes. The following pesticides are not wastes:
(1) [~~R~~]recalled pesticides described in Subsection R315-273-3(a)(1), [~~provided that~~]if the person conducting the recall:
(i) [~~H~~]has not made a decision to discard, [~~e.g.~~]for example, burn for energy recovery, the pesticide. Until such a decision is made, the pesticide does not meet the definition of ["]solid waste["] under Section R315-261[.]-2; thus the pesticide is not a hazardous waste and is not subject to hazardous waste requirements, including Rule R315-273. This pesticide remains subject to the requirements of

FIFRA; or

(ii) [~~H~~]has made a decision to use a management option that, under Section R315-261-2, does not cause the pesticide to be a solid waste; [~~i.e.,~~]that is, the selected option is use, other than use constituting disposal, or reuse, other than burning for energy recovery, or reclamation. Such a pesticide is not a solid waste and therefore is not a hazardous waste, and is not subject to the hazardous waste requirements including Rule R315-273. This pesticide, including a recalled pesticide that is exported to a foreign destination for use or reuse, remains subject to the requirements of FIFRA.

(2) [~~U~~]unused pesticide products described in Subsection R315-273-3(a)(2), if the generator of the unused pesticide product has not decided to discard, [~~e.g.~~]for example, burn for energy recovery, them. These pesticides remain subject to the requirements of FIFRA.

R315-273-6. Standards for Universal Waste Management -- Applicability-Aerosol Cans.

(a) Aerosol cans covered under Rule R315-273. The requirements of Rule R315-273 apply to persons managing aerosol cans, as described in Section R315-273-9, except those listed in Subsection R315-273-6(b).

(b) Aerosol cans not covered under Rule R315-273. The requirements of Rule R315-273 do not apply to persons managing the following types of aerosol cans:

(1) aerosol cans that are not yet waste under Rule R315-261. Subsection R315-273-6(c) describes when an aerosol can becomes a waste;

(2) aerosol cans that are not hazardous waste. An aerosol can is a hazardous waste if the aerosol can exhibits one or more of the characteristics identified in Sections R315-261-20 through R315-261-24 or the aerosol can contains a substance that is listed in Sections R315-261-30 through R315-261-35; and

(3) Aerosol cans that meet the standard for empty containers under Section R315-261-7.

(c) Generation of waste aerosol cans.

(1) A used aerosol can becomes a waste on the date it is discarded.

(2) An unused aerosol can becomes a waste on the date the handler decides to discard it.

R315-273-[6]7. Standards for Universal Waste Management -- Applicability for Utah Specific Wastes.

(a) Antifreeze.

(1) The requirements of Rule R315-273 apply to persons managing antifreeze, as described in Section R315-273-9, except those listed in Subsection R315-273-6(a)(2).

(2) Antifreeze not covered under Rule R315-273. The requirements of Rule R315-273 do not apply to persons managing the following antifreeze:

(i) [~~A~~]antifreeze, as described in Section R315-273-9,that is not yet a waste under Rule R315-261, including antifreeze that does not meet the criteria for waste generation in Subsection R315-273-6(a)(4).

(ii) [~~A~~]antifreeze, as described in Section R315-273-9 that is not hazardous waste. Antifreeze is a hazardous waste if it exhibits one or more of the characteristics identified in Sections R315-261-20 through R315-261-24.

(3) Generation of waste antifreeze.

(i) Antifreeze becomes a waste on the date it is discarded, [~~e.g.~~]for example, when sent for reclamation.

(ii) Antifreeze becomes a waste on the date the handler decides to discard it.

~~[(b) Aerosol Cans~~

~~(1) The requirements of Rule R315-273 apply to persons managing aerosol cans, as described in Section R315-273-9, except those listed in Subsection R315-273-6(b)(2).~~

~~(2) Aerosol cans not covered under Rule R315-273. The requirements of Rule R315-273 do not apply to persons managing the following aerosol cans:~~

~~(i) Aerosol cans, as described in Section R315-273-9, that are not yet wastes under Rule R315-261, including those that do not meet the criteria for waste generation in subsection R315-273(b)(3).~~

~~(ii) Aerosol cans, as described in Section R315-273-9, that are not hazardous waste. An aerosol can shall be managed as a hazardous waste if the can or its contents exhibit one or more of the characteristics identified in Sections R315-261-20 through 24, or if its contents are listed in Sections R315-261-30 through 35.~~

~~(3) Generation of waste aerosol cans.~~

~~(i) An aerosol can becomes a waste on the date it is discarded or is no longer useable. For purposes of Rule R315-273, an aerosol can is considered to be no longer useable when:~~

~~(A) the can is as empty as proper work practices allow;~~

~~(B) the spray mechanism no longer operates as designed;~~

~~(C) the propellant is spent; or~~

~~(D) the product is no longer used.~~

~~(ii) An unused aerosol can becomes a waste on the date the handler decides to discard it.~~]

R315-273-9. Standards for Universal Waste Management -- Definitions.

(a) "Aerosol can" means [~~a container with a total capacity of no more than 24 ounces of gas under pressure and is used to aerate and dispense any material through a valve in the form of a spray or foam~~]a non-refillable receptacle containing a gas compressed, liquefied or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.

(b) "Ampule" means an airtight vial made of glass, plastic, metal, or any combination of these materials.

(c) "Antifreeze" means [~~an~~]ethylene glycol or propylene glycol including aggregated batches of ethylene glycol or propylene glycol used as a heat transfer medium in an internal combustion engine; heating, ventilating, and air conditioning units; and electronics cooling applications; or used for winterizing equipment[~~based mixture that lowers the freezing point of water and is used as an engine coolant~~].

(d) "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.

(e) "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Subsections R315-273-13(a) and R315-273-13(c) and Subsections R315-273-33(a) and R315-273-33(c). 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.

(f) "Drum-top lamp crusher" means a device attached to a drum or container that mechanically reduces the size of lamps and includes a bag filter followed in series by a HEPA filter and an activated carbon filter. Drum-top crushers are the only devices that can be approved for the use of crushing lamps.

(g) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, [~~(~~]7 U.S.C. 136-136y[~~)~~].

(h) "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.

(i) "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.

(j) "Large Quantity Handler of Universal Waste" means a universal waste handler, as defined in Section R315-273-9 who accumulates 5,000 kilograms or more total of universal waste; batteries, pesticides, mercury-containing equipment, lamps, aerosol cans, or any other universal waste regulated in Rule R315-273, calculated collectively; at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which the 5,000 kilogram limit is met or exceeded.

(k) "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.

(l) "On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, [~~provided that~~]if 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~~]a person but connected by a right-of-way which he controls and to which the public does not have access, are also considered on-site property.

(m) "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:

(1) [~~I~~]is a new animal drug under FFDCA section 201(w)[~~,~~]; or

(2) [~~I~~]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

(3) [~~I~~]is an animal feed under FFDCA section 201(x) that bears or contains any substances described by Subsections R315-273-9(m)(1) or R315-273-9(m)(2)[~~-above~~].

(n) "Small Quantity Handler of Universal Waste" means a universal waste handler, as defined in this Section R315-273-9 who does not accumulate 5,000 kilograms or more of universal waste, batteries, pesticides, mercury-containing equipment, lamps, aerosol cans, or any other universal waste regulated in Rule R315-273, calculated collectively, at any time.

(o) "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).

(p) "Universal Waste" means any of the following hazardous wastes that are subject to the universal waste requirements of Rule R315-273:

(1) [~~B~~]batteries as described in Section R315-273-2;

(2) [~~P~~]pesticides as described in Section R315-273-3;

(3) [~~M~~]mercury-containing equipment as described in Section R315-273-4;

(4) [~~L~~]lamps as described in Section R315-273-5;

(5) [~~Antifreeze~~]aerosol cans as described in [~~Subsection~~]Section R315-273-6[~~(a)~~]; and

(6) [~~Aerosol cans~~]antifreeze as described in [~~Subsection~~]Section R315-273-[~~6(b)~~]7.

(q) "Universal Waste Handler:"

(1) [~~M~~]means:

(i) [~~A~~]a generator, as defined in Section R315-273-9, of universal waste; or

(ii) [~~T~~]the owner or operator of a facility, including [~~all~~]any 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.

(2) [~~D~~]does not mean:

(i) [~~A~~]a person who treats, except under [~~the provisions of~~]Subsections R315-273-13(a) or R315-273-13(c), or R315-273-33(a) or R315-273-33(c), disposes of, or recycles, except under Subsections R315-273-13(f) or R315-273-33(f), universal waste; or

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

(r) "Universal Waste Transfer Facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

(s) "Universal Waste Transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

R315-273-13. Standards for Universal Waste Management, Standards for Small Quantity Handlers of Universal Waste -- Waste Management.

(a) Batteries. A small quantity handler of universal waste shall manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste shall contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container shall be closed, structurally sound, compatible with the contents of the battery, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed, except that cells may be opened to remove electrolyte but shall be immediately closed after removal:

(i) [~~S~~]sorting batteries by type;

(ii) [~~M~~]mixing battery types in one container;

(iii) [~~D~~]discharging batteries so as to remove the electric charge;

(iv) [~~R~~]regenerating used batteries;

(v) [~~D~~]disassembling batteries or battery packs into individual batteries or cells;

(vi) [~~R~~]removing batteries from consumer products; or

(vii) [~~R~~]removing electrolyte from batteries.

(3) A small quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste, [~~e.g.,~~]such as battery pack materials[~~,~~] or discarded consumer products, as a result of the activities listed [~~above~~]in Subsection R315-273-13(a)(2), shall determine whether the electrolyte and[~~/or~~] other solid waste exhibit a characteristic of hazardous waste identified in Sections R315-261-20 through R315-261-24.

(i) If the electrolyte [~~and/~~]or other solid waste exhibit a characteristic of hazardous waste, it is subject to [~~all~~]the applicable requirements of Rules R315-260 through R315-266, R315-268 and R315-270. The handler is considered the generator of the hazardous electrolyte and[~~/or~~] other waste and is subject to Rule R315-262.

(ii) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste rules or regulations.

(b) Pesticides. A small quantity handler of universal waste shall manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides shall be contained in one or more of the following:

(1) [~~A~~]a container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(2) [~~A~~]a container that does not meet the requirements of Subsection R315-273-13(b)(1), [~~provided that~~]if the unacceptable container is overpacked in a container that does meet the requirements of Subsection R315-273-13(b)(1); or

(3) [~~A~~]a tank that meets the requirements of [~~40 CFR~~]Sections R315-265[~~.~~]-190 through R315-265-202, except for [~~40 CFR~~]Subsection R315-265[~~.~~]-197(c) and [~~40 CFR~~]Section R315-265[~~.~~]-200[~~ and 201, 40 CFR 265 is adopted by reference in R315-265~~]; or

(4) [~~A~~]a transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(c) Mercury-containing equipment. A small quantity handler of universal waste shall manage universal waste mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste shall place in a container any universal waste mercury-containing equipment with non-contained elemental mercury or that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container shall be closed, structurally sound, compatible with the contents of the device, shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and shall be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.

(2) A small quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing equipment [~~provided~~]if the handler:

(i) [~~R~~]removes and manages the ampules in a manner designed to prevent breakage of the ampules;

(ii) [~~R~~]removes the ampules only over or in a containment device, [~~e.g.,~~]such as a tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage;

(iii) [~~E~~]ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules from that containment device to a container that [~~meets the requirements of Section R315-262-34~~]is subject to the applicable requirements of Rules R315-260 through R315-270;

(iv) [~~I~~]immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a

container that meets the requirements of [~~Section R315-262-34~~]Rules R315-260 through R315-270;

(v) [~~E~~]ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) [~~E~~]ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) [~~S~~]stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) [~~P~~]packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation;

(3) A small quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment [~~provided~~]if the handler:

(i) [~~H~~]immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment; and

(ii) [~~F~~]follows [~~all~~]the requirements for removing ampules and managing removed ampules under Subsection R315-273-13(c)(2); and

(4)(i) A small quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing shall determine whether the following exhibit a characteristic of hazardous waste identified in Sections R315-261-20 through R315-261-24:

(A) [~~M~~]mercury or clean-up residues resulting from spills or leaks; [~~and/or~~]

(B) [~~O~~]other solid waste generated as a result of the removal of mercury-containing ampules or housings, [~~e.g.,~~]such as the remaining mercury-containing device[~~.~~]; or both.

(ii) If the mercury, residues, [~~and/or~~]other solid waste, or any combination of the three exhibits a characteristic of hazardous waste, it shall be managed in compliance with [~~all~~]the applicable requirements of Rules R315-260 through R315-266, R315-268, and R315-270. The handler is considered the generator of the mercury, residues, [~~and/or~~]other waste, or any combination of the three and shall manage it in compliance with Rule R315-262.

(iii) If the mercury, residues, [~~and/or~~]other solid waste, or any combination of the three is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste rules or regulations.

(d) Lamps. A small quantity handler of universal waste shall manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste shall contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages shall remain closed and shall lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste shall immediately clean up and place in a container any lamp that is broken and shall place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers shall be closed, structurally sound, compatible with the contents of the lamps and shall lack evidence of leakage, spillage or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

(3) A small quantity handler of universal waste may crush universal waste lamps using a drum-top lamp crusher designed specifically for crushing lamps [~~provided that~~]after the small quantity handler submits a drum-top lamp crusher registration application to and receives approval from the Director. The registration application shall demonstrate that the small quantity handler shall operate the drum-top lamp crusher to ensure the following:

(i) [~~T~~]the lamps are crushed in a closed accumulation container as specified by the manufacturer of the drum-top lamp crusher;

(ii) [~~T~~]the lamps are crushed in a controlled manner that prevents the release of mercury vapor or other contaminants in exceedance of the manufacturer's specifications;

(iii) [~~T~~]the drum-top lamp crusher shall have a filtration system consisting of, at a minimum, a bag filter followed in series by a HEPA filter and an activated carbon filter;

(iv) [~~T~~]the drum-top lamp crusher is installed, maintained, and operated in accordance with written procedures developed by the manufacturer of the equipment including specific instructions for the frequency of filter changes;

(v) [~~F~~]filters are either characterized to demonstrate that they are not a hazardous waste or managed as a hazardous waste;

(vi) [~~A~~]a spill clean-up kit is available;

(vii) [~~T~~]the area in which the drum-top crusher is operated is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(viii) [~~A~~]an employee using the drum-top lamp crusher is trained annually on the written operating, safety, personal protection and maintenance procedures of the system;

(ix) [~~A~~]an employee using the drum-top lamp crusher is trained annually in emergency procedures;

(x) [~~A~~]an operating record is kept and consists of the following:

(A) the number and size of lamps crushed per calendar day, per calendar month, and per calendar year;

(B) the schedule for the change out of filters;

(C) date and time of filter change out;

(D) date, type, and time of equipment maintenance;

(E) any occurrence of equipment malfunction; and

(F) procedures for preventing equipment malfunctions.

(4) The operating record shall be maintained for at least three years.

(5) When a drum-top crusher is no longer used or is relocated, the area where the crusher was located shall be decontaminated of [~~all~~]any mercury and other contaminants caused by the use of the drum-top lamp crusher. A report documenting the decontamination steps as well as supporting analytical data demonstrating successful remediation shall be submitted to the Director for approval within 30 days following completion of decontamination.

(6) The small quantity handler shall provide a closure plan along with a detailed written estimate, in current dollars, of the cost of disposing of the drum-top lamp crusher; decontamination of the area surrounding the drum-top lamp crusher, and any analytical costs required to show that decontamination is complete. Drum-top lamp crushers operated by the state or the federal government are exempt from the cost estimate requirement of Subsection R315-273-13(d)(6).

(7) The small quantity handler shall demonstrate financial assurance for the detailed cost estimates determined in Subsection R315-273-13(d)(6) using one of the options in Subsections R315-261-143(a) through R315-261-143(e). Drum-top lamp crushers operated by the state or the federal government are exempt from the financial assurance requirement of Subsection R315-273-13(d)(7).

(8) Crushed universal waste lamps may be managed as universal waste lamps under Rule R315-273 or they may be managed as hazardous waste in accordance with [~~all~~]the applicable requirements of Rules R315-260 through R315-266 and R315-268.

(e) Antifreeze. A small quantity handler of universal waste shall manage universal waste antifreeze in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste antifreeze shall be contained in one or more of the following:

(1) [~~A~~]a container that remains closed, structurally sound, compatible with the antifreeze, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(2) [~~A~~]a container that does not meet the requirements of Subsection R315-273-13(e)(1), [~~provided that~~]if the unacceptable container is overpacked in a container that does meet the requirements of Subsection R315-273-13(e)(1); or

(3) [~~A~~]a tank that meets the requirements of [~~40 CFR~~]Sections R315-265[~~.~~]-190 through R315-265-202, except for [~~40 CFR~~]Subsection R315-265[~~.~~]-197(c) and [~~40 CFR~~]Section R315-265[~~.~~]-200[~~- and 201, 40 CFR 265 is adopted by reference in R315-265~~]; or

(4) [~~A~~]a transport vehicle or vessel that is closed, structurally sound, compatible with the antifreeze, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(f) Aerosol cans. A small quantity handler of universal waste shall manage universal waste aerosol cans in a way that prevents release of any universal waste or component of a universal waste [~~or accelerant~~]to the environment as follows:

(1) [~~A small quantity handler of universal waste shall immediately contain any universal waste aerosol can that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a separate individual container. The individual container shall be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions~~]Universal waste aerosol cans shall be accumulated in a container that is structurally sound, compatible with the contents of the aerosol cans, lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and is protected from sources of heat.

(2) [~~A small quantity handler of universal waste may accumulate universal waste aerosol cans in a specially designated accumulation container provided it is clearly marked for such use. The accumulation container shall be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The universal waste aerosol cans shall be sorted by type and compatibility of contents to ensure that incompatible materials are segregated and managed appropriately in separate accumulation containers~~]Universal waste aerosol cans that show evidence of leakage shall be packaged in a separate closed container or overpacked with absorbents, or immediately punctured and drained in accordance with the requirements of Subsection R315-273-13(f)(4).

(3) A small quantity handler of universal waste may conduct the following activities as long as each individual aerosol can is not breached and remains intact:

(i) sorting aerosol cans by type;

(ii) mixing intact cans in one container; and

(iii) removing actuators to reduce the risk of accidental release.

([~~3~~]4) A small quantity handler of universal waste [~~may puncture universal waste~~]who punctures and drains their aerosol cans [~~to remove and collect the contents of the aerosol can provided the handler~~]shall recycle the empty punctured aerosol cans and meet the following requirements while puncturing and draining universal waste aerosol cans:

(i) [~~Ensures that the universal waste aerosol can is punctured in a manner designed to prevent the release of any universal waste or component of universal waste or accelerant to the environment;~~]Conduct puncturing and draining activities using a device specifically designed to safely puncture aerosol cans and effectively contain the residual contents and any emissions thereof.

(ii) [~~Ensures that the puncturing operations are performed safely by developing and implementing~~]Establish and follow a written procedure detailing how to safely puncture and drain universal waste aerosol cans, including proper assembly, operation and maintenance of the unit, segregation of incompatible wastes, and proper waste management practices to prevent fires or releases; maintain a copy of the manufacturer's specifications and instructions on site; and ensure employees operating the device are trained in the proper procedures.[~~ This procedure shall include:~~

~~(A) the type of equipment to be used to puncture the universal waste aerosol cans safely;~~

~~(B) operation and maintenance of the unit;~~

~~(C) segregation of incompatible wastes;~~

~~(D) proper waste management practices, i.e., ensuring that flammable wastes are stored away from heat or open flames; and~~

~~(E) waste characterization;~~]

(iii) Ensure[~~s that a spill clean-up kit is readily available to immediately clean up spills or leaks of the contents of the universal waste aerosol can which may occur during the can-puncturing operation;~~] that puncturing of the can is done in a manner designed to

prevent fires and to prevent the release of any component of universal waste to the environment. This manner includes, but is not limited to, locating the equipment on a solid, flat surface in a well-ventilated area.

(iv) Immediately transfer[~~s~~] the contents of the universal waste aerosol can[~~,~~] or puncturing device, if applicable, to a container or tank that meets the requirements of Sections R315-262-[~~34;~~]14, R315-262-15, R315-262-16 or R315-262-17.

(v) [~~Ensures that the area in which the universal waste aerosol cans are punctured is well ventilated; and~~]Conduct a hazardous waste determination on the contents of the emptied aerosol can in accordance with Section R315-262-11. Hazardous waste generated as a result of puncturing and draining the aerosol can is subject to the applicable requirements of Rules R315-260 through R315-270. The handler is considered the generator of the hazardous waste and is subject to Rule R315-262.

(vi) [~~Ensures that employees are thoroughly familiar with the procedure for sorting and puncturing universal waste aerosol cans, and proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.~~]If the contents are determined to be nonhazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state, or local solid waste rules or regulations.

(vii) A written procedure shall be in place in the event of a spill or leak and a spill clean-up kit shall be provided. Spills or leaks of the contents of the aerosol cans shall be cleaned up promptly.[

~~(4)(i) A small quantity handler of universal waste who punctures universal waste aerosol cans to remove the contents of the aerosol can, or who generates other solid waste as a result of the activities listed above, shall determine whether the contents of the universal waste aerosol can, residues and/or other solid wastes exhibit a characteristic of hazardous waste identified in Sections R315-261-20 through 24, or are listed as a hazardous waste identified in Sections R315-261-30 through 35.~~

~~(ii) If the contents of the universal waste aerosol can, residues and/or other solid waste exhibit a characteristic of hazardous waste or are listed hazardous wastes, they shall be managed in compliance with all applicable requirements of Rules R315-260 through 266, 268, 270 and 124. The handler is considered the generator of the contents of the universal waste aerosol can, residues, and/or other waste and is subject to the requirements of Rule R315-262. In addition to the Rule R315-262 labeling requirements, the container used to accumulate, store, or transport the hazardous waste contents removed from the punctured universal waste aerosol can shall be labeled with all applicable EPA Hazardous Waste Codes found in Sections R315-261-20 through 24 and Sections R315-261-30 through 35.~~

~~(iii) If the contents of the universal waste aerosol can, residues, and/or other solid waste are not hazardous, the handler may manage the waste in a way that is in compliance with applicable federal, state or local solid waste regulations.~~]

R315-273-14. Standards for Universal Waste Management, Standards for Small Quantity Handlers of Universal Waste -- Labeling[~~/~~] and Marking.

A small quantity handler of universal waste shall label or mark the universal waste to identify the type of universal waste as specified [~~below:~~]in Subsections R315-273-14(a) through R315-273-14(g).

(a) Universal waste batteries, [~~i.e.~~]that is, each battery, or a container in which the batteries are contained, shall be labeled or marked clearly with any one of the following phrases: "Universal Waste-Battery(ies)[~~,~~]", or "Waste Battery(ies)[~~,~~]", or "Used Battery(ies)[~~,~~]".

(b) A container, or multiple container package unit, tank, transport vehicle or vessel in which recalled universal waste pesticides as described in Subsection R315-273-3(a)(1) are contained shall be labeled or marked clearly with:

(1) [~~T~~]the label that was on or accompanied the product as sold or distributed; and

(2) [~~T~~]the words "Universal Waste-Pesticide(s)" or "Waste-Pesticide(s)[~~,~~]".

(c) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in Subsection R315-273-3(a)(2) are contained shall be labeled or marked clearly with:

(1)(i) [~~T~~]the label that was on the product when purchased, if still legible;

(ii) [~~I~~]if using the labels described in Subsection R315-273-14(c)(1)(i) is not feasible, the appropriate label as required under the Department of Transportation regulation 49 CFR part 172;

(iii) [~~I~~]if using the labels described in Subsections R315-273-14(c)(1)(i) and (ii) is not feasible, another label prescribed or designated by the waste pesticide collection program administered or recognized by a state; and

(2) [~~T~~]the words "Universal Waste-Pesticide(s)" or "Waste-Pesticide(s)[~~,~~]".

(d)(1) Universal waste mercury-containing equipment, [~~i.e.~~]that is, each device, or a container in which the equipment is contained, shall be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury Containing Equipment[~~,~~]", "Waste Mercury-Containing Equipment[~~,~~]," or "Used Mercury-Containing Equipment[~~,~~]".

(2) A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury Thermostat(s)[~~,~~]", "Waste Mercury Thermostat(s)[~~,~~]", or "Used Mercury Thermostat(s)[~~,~~]".

(e) Each lamp or a container or package in which such lamps are contained shall be labeled or marked clearly with one of the following phrases: "Universal Waste-Lamp(s)[~~,~~]", or "Waste Lamp(s)[~~,~~]", or "Used Lamp(s)".

(f) A container, tank, or transport vehicle or vessel in which antifreeze is contained shall be labeled or marked clearly with the words "Universal Waste-antifreeze".

(g) Universal waste aerosol cans, [~~i.e.~~]that is, each aerosol can, or a container in which the [~~universal waste~~]aerosol cans are contained[~~ or accumulated~~], shall be labeled or marked clearly with any [~~one~~]of the following phrases: "Universal Waste-Aerosol Can(s)", "Waste Aerosol Can(s)", or "[~~Waste~~]Used Aerosol Can(s)".

R315-273-32. Standards for Universal Waste Management, Standards for Large Quantity Handlers of Universal Waste -- Notification.

(a)(1) Except as provided in Subsections R315-273-32(a)(2) and R315-273-32(a)(3), a large quantity handler of universal waste shall have sent written notification of universal waste management to the Director, and received an EPA Identification Number, before meeting or exceeding the 5,000 kilogram storage limit.

(2) A large quantity handler of universal waste who has already notified the Director of his hazardous waste management activities and has received an EPA Identification Number is not required to renotify under [~~this s~~]Section R315-273-32 except as required in Subsection R315-273-33(d)(3).

(3) A large quantity handler of universal waste who manages recalled universal waste pesticides as described in Subsection R315-273-3(a)(1) and who has sent notification to EPA as required by 40 CFR part 165 is not required to notify for those recalled universal waste pesticides under [~~this s~~]Section R315-273-32.

(b) This notification shall include:

(1) [~~T~~]the universal waste handler's name and mailing address;

(2) [~~T~~]the name and business telephone number of the person at the universal waste handler's site who should be contacted regarding universal waste management activities;

(3) [~~T~~]the address or physical location of the universal waste management activities;

(4) [~~A~~]a list of [~~all~~]the types of universal waste managed by the handler, for example, batteries, pesticides, mercury-containing equipment, lamps, and aerosol cans; and

(5) [~~A~~]a statement indicating that the handler is accumulating more than 5,000 kilograms of universal waste at one time.

R315-273-33. Standards for Universal Waste Management, Standards for Large Quantity Handlers of Universal Waste -- Waste Management.

(a) Batteries. A large quantity handler of universal waste shall manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste shall contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container shall be closed, structurally sound, compatible with the contents of the battery, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed, except that cells may be opened to remove electrolyte but shall be immediately closed after removal:

(i) [~~S~~]sorting batteries by type;

(ii) [~~M~~]mixing battery types in one container;

(iii) [~~D~~]discharging batteries so as to remove the electric charge;

(iv) [~~R~~]regenerating used batteries;

(v) [~~D~~]disassembling batteries or battery packs into individual batteries or cells;

(vi) [~~R~~]removing batteries from consumer products; or

(vii) [~~R~~]removing electrolyte from batteries.

(3) A large quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste, [~~e.g.,~~]such as battery pack materials[~~,~~] or discarded consumer products, as a result of the activities listed [~~above~~]in Subsection R315-273-33(a)(2), shall determine whether the electrolyte and[~~/or~~] other solid waste exhibit a characteristic of hazardous waste identified in Sections R315-261-20 through R315-261-24.

(i) If the electrolyte [~~and/~~]or other solid waste exhibit a characteristic of hazardous waste, it shall be managed in compliance with [~~all~~]the applicable requirements of Rules R315-260 through R315-266, R315-268 and R315-270. The handler is considered the generator of the hazardous electrolyte and[~~/or~~] other waste and is subject to Rule R315-262.

(ii) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste rules or regulations.

(b) Pesticides. A large quantity handler of universal waste shall manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides shall be contained in one or more of the following:

(1) [~~A~~]a container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(2) [~~A~~]a container that does not meet the requirements of Subsection R315-273-33(b)(1), [~~provided that~~]if the unacceptable container is overpacked in a container that does meet the requirements of Subsection R315-273-33(b)(1); or

(3) [~~A~~]a tank that meets the requirements of [~~40 CFR~~]Sections R315-265[~~.~~]-190 through R315-265-202, except for [~~40 CFR~~]Subsection R315-265[~~.~~]-197(c) and [~~40 CFR~~]Section R315-265[~~.~~]-200[~~and 201, 40 CFR 265 is adopted by reference in R315-265~~]; or

(4) [~~A~~]a transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(c) Mercury-containing equipment. A large quantity handler of universal waste shall manage universal waste mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste shall place in a container any universal waste mercury-containing equipment with non-contained elemental mercury or that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container shall be closed, structurally sound, compatible with the contents of the device, shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and shall be reasonably designed to prevent

the escape of mercury into the environment by volatilization or any other means.

(2) A large quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing equipment [~~provided~~]if the handler:

(i) [~~R~~]removes and manages the ampules in a manner designed to prevent breakage of the ampules;

(ii) [~~R~~]removes the ampules only over or in a containment device, [~~e.g.,~~]such as a tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage;

(iii) [~~E~~]ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks of broken ampules from that containment device to a container that [~~meets the requirements of Section R315-262-34~~]is subject to the applicable requirements of Rules R315-260 through R315-270;

(iv) [~~I~~]immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of [~~Section R315-262-34~~]Rules R315-260 through R315-270;

(v) [~~E~~]ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) [~~E~~]ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) [~~S~~]stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) [~~P~~]packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation;

(3) A large quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment [~~provided~~]if the handler:

(i) [~~I~~]immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment; and

(ii) [~~F~~]follows [~~all~~]the requirements for removing ampules and managing removed ampules under Subsection R315-273-33(c)(2); and

(4)(i) A large quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing shall determine whether the following exhibit a characteristic of hazardous waste identified in Sections R315-261-20 through R315-261-24:

(A) [~~M~~]mercury or clean-up residues resulting from spills or leaks[~~, and/or~~];

(B) [~~O~~]other solid waste generated as a result of the removal of mercury-containing ampules or housings, [~~e.g.,~~]such as the remaining mercury-containing device; or both.

(ii) If the mercury, residues, [~~and/or~~]other solid waste, or any combination of the three exhibits a characteristic of hazardous waste, it shall be managed in compliance with [~~all~~]the applicable requirements of Rules R315-260 through R315-266, R315-268 and R315-270. The handler is considered the generator of the mercury, residues, [~~and/or~~]other waste, or any combination of the three and shall manage it in compliance with Rule R315-262.

(iii) If the mercury, residues, [~~and/or~~]other solid waste, or any combination of the three is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste rules or regulations.

(d) Lamps. A large quantity handler of universal waste shall manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste shall contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages shall remain closed and shall lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste shall immediately clean up and place in a container any lamp that is broken and shall place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers shall be closed, structurally sound, compatible with the contents of the lamps and shall lack evidence of leakage, spillage or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

(3) A large quantity handler of universal waste may crush universal waste lamps using a drum-top lamp crusher designed specifically for crushing lamps [~~provided that~~]after the Large quantity handler submits a drum-top lamp crusher registration application to and receives approval from the Director. The registration application shall demonstrate that the large quantity handler shall operate the drum-top lamp crusher to ensure the following:

(i) [~~T~~]the lamps are crushed in a closed accumulation container as specified by the manufacturer of the drum-top lamp crusher;

(ii) [~~T~~]the lamps are crushed in a controlled manner that prevents the release of mercury vapor or other contaminants in exceedance of the manufacturer's specifications;

(iii) [~~T~~]the drum-top lamp crusher shall have a filtration system consisting of, at a [~~miniumum~~]minimum, a bag filter followed in series by a HEPA filter and an activated carbon filter;

(iv) [~~T~~]the drum-top lamp crusher is installed, maintained, and operated in accordance with written procedures developed by the manufacturer of the equipment including specific instructions for the frequency of filter changes;

(v) [~~F~~]filters are either characterized to demonstrate that they are not a hazardous waste or managed as a hazardous waste;

(vi) [~~A~~]a spill clean-up kit is available;

(vii) [~~T~~]the area in which the drum-top crusher is operated is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(viii) [~~T~~]the employee using the drum-top lamp crusher is trained annually on the written operating, safety, personal protection

and maintenance procedures of the system;

(ix) [~~The~~]an employee using the drum-top lamp crusher is trained annually in emergency procedures;

(x) [~~A~~]an operating record is kept and consists of the following:

(A) the number and size of lamps crushed per calendar day, per calendar month, and per calendar year;

(B) the schedule for the change out of filters;

(C) date and time of filter change out;

(D) date, type, and time of equipment maintenance;

(E) any occurrence of equipment malfunction; and

(F) procedures for preventing equipment malfunctions.

(4) The operating record shall be maintained for at least three years.

(5) When a drum-top crusher is no longer used or is relocated, the area where the crusher was located shall be decontaminated of [~~all~~]any mercury and other contaminants caused by the use of the drum-top lamp crusher. A report documenting the decontamination steps as well as supporting analytical data demonstrating successful remediation shall be submitted to the Director for approval within 30 days following completion of decontamination.

(6) The large quantity handler shall provide a closure plan along with a detailed written estimate, in current dollars, of the cost of disposing the drum-top lamp crusher; decontamination of the area surrounding the drum-top lamp crusher, and any analytical costs required to show that decontamination is complete. Drum-top lamp crushers operated by the state or the federal government are exempt from the cost estimate requirement of Subsection R315-273-33(d)(6).

(7) The large quantity handler shall demonstrate financial assurance for the detailed cost estimates determined in Subsection R315-273-33(d)(6) using one of the options in Subsections R315-261-143(a) through R315-261-143(e). Drum-top lamp crushers operated by the state or the federal government are exempt from the financial assurance requirement of Subsection R315-273-33(d)(7).

(8) Crushed universal waste lamps may be managed as universal waste lamps under Rule R315-273 or they may be managed as hazardous waste in accordance with [~~all~~]the applicable requirements of Rules R315-260 through R315-266 and R315-268.

(e) Antifreeze. A large quantity handler of universal waste shall manage universal waste antifreeze in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste antifreeze shall be contained in one or more of the following:

(1) [~~A~~]a container that remains closed, structurally sound, compatible with the antifreeze, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(2) [~~A~~]a container that does not meet the requirements of Subsection R315-273-13(e)(1), [~~provided that~~]if the unacceptable container is overpacked in a container that does meet the requirements of Subsection R315-273-13(e)(1); or

(3) [~~A~~]a tank that meets the requirements of [~~40 CFR~~]Sections R315-265[~~.~~]-190 through R315-265-202, except for [~~40 CFR~~]Subsection R315-265[~~.~~]-197(c) and [~~40 CFR~~]Section R315-265[~~.~~]-200[~~ and 201, 40 CFR 265 is adopted by reference in R315-265~~]; or

(4) [~~A~~]a transport vehicle or vessel that is closed, structurally sound, compatible with the antifreeze, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(f) Aerosol cans. A large quantity handler of universal waste shall manage universal waste aerosol cans in a way that prevents release of any universal waste or component of a universal waste [~~or accelerant~~]to the environment as follows:

(1) [~~A large quantity handler of universal waste shall immediately contain any universal waste aerosol can that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a separate individual container. The individual container shall be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions~~]Universal waste aerosol cans shall be accumulated in a container that is structurally sound, compatible with the contents of the aerosol cans, lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and is protected from sources of heat.

(2) [~~A large quantity handler of universal waste may accumulate universal waste aerosol cans in a specially designated accumulation container provided it is clearly marked for such use. The accumulation container shall be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The universal waste aerosol cans shall be sorted by type and compatibility of contents to ensure that incompatible materials are segregated and managed appropriately in separate accumulation containers~~]Universal waste aerosol cans that show evidence of leakage shall be packaged in a separate closed container or overpacked with absorbents, or immediately punctured and drained in accordance with the requirements of Subsection R315-273-33(f).

(3) A large quantity handler of universal waste may conduct the following activities as long as each individual aerosol can is not breached and remains intact:

(i) sorting aerosol cans by type;

(ii) mixing intact cans in one container; and

(iii) removing actuators to reduce the risk of accidental release.

([~~3~~]4) A large quantity handler of universal waste [~~may~~]who punctures and drains their [~~universal waste~~]aerosol cans [~~to remove and collect the contents of the aerosol can provided the handler~~]shall recycle the empty punctured aerosol cans and meet the following requirements while puncturing and draining universal waste aerosol cans:

(i) [~~Ensures that the universal waste aerosol can is punctured in a manner designed to prevent the release of any universal waste or component of universal waste or accelerant to the environment;~~]Conduct puncturing and draining activities using a device specifically designed to safely puncture aerosol cans and effectively contain the residual contents and any emissions thereof.

(ii) [~~Ensures that the puncturing operations are performed safely by developing and implementing~~]Establish and follow a written procedure detailing how to safely puncture and drain the universal waste aerosol cans, including proper assembly, operation and

maintenance of the unit, segregation of incompatible wastes, and proper waste management practices to prevent fires or releases; maintain a copy of the manufacturer's specifications and instructions on site; and ensure employees operating the device are trained in the proper procedures.[~~This procedure shall include:~~

~~(A) the type of equipment to be used to puncture the universal waste aerosol cans safely;~~

~~(B) operation and maintenance of the unit;~~

~~(C) segregation of incompatible wastes;~~

~~(D) proper waste management practices, i.e., ensuring that flammable wastes are stored away from heat or open flames; and~~

~~(E) waste characterization;~~]

(iii) Ensure[~~s~~] that [~~a spill clean-up kit is readily available to immediately clean up spills or leaks of the contents of the universal waste aerosol can which may occur during the can puncturing operation;~~]puncturing of the can is done in a manner designed to prevent fires and to prevent the release of any component of universal waste to the environment. This manner includes, but is not limited to, locating the equipment on a solid, flat surface in a well-ventilated area.

(iv) Immediately transfer[~~s~~] the contents [~~of~~]from the [~~universal~~]waste aerosol can, or puncturing device, if applicable, to a container or tank that meets the requirements of Sections R315-262-[~~34~~]14, R315-262-15, R315-262-16, or R315-262-17.[~~;~~]

(v) [~~Ensures that the area in which the universal waste aerosol cans are punctured is well ventilated; and~~]Conduct a hazardous waste determination on the contents of the emptied aerosol can in accordance with Section R315-262-11. Any hazardous waste generated as a result of puncturing and draining the aerosol can is subject to the applicable requirements of Rules R315-260 through R315-270. The handler is considered the generator of the hazardous waste and is subject to Rule R315-262.

(vi) [~~Ensures that employees are thoroughly familiar with the procedure for sorting and puncturing universal waste aerosol cans, and proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies~~]If the contents are determined to be nonhazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state, or local solid waste rules or regulations.

(vii) A written procedure shall be in place in the event of a spill or leak and a spill clean-up kit shall be provided. Spills or leaks of the contents of the aerosol cans shall be cleaned up promptly.[

~~(4)(i) A large quantity handler of universal waste who punctures universal waste aerosol cans to remove the contents of the aerosol can, or who generates other solid waste as a result of the activities listed above, shall determine whether the contents of the universal waste aerosol can, residues and/or other solid wastes exhibit a characteristic of hazardous waste identified in Sections R315-261-20 through 24, or are listed as a hazardous waste identified in Sections R315-261-30 through 35.~~

~~(ii) If the contents of the universal waste aerosol can, residues and/or other solid waste exhibit a characteristic of hazardous waste or are listed hazardous wastes, they shall be managed in compliance with all applicable requirements of Rules R315-260 through 266, 268, 270 and 124. The handler is considered the generator of the contents of the universal waste aerosol can, residues, and/or other waste and is subject to the requirements of Rule R315-262. In addition to the Rule R315-262 labeling requirements, the container used to accumulate, store, or transport the hazardous waste contents removed from the punctured universal waste aerosol can shall be labeled with all applicable EPA Hazardous Waste Codes found in Sections R315-261-20 through 24 and Sections R315-261-30 through 35.~~

~~(iii) If the contents of the universal waste aerosol can, residues, and/or other solid waste are not hazardous, the handler may manage the waste in a way that is in compliance with applicable federal, state or local solid waste regulations.~~]

R315-273-34. Standards for Universal Waste Management, Standards for Large Quantity Handlers of Universal Waste -- Labeling[~~/~~] and Marking.

A large quantity handler of universal waste shall label or mark the universal waste to identify the type of universal waste as specified [~~below:~~]in Subsections R315-273-34(a) through R315-273-34(g).

(a) Universal waste batteries, [~~i.e.~~]that is, each battery, or a container or tank in which the batteries are contained, shall be labeled or marked clearly with any one of the following phrases: "Universal Waste-Battery(ies)[~~,~~]", or "Waste Battery(ies)[~~,~~]", or "Used Battery(ies)[~~,~~]".

(b) A container, or multiple container package unit, tank, transport vehicle or vessel in which recalled universal waste pesticides as described in Subsection R315-273-3(a)(1) are contained shall be labeled or marked clearly with:

(1) [~~T~~]the label that was on or accompanied the product as sold or distributed; and

(2) [~~T~~]the words "Universal Waste-Pesticide(s)" or "Waste-Pesticide(s)[~~;~~]".

(c) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in Subsection R315-273-3(a)(2) are contained shall be labeled or marked clearly with:

(1)(i) [~~T~~]the label that was on the product when purchased, if still legible;

(ii) [~~I~~]if using the labels described in Subsection R315-273-34(c)(1)(i) is not feasible, the appropriate label as required under the Department of Transportation regulation 49 CFR part 172;

(iii) [~~I~~]if using the labels described in Subsections R315-273-34(c)(1)(i) and R315-273-34(c)(1)(ii) is not feasible, another label prescribed or designated by the pesticide collection program; and

(2) [~~T~~]the words "Universal Waste-Pesticide(s)" or "Waste-Pesticide(s)[~~,~~]".

(d)(1) Mercury-containing equipment, [~~i.e.~~]that is, each device, or a container in which the equipment is contained, shall be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury Containing Equipment[~~,~~]", "Waste Mercury-Containing Equipment[~~,~~]", or "Used Mercury-Containing Equipment[~~,~~]".

(2) A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury Thermostat(s)[~~,~~]", "Waste Mercury Thermostat(s)[~~,~~]", or "Used Mercury Thermostat(s)[~~,~~]".

(e) Each lamp or a container or package in which such lamps are contained shall be labeled or marked clearly with any one of the following phrases: "Universal Waste-Lamp(s)[~~,~~]", or "Waste Lamp(s)[~~,~~]", or "Used Lamp(s)".

(f) A container, tank, or transport vehicle or vessel in which antifreeze is contained shall be labeled or marked clearly with the words "Universal Waste-antifreeze".

(g) Universal waste aerosol cans, [~~i.e.~~]that is, each aerosol can, or a container in which the [~~universal waste~~]aerosol cans are contained[~~ or accumulated~~], shall be labeled or marked clearly with any one of the following phrases: "Universal Waste-Aerosol Can(s)", [~~or~~]"Waste Aerosol Can(s)", or "Used Aerosol Can(s)".

KEY: hazardous waste, universal waste
Date of Enactment or Last Substantive Amendment: September 14, 2020
Notice of Continuation: January 14, 2021
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is an Executive Order 13771 (82 FR 9339, January 30, 2017) regulatory action because this action is not significant under Executive Order 12866.

Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this state operating permit program will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this action approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state operating permit program, and does not alter the relationship or the distribution of power and responsibilities established in the Act.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

In addition, the state operating permit program is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the state operating permit program does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

This action also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it proposes to approve a state operating permit program.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

In reviewing state submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Executive Order 12898: Federal Actions to Address Environmental

Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this action. In reviewing state operating permit program submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Act. Accordingly, this action merely approves certain state requirements and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operation permits, Reporting and recordkeeping requirements.

Dated: November 19, 2019.

Cathy Stepp,

Regional Administrator, Region 5.

40 CFR part 70 is amended as follows:

PART 70—STATE OPERATING PERMIT PROGRAMS

■ 1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Amend appendix A to part 70 by adding paragraph (d) under Wisconsin to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Wisconsin

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(d) Department of Natural Resources: Title V operating permit program revisions and updates received on March 8, 2017. Wisconsin's Title V program is hereby updated to include these requested changes.

* * * * *

[FR Doc. 2019–26296 Filed 12–6–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 264, 265, 268, 270, and 273

[EPA–HQ–OLEM–2017–0463; FRL–10002–49–OLEM]

RIN 2050–AG92

Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is adding hazardous waste aerosol cans to the universal waste program under the Federal Resource Conservation and Recovery Act (RCRA) regulations. This change will benefit the wide variety of establishments generating and managing hazardous waste aerosol cans, including the retail sector, by providing a clear, protective system for managing discarded aerosol cans. The streamlined universal waste regulations are expected to ease regulatory burdens on retail stores and others that discard hazardous waste aerosol cans; promote the collection and recycling of these cans; and encourage the development of municipal and commercial programs to reduce the quantity of these wastes going to municipal solid waste landfills or combustors.

DATES: This final rule is effective on February 7, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–2017–0463. All documents in the docket are listed on the *http://www.regulations.gov* website. 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 Stanley, Office of Land and Emergency Management (5304P), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 703–308–7285; email address: *stanley.laura@epa,gov*, or Tracy Atagi, Office of Land and Emergency Management (5304P), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 703–308–8672; email address: *atagi.tracy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This final rule will affect persons who generate, transport, treat, recycle, or dispose of hazardous waste aerosol cans, herein referred to as aerosol cans, unless those persons are households or very small quantity generators (VSQGs). Entities potentially affected by this action include over 25,000 industrial facilities in 20 different industries (at the 2-digit North American Industry Classification System (NAICS) code level). An estimated 7,483 of these facilities are large quantity generators (LQG). Most of these industries have relatively few entities that are potentially affected. The two top economic sectors (at the 2-digit NAICS code level) with the largest percentage of potentially affected entities are the retail trade industry (NAICS code 44–45), representing 69% of the affected LQG universe, and manufacturing (NAICS code 31–33), representing 17% of the affected LQG universe. Potentially affected categories and entities include, but are not necessarily limited to:

2 Digit NAICS code	Primary NAICS description	Total affected large quantity generators	Generated tons
44–45	Retail Trade	5,194	303
31–33	Manufacturing	1,238	7,771
48–49	Transportation and Warehousing	168	1,033
62	Health Care and Social Assistance	184	13
81	Other Services (except Public Administration)	169	4
92	Public Administration	113	190
61	Educational Services	116	32
54	Professional, Scientific, and Technical Services	89	16
42	Wholesale Trade	75	511
22	Utilities	40	14
56	Administrative and Support and Waste Management and Remediation Services	51	1,906
	All Other NAICS Codes	46	49
Total		7,483	11,843

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in section V of this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the agency taking?

The Environmental Protection Agency (EPA) is adding hazardous waste aerosol cans to the list of universal wastes regulated under the RCRA regulations. This revision will benefit the wide variety of establishments generating and managing aerosol cans, including the retail sector, by providing a clear, practical system for handling discarded aerosol cans.

C. What is the agency's authority for taking this action?

These regulations are promulgated under the authority of sections 2002(a), 3001, 3002, 3004, and 3006 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 (HSWA), 42 U.S.C. 6922, 6923, 6924, 6925, 6930, and 6937.

D. What are the incremental costs and benefits of this action?

This final action is estimated to result in an annual cost savings of $5.3 million to $47.8 million. Information on the estimated economic impacts of this action is presented in section VIII of this document, as well as in the Regulatory Impact Analysis (RIA) available in the docket for this final action. In addition to cost savings, EPA's analysis shows qualitative benefits to adding aerosol cans to the universal waste program, including improved implementation of and compliance with the hazardous waste program and increased recovery and recycling of aerosol cans.

II. List of Acronyms

CFR Code of Federal Regulations

DOT Department of Transportation
EPA Environmental Protection Agency
E.O. Executive Order
FR Federal Register
LQG Large Quantity Generator
LQHUW Large Quantity Handler of Universal Waste
NAICS North American Industry Classification System
NODA Notice of Data Availability
OMB Office of Management and Budget
RCRA Resource Conservation and Recovery Act
SQG Small Quantity Generator
SQHUW Small Quantity Handler of Universal Waste
TSDF Treatment, Storage and Disposal Facility
VSQG Very Small Quantity Generator

III. Background

A. Summary of Proposal

On March 16, 2018, EPA published the proposal to add aerosol cans to the Federal universal waste program (83 FR 11654). EPA's proposal recognized that inclusion of this common waste stream as universal waste could better ensure that aerosol cans are managed appropriately at the end of their lives, remove these wastes from the municipal waste stream, potentially encourage recycling, and reduce unnecessary burden for generators.

In its proposal, EPA analyzed the factors for inclusion of a waste stream in the universal waste program and took public comment on its conclusions. In addition, EPA defined what materials would qualify as aerosol cans for the purposes of management as universal waste. EPA proposed management standards for handlers of these materials and took public comment on the proposed standards.

In addition to the universal waste management standards that apply to all universal waste handlers, such as labeling and marking, accumulation time limits, employee training, responses to releases, export requirements, and, for large quantity handlers of universal waste, notification and tracking, EPA proposed specific standards that relate to the puncturing and draining of aerosol cans.

EPA proposed that puncturing and draining of aerosol cans be conducted by a commercial device specifically designed to safely puncture aerosol cans and effectively contain the residual contents as well as any emissions from the puncturing and draining activities. In addition, EPA proposed that handlers establish written procedures for safely puncturing and draining universal waste aerosol cans and ensure that employees operating the device be trained in the proper procedures. EPA proposed that puncturing of aerosol cans be done in a manner designed to prevent fires and releases and that any residuals from puncturing cans be transferred to a tank or container, at which point the handler must make a hazardous waste determination on the residuals, as required in 40 CFR 262.11. The proposal also included that written procedures be in place in the event of a spill or release, that a spill clean-up kit be provided, and that any spills or leaks be cleaned up promptly.

In addition to these proposed standards, EPA analyzed the existing state universal waste programs that include aerosol cans and requested comment on including further limitations on puncturing and draining of cans that might contain materials that pose an incompatibility hazard with other materials or establishing further limits on which types of handlers are allowed to puncture and drain aerosol cans within the universal waste program.

EPA has analyzed all the comments received in response to its proposed rule and responds to those comments in this final rule or in the Response to Comment document available in the docket for this rulemaking.

B. Description of Aerosol Cans

Aerosol cans are widely used for dispensing a broad range of products including paints, solvents, pesticides, food and personal care products, and many others. The Household and Commercial Products Association estimates that 3.75 billion aerosol cans were filled in the United States in 2016 for use by commercial and industrial facilities as well as by households.[1]

A typical aerosol can consists of several components, including (but not limited to) the following: (1) The can or container storing both propellant and the product; (2) an actuator or button at the top of the can that is pressed to deliver the product; (3) a valve, which controls delivery or flow of the product; (4) the propellant (a compressed gas or liquefied gas), which provides the pressure in the container to expel or release the product when the actuator is pressed to open the valve; (5) the product itself; and (6) a dip tube, which is connected to the valve to bring the product up through the can to be released when the actuator is pressed.[2]

The can itself is typically a small steel or aluminum container, designed to be hand-held, which is sealed with its contents under pressure. The can's design is intended to prevent unwanted releases of the contents to the environment under normal handling and storage conditions. However, when aerosol cans are mismanaged, particularly when exposed to excessive heat, the resulting increase in internal pressure can reach a point beyond the design strength of the can, thereby causing it to burst and release its contents. At the point of bursting, the contents of the can have been heated to a temperature and pressure far above ambient environmental conditions, causing the contents to rapidly vaporize and be forcefully released. If the propellant or product is ignitable, the contents of the can may readily catch fire as they are released and exposed to atmospheric oxygen, creating a rapidly burning vapor ''fireball.'' In addition, the bottom of the can may detach as a result of a manufacturing defect or an external force, potentially causing the upper part of the can to become a projectile.

Aerosol cans frequently contain flammable propellants such as propane or butane which can cause the aerosol can to demonstrate the hazardous characteristic for ignitability (40 CFR 261.21).[3] In addition, the aerosol can may also be a hazardous waste for other reasons when discarded. More specifically, an aerosol can may contain materials that exhibit hazardous characteristics per 40 CFR part 261, subpart C. Similarly, a discarded aerosol can may also be a P- or U-listed hazardous waste if it contains a commercial chemical product found at 40 CFR 261.33(e) or (f).

C. Current Federal Regulation of Aerosol Cans

1. Regulation of Aerosol Cans Under RCRA

Any person who generates a solid waste, as defined in 40 CFR 261.2, must determine whether the solid waste qualifies as hazardous waste. The waste may be hazardous either because it is listed as a hazardous waste in subpart D of 40 CFR part 261 or because it exhibits one or more of the characteristics of hazardous waste, as provided in subpart C of 40 CFR part 261. As discussed above, aerosol cans are frequently hazardous due to the ignitability characteristic and in some cases may also contain listed waste or

[1] Household and Commercial Products Association, Aerosol Products Survey Shows Strong, Stable Industry, May 2017. *https://www.thehcpa.org/aerosol-products-survey-shows-strong-stable-industry/* retrieved October 21, 2019.

[2] National Aerosol Association, *History of the Aerosol, http://www.nationalaerosol.com/history-of-the-aerosol/,* retrieved December 11, 2017.

[3] University of Vermont, *Paint and Aerosol Safety, http://www.uvm.edu/safety/art/paint-aerosol-safety,* retrieved December 11, 2017.

exhibit other hazardous waste characteristics.[4]

Until this rulemaking goes into effect, many, but not all, generators of aerosol cans identified or listed as a hazardous waste have been subject to the full RCRA Subtitle C hazardous waste management requirements, including all applicable requirements of 40 CFR parts 260 through 268. Depending on their activities, some generators have only to meet the requirements of part 262, including on-site management, pre-transport, and manifesting. Under 40 CFR 262.14, VSQGs, defined as facilities that generate less than or equal to 100 kilograms of hazardous waste in a calendar month, are not subject to the RCRA Subtitle C hazardous waste management standards, provided they send their waste to a municipal solid waste landfill or non-municipal nonhazardous waste facility approved by the state for the management of VSQG wastes and meet other conditions. In addition, households that generate waste aerosol cans are exempt from the Federal hazardous waste management requirements under the household hazardous waste exemption in 40 CFR 261.4(b)(1).[5]

Facilities that treat, store, and/or dispose of hazardous waste aerosol cans are subject to the requirements of 40 CFR part 264 (for permitted facilities) or the requirements of 40 CFR part 265 (for interim status facilities). However, when hazardous waste aerosol cans are recycled, the recycling process itself is not subject to regulation, except as indicated in 40 CFR 261.6(d). EPA has interpreted the current hazardous waste regulations to mean that puncturing and draining an aerosol can, if performed for the purpose of recycling (*e.g.,* for scrap metal recycling), is considered part of the recycling process and is exempt from RCRA permitting requirements under 40 CFR 261.6(c).[6] However, until this rulemaking goes into effect, facilities receiving hazardous waste aerosol cans from off site would require a RCRA permit for storage prior to the recycling activity and the recycling process would be subject to subparts AA and BB of 40 CFR part 264 or 265, or subject to part 267.

2. Regulation Under the Federal Insecticide, Fungicide, and Rodenticide Act

Hazardous waste aerosol cans that contain pesticides are also subject to the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), including compliance with the instructions on the label. In general, the statement on aerosol pesticide product FIFRA labels prohibits the puncturing of the cans. However, in April 2004, EPA issued a determination that puncturing aerosol pesticide containers in the process of recycling aerosol cans is consistent with the purposes of FIFRA. The purpose of the label prohibiting puncturing of pesticide-containing aerosol cans is to protect the ordinary users of pesticides from the hazards of pressurized containers. The hazards associated with recycling aerosol pesticide containers are adequately, and more appropriately, addressed under Federal, state and local laws concerning solid and hazardous wastes and occupational safety and health. Such puncturing is therefore lawful pursuant to FIFRA section 2(ee)(6) provided that the following conditions are met:

- The puncturing of the container is performed by a person who, as a general part of his or her profession, performs recycling and/or disposal activities;
- The puncturing is conducted using a device specifically designed to safely puncture aerosol cans and effectively contain the residual contents and any emissions thereof; and
- The puncturing, waste collection, and disposal, are conducted in compliance with all applicable Federal, state, and local waste (solid and hazardous waste) and occupational safety and health laws and regulations.[7]

D. Retail Strategy and Aerosol Cans

The retail sector as a whole handles a very large number of diverse products, which change over time and may, in many instances, become regulated as hazardous waste under RCRA when discarded. As a result, retailers are required to make hazardous waste determinations for a variety of products being discarded at stores located across the country.

In 2014, EPA published a Notice of Data Availability (NODA) for the Retail Sector as part of the Agency's continuing efforts to better understand concerns from all stakeholders regarding RCRA's applicability to the retail sector, as well as to obtain information and feedback on issues affecting the retail sector (79 FR 8926, February 14, 2014). In the NODA, EPA requested comment on a series of topics related to retail operations, waste management practices, and management of materials that may become hazardous waste when discarded. This specifically included requests for information regarding aerosol cans (*e.g.,* quantity generated, classification, and management options, including handling them as universal waste), since aerosol cans comprise a large percentage of the retail sector's hazardous waste stream. Approximately 35% of NODA commenters specifically suggested that discarded aerosol cans be managed as universal waste.

In response to comments on the Retail Sector NODA, the Agency published the *Strategy for Addressing the Retail Sector under RCRA's Regulatory Framework,* which lays out a cohesive plan to address the unique challenges faced by the retail sector in complying with RCRA regulations while reducing burden and protecting human health and the environment.[8] One of the action items under the Retail Strategy is to explore adding hazardous waste aerosol cans to the Universal Waste Rule. This final rule, which adds aerosol cans to the Federal universal waste program, completes EPA's commitment in the Retail Strategy to explore this option. Further, with this action, EPA has completed all commitments made in the Retail Strategy.

E. Universal Waste Rule

In 1995, EPA promulgated the Universal Waste Rule (60 FR 25492, May 11, 1995) to establish a streamlined hazardous waste management system for widely generated hazardous wastes as a way to encourage environmentally sound collection and proper management of the wastes within the system. Hazardous waste batteries, certain hazardous waste pesticides, mercury-containing equipment, and hazardous waste lamps are already included on the Federal list of universal wastes. The universal waste regulations in 40 CFR part 273 are a set of alternative hazardous waste management standards that operate in lieu of regulation under 40 CFR parts

[4] Aerosol cans that have not been discarded are not solid or hazardous wastes.

[5] Under 40 CFR 261.4(b)(1), ''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).

[6] EPA first explained this interpretation in 1993. *See* U.S. EPA *1993 Regulatory Status of Used Residential And Commercial/Industrial Aerosol Cans,* Memo from Jeff Denit, Acting Director, Office of Solid Waste to John DiFazio, Chemical Specialties Manufacturers Association, October 7, 1993. RO# 11780.

[7] 2004 U.S. EPA *Puncturing of Aerosol Pesticide Products Under FIFRA for the Purpose of Recycling,* Letter from Lois Rossi and William Diamond, Office of Pollution Prevention and Toxic Substances, U.S. EPA, to John A. Wildie, Randolph Air Force Base, April 30, 2004, Docket ID# EPA–HQ–OLEM–2017–0463–0007.

[8] EPA 2016. *Strategy for Addressing the Retail Sector under RCRA's Regulatory Framework.* September 12, 2016. *https://www.epa.gov/hwgenerators/strategy-addressing-retail-sector-under-resource-conservation-and-recovery-acts,* retrieved on January 24, 2018.

260 through 272 for specified hazardous wastes.

Handlers and transporters who generate or manage items designated as a universal waste are subject to the management standards under 40 CFR part 273, rather than the full RCRA Subtitle C regulations. Handlers include both facilities that generate universal waste and facilities that receive universal waste from other universal waste handlers, accumulate the universal waste, and then send the universal waste to another handler, a destination facility, or a foreign destination. Handlers do not include facilities that treat, dispose of, or recycle universal waste except as provided in the universal waste regulations. The regulations distinguish between ''large quantity handlers of universal waste'' (those who handle more than 5,000 kilograms of total universal waste at one time) and ''small quantity handlers of universal waste'' (those who handle 5,000 kilograms or less of universal waste at one time). The 5,000-kilogram accumulation limit applies to the quantity of all universal wastes accumulated. The streamlined standards include requirements for storage, labeling and marking, preparing the waste for shipment off site, employee training, response to releases, and, in the case of large quantity handlers, notification and tracking of universal waste shipments. Transporters of universal waste are also subject to less stringent requirements than the full Subtitle C hazardous waste transportation regulations.

Under the Universal Waste Rule, destination facilities are those facilities that treat, store, dispose, or recycle universal wastes. Universal waste destination facilities are subject to all currently applicable requirements for hazardous waste treatment, storage, and disposal facilities (TSDFs) and must receive a RCRA permit for such activities. Destination facilities that recycle universal waste and that do not store that universal waste prior to recycling in accordance with 40 CFR 261.6(c)(2) may be exempt from permitting under the Federal regulations (see 40 CFR 273.60(b)). Finally, states implementing the universal waste program are authorized to add wastes that are not Federal universal wastes to their lists of universal wastes. Therefore, in some states, aerosol cans are already regulated as a universal waste.

F. State Universal Waste Programs That Include Aerosol Cans

Five states—California, Colorado, New Mexico, Ohio, and Utah—already have universal waste aerosol can programs in place, and Minnesota plans to propose to add aerosol cans to their universal waste regulations in 2019.[9] The universal waste programs in all these states include streamlined management standards similar to 40 CFR part 273 for small and large quantity handlers of universal waste and a one-year accumulation time limit for the aerosol cans. In addition, the five current state universal waste programs set standards for puncturing and draining of aerosol cans by universal waste handlers.

The aerosol can universal waste programs in California, Colorado, New Mexico, Ohio, and Utah allow for puncturing and draining of aerosol cans by universal waste handlers, as long as specific management standards and waste characterization requirements are met. In addition, California does not allow off-site commercial processors[10] to puncture and drain aerosol cans without a permit and requires those handlers that do puncture and drain cans to submit a notification. Guidance in effect in Minnesota at the time of publication of this final rule also allows handlers to puncture and drain their aerosol cans.

IV. Rationale for Including Aerosol Cans in the Universal Waste Rule

A. Factors for Inclusion in the Universal Waste Rule

EPA is adding aerosol cans to the list of universal wastes because this waste meets the factors found at 40 CFR 273.81 that describe hazardous waste appropriate for management under the streamlined universal waste system. Adding aerosol cans to the Universal Waste Rule simplifies handling and disposal of the wastes for generators, while ensuring that universal waste aerosol cans are sent to the appropriate destination facilities, where they will be managed as a hazardous waste with all applicable Subtitle C requirements to ensure protection of human health and the environment. Management as universal waste under the final requirements is also expected to facilitate environmentally sound recycling of the metal used to make the cans.

The universal waste regulations include eight factors to consider in evaluating whether a waste is appropriate for including in the regulations as a universal waste. These factors, codified at 40 CFR 273.81, are to be used to determine whether regulating a particular hazardous waste under the streamlined standards would improve overall management of the waste, and, therefore, whether the waste is a good candidate to be a universal waste. As the Agency noted in the preamble to the final Universal Waste Rule (60 FR 25513), not every factor must be met for a waste to be appropriately regulated under the universal waste system. However, consideration of the weight of evidence should result in a conclusion that regulating a particular hazardous waste under 40 CFR part 273 will improve waste management.

EPA has examined information on aerosol cans, including information submitted in the public comments on the proposed rule and the public comments on the 2014 Retail NODA using the criteria in 40 CFR 273.81.[11] In light of its evaluation of this information, the Agency has determined that on balance, hazardous waste aerosol cans meet the factors in 40 CFR 273.81 warranting inclusion on the Federal list of universal wastes for management under part 273. EPA received numerous comments on the proposed rule agreeing that aerosol cans are appropriate for inclusion in the Universal Waste Rule. EPA believes that adding aerosol cans to the list of universal wastes will make collection and transportation of this waste to an appropriate facility easier, and therefore will help facilitate recycling and reduce the amount of aerosol cans disposed of in municipal landfills. A summary of how the criteria in 40 CFR 273.81 apply to aerosol cans is described below.

1. The Waste, as Generated by a Wide Variety of Generators, Should Be a Listed or Characteristic Hazardous Waste (40 CFR 273.81)(a))

As discussed in section III, aerosol cans frequently demonstrate the hazardous characteristic for ignitability (40 CFR 261.21) due to the nature of the propellant used. In addition, the contents (propellant or product) may also exhibit another hazardous characteristic per 40 CFR part 261, subpart C, and may also be a P- or U-

[9] See supporting document number 0004 in the docket for this rulemaking (EPA–HQ–RCRA–2017–0463). See also Minnesota Pollution Control Agency 2016, *Public Rulemaking Docket, https://www.pca.state.mn.us/sites/default/files/mm-rule1-00.pdf,* retrieved August 21, 2019.

[10] According to California's guidance for their regulations, a ''commercial processor'' is any person that processes aerosol cans in exchange for compensation. Some examples include individuals from another generator's site, registered hazardous waste transporters, operators of hazardous waste treatment, storage and/or disposal facilities, and operators of transportable treatment units.

[11] Public comments on the 2014 Retail NODA can be found in docket number EPA–HQ–RCRA–2012–0426.

listed hazardous waste found at 40 CFR 261.33(e) or (f).

2. The Waste, or Category of Waste, Should Not Be Exclusive to a Particular Industry or Group of Industries, But Generated by a Wide Variety of Establishments (40 CFR 273.81(b))

EPA has documented in the RIA for this final rule that large and small quantity generators managing hazardous waste aerosol cans can be found in 20 different industries (at the 2-digit NAICS code level). Thus, aerosol cans are commonly generated by a wide variety of types of establishments, including retail and commercial businesses, office complexes, very small quantity generators, small businesses, government organizations, as well as large industrial facilities.

3. The Waste Should Be Generated by a Large Number of Generators and Frequently Generated in Relatively Small Quantities (40 CFR 273.81(c))

As documented in the RIA, more than 25,000 large and small quantity generators manage hazardous waste aerosol cans. Quantities generated vary depending on the type of generator and the situations associated with generation. For example, a retail store may determine that large quantities of aerosol cans that can no longer be sold or donated must be discarded as hazardous waste. On the other hand, entities that use aerosol cans in their day-to-day operations may generate small quantities of partially-used hazardous waste aerosol cans on a sporadic basis. Data from the RIA demonstrate that in 2017, LQGs generated an average of 1.6 tons per year each (approximately 3,600 cans).

4. Systems to Be Used for Collecting the Waste (Including Packaging, Marking, and Labeling Practices) Would Ensure Close Stewardship of the Waste (40 CFR 273.81(d))

The baseline universal waste requirements of notification, labeling, training, and response to releases found in 40 CFR part 273, subparts B and C, and the final specific requirements for management of aerosol cans in 40 CFR 273.13 and 40 CFR 273.33, discussed in section V, are designed to ensure close stewardship of the hazardous waste aerosol cans.

5. Risks Posed by the Waste During Accumulation and Transport Should Be Relatively Low Compared to the Risks Posed by Other Hazardous Waste, and Specific Management Standards Would Be Protective of Human Health and the Environment During Accumulation and Transport (40 CFR 273.81(e))

Aerosol cans are designed to contain the products they hold during periods of storage and transportation as they move from the manufacturer to the retailer, and ultimately to the final customer. Because of their design, hazardous waste aerosol cans present a relatively low risk compared to other types of hazardous waste that are not contained as-generated under normal management conditions and the risk posed by intact waste aerosol cans during storage and transport is similar to the risk posed by intact product aerosol cans. Retail and other entities that generate waste aerosol cans are accustomed to safely handling aerosol can products. In addition, the ignitability risk posed during accumulation and transport is addressed by standards set by local fire codes, the Office of Safety and Health Administration, and the Department of Transportation (DOT).[12] These standards include requirements for outer packaging, can design, and general pressure conditions.

Finally, the Agency has determined that the requirements of the universal waste program are effective in mitigating risks posed by hazardous waste aerosol cans. Specifically, the requirements for handlers to accumulate aerosol cans in a container that is structurally sound and compatible with the contents of the aerosol cans will ensure safe management and transport. In addition, the universal waste program requires proper training for employees when handling universal waste, responding to releases, and shipment in accordance with DOT regulations. These requirements will make the risks posed during accumulation and transport low. Additionally, the final specific requirements for management of aerosol cans that are punctured and drained at the handler, described in section V, address the ignitability risk and are designed to help prevent releases. Thus, the specific aerosol can universal waste management standards address the risks posed by hazardous waste aerosol cans.

[12] For example, DOT—49 CFR 173.306 for Shipping of Limited Quantities, Aerosol Cans and 49 CFR 173.115 for Flammable Gas, OSHA—29 CFR 1910.106(d)(6), Flammable Liquids, 2015 NFPA—Chapter 30, Flammable and Combustible Liquids Code, and Chapter 30B, Code for the Manufacture and Storage of Aerosol Products.

6. Regulation of the Waste Under 40 CFR Part 273 Will Increase the Likelihood That the Waste Will Be Diverted From Non-Hazardous Waste Management Systems (*e.g.,* the Municipal Solid Waste Stream) to Recycling, Treatment, or Disposal in Compliance With Subtitle C of RCRA (40 CFR 273.81(f))

Managing hazardous waste aerosol cans under the universal waste program is expected to increase the number of these items collected and to increase the number of aerosol cans being diverted from the non-hazardous waste stream into the hazardous waste stream because it would allow generators, especially those that generate this waste sporadically, to send it to a central consolidation point. Under the Universal Waste Rule, a handler of universal waste can send the universal waste to another handler, where it can be consolidated into a larger shipment for transport to a destination facility. Therefore, under the final rule it will be more economical to send hazardous waste aerosol cans for recycling for recovery of metal values. The final rule will advance the RCRA goal of increased resource conservation and increase proper disposal of hazardous waste, making it less likely that aerosol cans will be sent for improper disposal in municipal landfills or municipal incinerators. In addition, because the streamlined structure of the universal waste regulations makes aerosol can collection programs more economical, hazardous waste aerosol cans that might otherwise be sent to a municipal landfill under a VSQG or household hazardous waste exemption will be more easily collected and consolidated for hazardous waste disposal. This waste will be diverted from the municipal solid waste stream to universal waste management.

7. Regulation of the Waste Under 40 CFR Part 273 Will Improve the Implementation of and Compliance With the Hazardous Waste Regulatory Program (40 CFR 273.81(g))

The structure and requirements of the Universal Waste Rule are well suited to the circumstances of handlers of hazardous waste aerosol cans and their inclusion in the universal waste program will improve compliance with the hazardous waste regulations. In particular, handlers of hazardous waste aerosol cans who are infrequent generators of hazardous waste and who might otherwise be unfamiliar with the more complex Subtitle C management structure, but who generate hazardous waste aerosol cans, will be able to more

easily send this waste for proper management. Therefore, adding aerosol cans to the list of universal wastes would offer a protective hazardous waste management system that is likely to be more accessible, particularly for the retail sector, which can face unique compliance challenges as compared to manufacturing and other ''traditional'' RCRA-regulated sectors.[13]

8. Additional Factor (40 CFR 273.81(h)): States' Experience Under Existing State Universal Waste Programs Indicates That Regulation Under 40 CFR Part 273 Will Improve Management of Aerosol Cans

The factors included in 40 CFR 273.81 are designed to determine whether regulating a particular hazardous waste under the streamlined standards for universal waste would improve the overall management of the waste; 40 CFR 273.81(h) includes other factors as may be appropriate. Under 40 CFR 273.81(h), EPA considered states' experience of already managing aerosol cans under state universal waste programs. As discussed in section III, five states have added aerosol cans to their universal waste programs, and those states' experiences with management of aerosol cans under their respective universal waste programs provides a useful source of information to inform EPA's judgment on whether to add aerosol cans to the national universal waste program.

Information supplied to EPA from officials in those five states indicates that their programs improve the implementation of the hazardous waste program. Specifically, waste management officials from the four states whose programs were operating at the time of the proposed rule have represented to EPA that these programs have been operating well and achieving their objective of facilitating safe management of hazardous waste aerosol cans.[14] In particular, State officials from both California and Colorado stated to EPA that their respective aerosol can universal waste programs have been in effect since 2002 and they have not identified any problems with enforcing compliance with the standards. Accordingly, this information weighs in favor of concluding that management of aerosol cans under the Federal universal waste regulations is likely to be successful.

B. Expected Changes in Management of Aerosol Cans

EPA expects that under this final rule, the number of aerosol cans that are diverted from municipal solid waste landfills and incinerators to recycling or disposal in Subtitle C facilities will increase. Small and large quantity generators are already required to manage their hazardous waste aerosol cans under RCRA Subtitle C. Following implementation of this rule, some of these generators will likely begin managing their aerosol cans as a universal waste, either to save money or to improve implementation of their existing waste management program. One of the streamlined provisions of the Universal Waste Rule allows consolidation of aerosol cans at central locations, which makes it easier for smaller generators to arrange for hazardous waste recycling or disposal of these materials when they are generated. Because the streamlined structure of the universal waste standards makes aerosol can collection programs more economical, hazardous waste aerosol cans that might otherwise be sent to a municipal landfill under a VSQG or household hazardous waste exemption would be more easily collected and consolidated for hazardous waste disposal by those who are interested in managing it this way. EPA intends to encourage individual households and VSQGs to participate in such programs.

In summary, EPA believes that management of hazardous waste aerosol cans will best be implemented through a universal waste approach where handlers are operating within a simple, streamlined management system. The universal waste program addresses the environmental concerns surrounding the management of such wastes, while at the same time putting into place a structure that will allow for and encourage increased collection of aerosol cans for recycling.

V. Discussion of Final Rule

A. Waste Covered by Final Rule

1. Definition of Aerosol Can

a. Discussion of Proposed Rule

EPA proposed that an ''aerosol can'' be defined as an ''intact container in which gas under pressure is used to aerate and dispense any material through a valve in the form of a spray or foam.'' This definition is the same as the definition of aerosol can in the California, Colorado, New Mexico and Utah universal waste programs, with the exception of a twenty-four ounce size limit in Utah's definition of aerosol can. EPA proposed to adopt this definition of aerosol can to be consistent with the existing state programs.

This proposed definition was intended be limited to sealed containers whose intended use is to dispense a material by means of a propellant or compressed gas. Aerosol cans are designed to contain those materials until they are intended for release and to present minimal risk during normal storage and transport. Other types of containers, including compressed gas canisters and propane cylinders, present a greater risk than aerosol cans and would not be included. EPA also requested comment on limiting the definition of aerosol cans to those under twenty-four ounces, consistent with Utah's aerosol can universal waste program.

b. Summary of Comments

Several commenters recommended that EPA model the definition of aerosol can after language used in the DOT regulations in 49 CFR 171.8 and U.N. Model Regulations. An aerosol is defined in 49 CFR 171.8 as an article consisting of any non-refillable receptacle containing a gas compressed, liquefied, or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas. Commenters noted that, in addition to harmonizing the RCRA regulations with DOT requirements, this language would be more inclusive, making it clear that aerosol cans containing products that are not dispensed as a spray or foam, such as aerosol cans that dispense product in the form of paste or powder, may be managed as universal waste. In addition, this definition would address the risk of gas cylinders if managed as universal waste, since those cylinders would not be considered ''non-refillable receptacles'' with a ''self-closing release device'' and therefore not eligible to be managed as universal waste under the alternative wording.

Most commenters supported EPA's proposal to exclude compressed gas cylinders from the definition of universal waste aerosol can, noting that such devices pose a higher risk than aerosol cans pose. Two industry commenters requested that compressed gas cylinders be included as universal waste, with one commenter asserting that ''as long as facilities have procedures in place to safely

[13] EPA 2016. *Strategy for Addressing the Retail Sector under RCRA's Regulatory Framework.* September 12, 2016. *https://www.epa.gov/hwgenerators/strategy-addressing-retail-sector-under-resource-conservation-and-recovery-acts,* retrieved on January 24, 2018.

[14] See supporting document number 0004 in the docket for this rulemaking (EPA–HQ–RCRA–2017–0463).

depressurize these devices, potential risks can be mitigated.'' [15]

Finally, most commenters (including industry, most states, and local government) supported EPA's proposal to not set a specific size limit on aerosol cans. One state association and a few individual states did support limiting the size of aerosol cans to twenty-four ounces.

c. Final Rule Provisions

EPA is finalizing a definition of ''aerosol can'' that is consistent with language in the DOT regulations.[16] In the final rule, aerosol can is defined as a non-refillable receptacle containing a gas compressed, liquefied or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas. Using language from the DOT regulation will help ensure consistency across Federal regulatory programs, avoid unnecessarily narrowing the scope of the rule to aerosol cans that aerate their product, and will not inadvertently include compressed gas cylinders in the definition of aerosol can. Because compressed gas cylinders, unlike aerosol cans, require special procedures to safely depressurize, it would not be appropriate to include them in the final rule. Finally, because the DOT language is more inclusive than the proposed language, it better matches the intent of the proposal to apply to all types of aerosol cans, including cans that dispense product in the form of paste or powder, and would not require states that have already added aerosol cans to their universal waste program to change their regulations.

2. Applicability

a. Discussion of Proposed Rule

The proposed rule excluded from the universal waste requirements those cans that are not yet a waste under 40 CFR part 261 and those cans that are not hazardous waste. In addition, at proposed 40 CFR 273.6(b)(1)–(3), the proposal specifically excluded aerosol cans that have been emptied of their contents (both propellant and product). Aerosol cans that fall under these categories would not be subject to hazardous waste requirements or universal waste requirements.

Finally, the proposed rule also proposed to exclude aerosol cans that show evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. This proposed rule language would mean that hazardous waste aerosol cans that are not intact would continue to be subject to the full hazardous waste standards.

b. Summary of Comments

Several commenters requested that EPA allow leaking and damaged aerosol cans to be managed as universal waste. Commenters point out that the rules for other types of universal wastes (lamps, pesticides, batteries, mercury-containing equipment) allow damaged or leaking items to be managed as universal waste as long as they are in an appropriate container (*e.g.,* overpacked with absorbents). Commenters were concerned that determining whether an aerosol can shows ''evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions'' is a subjective standard that would be confusing to implement. Commenters noted that Colorado allows damaged aerosol cans to be managed as universal waste as long as they are managed in a separate individual container and that Ohio allows damaged aerosol cans to be managed as universal waste as long as they are overpacked with absorbents or immediately punctured to remove the contents of the can.

c. Final Rule Provisions

EPA is finalizing as proposed the language in 40 CFR 273.6(b)(1)–(3). These provisions designate aerosol cans that are not subject to hazardous waste requirements because they are either not solid waste, not hazardous waste, or they met the definition of empty container in 40 CFR 261.7.

However, EPA is not finalizing the proposed language in 40 CFR 273.6(b)(4), which would have barred leaking or damaged aerosol cans from being managed as universal waste, instead leaving such cans subject to 40 CFR part 262 hazardous waste requirements. Rather, EPA is requiring that universal waste aerosol cans that show evidence of leakage must be packaged in a separate closed container or overpacked with absorbents, or immediately punctured and drained in accordance with the aerosol can universal waste requirements. (See 40 CFR 273.13(e)(2) and 40 CFR 273.33(e)(2)).

EPA agrees with those commenters who indicated that such an approach is more consistent with how other universal wastes are regulated and how the states that currently regulate aerosol cans as universal waste operate their programs. In addition, setting specific protective management standards for leaking aerosol cans under the universal waste regulations would ensure the risk from these cans is addressed and that they are ultimately sent to appropriate destination facilities per 40 CFR 273.18 and 40 CFR 273.38 instead of potentially being diverted to municipal waste streams as VSQG waste per the requirements in 40 CFR 262.14. Such an approach is also consistent with DOT requirement that aerosols that are damaged, defective, or leaking to the point where they do not meet applicable design standards be transported in special aerosol salvage drums. See 49 CFR 173.306(k)(2).

3. Comments and Responses Related to ''Emptied'' Aerosol Cans

a. Comment: Empty Aerosol Cans Should be Allowed To Be Managed as Universal Waste

Summary of Comments. Several commenters requested that EPA clarify that handlers should be able to continue to manage their punctured and drained aerosol cans as a universal waste and send them to another handler or destination facility. The proposed § 273.6(b)(3) designated aerosol cans that meet the standard for empty containers under § 261.7 of the chapter as being excluded from universal waste requirements, and the proposed definition for aerosol cans included the requirement that they be ''intact,'' implying that punctured aerosol cans would not meet the definition. Commenters stated that including empty aerosol cans would provide a clear decision process for generators to include all aerosol cans—empty, full, or partially full—for proper handling and disposal as universal waste. However, commenters noted it would not be necessary to require empty aerosol cans to be managed under the universal waste regulations because generators may still want to manage empty aerosol cans as scrap metal for recycling.

EPA Response. EPA agrees that while aerosol cans that meet the standard for empty containers found at 40 CFR 261.7 should not be required to meet the universal waste requirements, they also should not be barred from being managed as universal waste if a handler chooses to do so. Residues in empty containers that meet the requirements of 40 CFR 261.7 are not subject to RCRA hazardous waste requirements. However, a handler is nevertheless allowed under the regulation to manage

[15] See comment number 0088 in the docket for this rulemaking (EPA–HQ–RCRA–2017–0463).

[16] The DOT definition is also similar to the definition used in U.N. Model regulations. EPA chose the DOT version in order to promote consistency between the U.S. Federal regulatory programs.

aerosol cans that meet the empty container standards as universal waste if they would prefer to do so. Likewise, non-hazardous aerosol cans may be managed as universal waste, although they are not required to be managed as such. EPA notes that the final definition of aerosol can is based on the DOT definition and no longer specifies that the cans must be ''intact,'' thus removing a potential source of confusion.

b. Comment: Additional Guidance Needed on How To Determine if an Aerosol Can Meets the Empty Container Standard

Summary of Comments. Several commenters suggested that EPA provide additional guidance on how to determine if an aerosol can meets the empty container standard found at 40 CFR 261.7. One commenter suggested that EPA adopt guidance used by the State of Minnesota which recognizes an aerosol can as ''empty'' when (1) the container contains no compressed ignitable gas propellant or product; (2) all liquid product that can be dispensed through the valve has been; and (3) less than 3% of the product capacity of the container remains. Minnesota's guidance also recognizes that documenting that an aerosol can meets this standard can be impractical and therefore provides that aerosol cans may be assumed empty when both of the following criteria are satisfied: (1) No liquid is felt or heard when the can is shaken by hand; and (2) no gas or liquid is released when the spray/discharge valve is activated and the container is rotated through all directions, and the valve is not observably or known to be clogged.[17] Another commenter suggested that EPA add a provision to 40 CFR 261.7 stating that an aerosol can is empty when it has been punctured and drained. The commenter stated that this provision should apply to cans that hold characteristic or listed wastes.[18]

EPA Response. Under 40 CFR 261.7(b),[19] a container that has held non-acute hazardous waste is ''empty'' if (1) all wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, *e.g.,* pouring, pumping, and aspirating (applicable in all cases), *and* (2) no more than 2.5 centimeters (one inch) of residue remains on the bottom of the container or inner liner, or (3) no more than 3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 119 gallons in size. In addition, a container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric pressure.

In the case of a container that has held an acute hazardous waste listed in 40 CFR 261.31 or 261.33(e), the container is considered empty when it has been triple rinsed or has been cleaned by another method that has been shown in scientific literature, or by tests conducted by the generator to achieve equivalent removal, per 40 CFR 261.7(b)(3). EPA also considers a container that has held an acute hazardous that is a compressed gas to meet the definition of empty when it approaches atmospheric pressure, as defined in 40 CFR 261.7(b)(2).[20] EPA is not aware of a chemical commonly found in aerosol cans that would be listed as an acute hazardous waste, but if such an aerosol can product does exist, it would have to meet the 40 CFR 261.7(b)(2) or (3) standard to be considered ''empty'' under the regulations. The commenter request for a revision to 40 CFR 261.7 that would allow aerosol cans that have held acutely hazardous waste to be disposed of without meeting the current standard in 40 CFR 261.7(b)(3) when punctured and drained is being beyond the scope of this rulemaking.

However, in the case of aerosol cans being recycled, rather than disposed of, aerosol cans that have been punctured and drained prior to recycling are considered exempt scrap metal under 40 CFR 261.6(a)(3)(ii), and therefore all such punctured cans would be exempt from hazardous waste requirements when recycled.

c. Comment: EPA Should Clarify That an Aerosol Can Does Not Need To Be ''Empty'' To Be Exempt Scrap Metal

Summary of Comments. One commenter noted that EPA said in the proposed rule that aerosol containers that meet the definition of empty in 40 CFR 261.7 are not subject to hazardous waste regulation and may be recycled as scrap metal. They found this statement misleading because it implies that the aerosol can must be RCRA empty, per 40 CFR 261.7, to be classified as exempt scrap metal. The commenter stated that an aerosol container does not need to be completely empty or triple rinsed (if it held a P-listed waste) to be classified and recycled as scrap metal. However, it is a good management practice to remove as much of the waste from the aerosol can as possible.

EPA Response. Under 40 CFR 261.1, ''scrap metal'' is defined as bits and pieces of metal parts (*e.g.,* bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (*e.g.,* radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled. Under 40 CFR 261.6(a)(3)(ii), exempt scrap metal is not subject to regulation under parts 262 through 268, part 270, or part 124, and is not subject to the notification requirements of section 3010 of RCRA.

However, an aerosol can that still contains hazardous liquid and/or hazardous compressed gas would not meet the definition of scrap metal and would not be eligible for the scrap metal exemption. As EPA has clearly stated, materials containing significant amounts of liquid cannot be eligible to be exempt scrap metal.[21] Thus while EPA agrees that aerosol cans do not need to be triple rinsed prior to being recycled as scrap metal, they do need to have their contents removed to be considered scrap metal.

d. Comment: Universal Waste Handlers Should Not Be Required To Make a Hazardous Waste Determination on the Emptied Cans

Summary of Comments. One commenter noted that 40 CFR 273.13(e)(3)(v) and 273.33(e)(3)(v) of the proposed rule require that the universal waste handler ''Conduct a hazardous waste determination on the emptied aerosol can and its contents per 40 CFR 262.11.'' While the commenter agreed on the need for a hazardous waste determination to be made on the contents, they stated that requiring it for the emptied cans contradicts prior EPA guidance regarding scrap metal. The proposed rule only allows for puncturing of cans on the condition that the empty punctured aerosol cans be recycled. EPA has previously stated that a formal hazardous waste determination is not required for scrap metal being recycled under 40 CFR 261.6(a)(3)(ii).[22]

[17] See comment number 0086 in the docket for this rulemaking (EPA–HQ–RCRA–2017–0463).

[18] See comment number 0085 in the docket for this rulemaking (EPA–HQ–RCRA–2017–0463).

[19] EPA did not request comment on or otherwise reopen the empty container provisions of 40 CFR 261.7 and comments requesting changes to the empty container regulations are outside the scope of this rule.

[20] EPA first explained this interpretation in 2017. *See* U.S. EPA *2017 RCRA Regulatory Status of Permeation Device,* Memo from Barnes Johnson, Director, Office of Resource Conservation and Recovery to Alex Chaharom, GeNO LLC, February 9, 2017. RO# 14887

[21] EPA 1985 *Definition of Solid Waste Final Rule,* 50 FR 614 at 624–625, January 4, 1985.

[22] EPA 1993 Memorandum from Jeffrey D. Denit, Acting Director, Office of Solid Waste to Gregory L. Crawford. *Regulatory Status of Used Residential And Commercial/Industrial Aerosol Cans,* October

EPA response. EPA agrees with the comment and has removed the language in 40 CFR 273.13(e)(3)(v) and 273.33(e)(3)(v) requiring a waste determination to be made on the emptied aerosol can destined for recycling.

B. Management Requirements for Aerosol Cans

1. Requirements for Small and Large Quantity Handlers

Under the final rule, the existing universal waste requirements currently applicable to small quantity handlers of universal waste (SQHUW) and large quantity handlers of universal waste (LQHUW) are also applicable to handlers of discarded aerosol cans.[23] For both SQHUWs and LQHUWs, these requirements include waste management standards, labeling and marking, accumulation time limits, employee training, responses to releases, requirements related to off-site shipments, and export requirements. LQHUWs are subject to additional notification and tracking requirements. For the labeling requirement, EPA is finalizing in 40 CFR 273.14 and 273.34 that either each aerosol can, or a container in which the aerosol cans are contained, must be labeled or marked clearly with any of the following phrases: ''Universal Waste—Aerosol Can(s),'' ''Waste Aerosol Can(s),'' or ''Used Aerosol Can(s).''

In addition, EPA is finalizing that small and large quantity universal waste handlers must follow certain specific management standards while handling their universal waste aerosol cans. Under the final rule, all handlers must manage their universal waste aerosol cans in a manner designed to prevent releases to the environment. This management includes accumulating universal waste aerosol cans in containers that are structurally sound and compatible with the contents of the can, and show no evidence of leaks, spills, or damage that could cause leaks under reasonably foreseeable conditions. The accumulation requirements in this final rule are similar to the existing accumulation requirements for small and large quantity universal waste handlers for other types of universal waste in 40 CFR 273.13 and 273.33 and are found in new paragraph (e) of each of these sections. Handlers may sort aerosol cans by type and consolidate intact aerosol cans in larger containers, remove actuators to reduce the risk of accidental release, and, under certain conditions, may puncture and drain aerosol cans when the emptied cans are to be recycled, as described below.

Other than the comments on the requirements for puncturing and draining at small and large quantity handlers, which are described below, EPA received few comments on the requirements for small and large quantity universal waste handlers. One state association urged EPA to place limits on the accumulation requirements for universal waste handlers by requiring separation of incompatible wastes because of the wide array of products aerosol cans contain.[24] EPA is finalizing the performance-based standard that handlers must manage their universal waste aerosol cans in a manner that prevents releases, but EPA is not requiring separation of specific types of aerosol cans whose contents may pose an incompatibility risk because EPA expects the intact aerosol cans will ensure the contents of these cans will not mix and therefore will not pose incompatibility risks. In addition, EPA is requiring that universal waste aerosol cans that show evidence of leakage must be packaged in a separate closed container or overpacked with absorbents, or immediately punctured and drained in accordance with the aerosol can universal waste requirements. (See 40 CFR 273.13(e)(2) and 40 CFR 273.33(e)(2)), thus removing the risk of incompatible contents mixing during storage and transport.

A waste management industry commenter suggested EPA require that handlers accumulate universal waste aerosol cans in strong outer packaging that will not be allowed to build pressure, that the contents of the aerosol cans are compatible, and that protective caps are in place or valve stems are removed to prevent the accidental release of the contents of the aerosol cans during storage and handling.[25] EPA is finalizing, as proposed, the performance-based standards that require the aerosol cans to be accumulated in containers that are structurally sound and compatible with the contents of the cans. EPA is not requiring handlers to remove the actuators to reduce the risk of accidental release but is allowing handlers to do so prior to accumulation if they choose.

A state commenter suggested that EPA include more specific safety measures to address the risk of cans bursting when exposed to excessive heat during accumulation, regardless of whether the handler punctures and drains the universal waste aerosol cans.[26] In order to address this risk, EPA added language to 40 CFR 273.13(e)(1) and 40 CFR 273.33(e)(1) to require the universal waste aerosol cans be accumulated in a container that is protected from sources of heat. Sources of heat include, but are not limited to, open flames; lighting; smoking; cutting and welding; hot surfaces; frictional heat; static, electrical, and mechanical sparks; and heat-producing chemical reactions.[27] For example, handlers should not allow smoking or open flames near containers accumulating universal waste aerosol cans. It is the responsibility of the operator to ensure that the containers accumulating universal waste aerosol cans are protected from sources of heat.

2. Requirements on Puncturing and Draining at Small and Large Quantity Handlers

a. Summary of Proposal

EPA proposed specific management standards for the puncturing and draining of aerosol cans at universal waste handlers, similar to the requirements being implemented in states that added aerosol cans to their list of universal waste. EPA proposed that puncturing and draining activities be conducted by a device specifically designed to safely puncture aerosol cans and effectively contain the residual contents and any emissions thereof.

EPA proposed that handlers must establish a written procedure detailing how to safely puncture and drain universal waste aerosol cans (including operation and maintenance of the unit; segregation of incompatible wastes; and proper waste management practices to prevent fires or releases), maintain a copy of the manufacturer's specification and instruction on site, and ensure that employees operating the devices are trained in the proper procedures.

EPA also proposed that the actual puncturing of the cans should be done in a manner designed to prevent fires and to prevent the release of the aerosol can contents to the environment so as to minimize human exposure. This included, but was not limited to,

7, 1993, RO#11782; EPA 1994; Memorandum from to Michael H. Shapiro, Director, Office of Solid Waste, to Michael C. Campbell, *Regulatory Status of Waste Aerosol Cans,* January 1, 1994, RO#11806.

[23] Note that EPA did not ask for comment or otherwise reopen the pre-existing universal waste requirements that will now also apply to universal waste aerosol cans. Comments on the pre-existing universal waste requirements are beyond the scope of this rulemaking.

[24] See comment number 0073 in the docket for this rulemaking (EPA–HQ–RCRA–2017–0463).

[25] See comment number 0063 in the docket for this rulemaking (EPA–HQ–RCRA–2017–0463).

[26] See comment number 0085 in the docket for this rulemaking (EPA–HQ–RCRA–2017–0463).

[27] This list is derived from OSHA's definition of ''sources of ignition'' in 29 CFR 1910.106(h)(7)(i)(*a*).

locating the equipment on a solid, flat surface in a well-ventilated area.

In addition, EPA proposed that the contents from the cans should be immediately transferred from the waste aerosol cans or puncturing device (if applicable), to a container or tank and that the contents are subject to a hazardous waste determination under 40 CFR 262.11. If the contents are hazardous waste, the handler becomes the hazardous waste generator of the hazardous aerosol can contents and must manage those wastes in accordance with applicable RCRA regulations.

The proposed rule also required that a written procedure be in place in the event of a spill or release and a spill clean-up kit must be provided. All spills or leaks of the contents must be cleaned up promptly.

EPA requested comment on establishing further limitations on the puncturing and draining of aerosol cans that may contain wastes incompatible with the puncturing and draining equipment or the contents of other cans being drained. EPA also requested comment on limiting puncturing and draining to handlers that are not commercial processors (*i.e.,* a person that processes aerosol cans received from other entities in exchange for compensation). Such a limitation would be consistent with California's universal waste program. Handlers that are off-site commercial processors could still accept aerosol cans and process the cans by sorting and consolidating them but would be unable to puncture and drain the cans. Under this option, off-site commercial processors that would like to puncture and drain aerosol cans would have to first meet the requirements for a universal waste destination facility (*e.g.,* obtaining a permit for the storage of the hazardous waste aerosol cans prior to recycling).

b. Summary of Comments

The most frequent comment EPA received on puncturing and draining was on limiting handlers from puncturing and draining aerosol cans received from off-site handlers. For example, waste management industry commenters and some state commenters requested that EPA not allow off-site handlers to puncture and drain aerosol cans collected from other handlers unless they first meet the requirements for a universal waste destination facility.[28] On the other hand, an industry commenter and a state commenter requested that EPA not limit which handlers can puncture and drain aerosol cans.[29] Multiple industry commenters requested that, at a minimum, if EPA limits off-site handlers from puncturing and draining, EPA still allow off-site handlers to puncture and drain aerosol cans collected from other handlers in the same company or handlers that are related entities.[30]

EPA also received numerous comments on the specific management standards for the puncturing and draining of aerosol cans at universal waste handlers. EPA received broad comments from industry commenters supporting the proposed standards for the puncturing and draining of aerosol cans as sufficient and arguing that further limitations are not necessary.[31] EPA also received specific suggestions from industry commenters on the management standards. For example, one commenter recommended that EPA should not place additional limitations on puncturing and draining designed to address potential incompatibility concerns because they are not necessary.[32] On the other hand, one state requested that EPA prohibit handlers from puncturing and draining aerosol cans with possible incompatibility with the puncturing and draining equipment or the contents of other cans being drained.[33]

State associations commented that EPA should require puncturing and draining to be conducted in a commercially-manufactured device and not allow handlers to use ''homemade'' devices.[34] A commenter from the waste management industry argued that there is no basis for requiring puncturing and draining to be conducted in a commercial device and pointed out that many companies have designed and operated their own equipment for such purposes based on their engineering expertise.[35]

Commenters also asked for the requirement that puncturing and draining activities be conducted in a device designed to effectively contain the residual contents and emissions to be clarified.[36] Specifically, commenters requested EPA clarify what ''effectively contain'' means in relation to emissions and what constitutes breakthrough.[37] A state association commenter wrote that the only way to ensure the puncturing and draining activities are containing emissions it to implement an air monitoring program or to ensure the devices are equipped with ''end of life'' filters that show when breakthrough is occurring.[38] An industry commenter wrote that a requirement that allows for no breakthrough is not practical, but that handlers can maximize collection of emissions by following manufacturer instructions.[39]

EPA also received comments from state associations urging EPA to require handlers that puncture and drain to establish and follow a written procedure detailing how to safely puncture aerosol cans rather than only require handlers to establish a written procedure as proposed.[40] Commenters also pointed out that it is common practice to operate puncturing and draining devices on spill catchment pallets to aid in capturing accidental leaks or spills and asked EPA to allow this under the final rule.[41]

c. Final Rule Provisions

EPA expects puncturing and draining activities at universal waste handlers will differ from those currently performed by hazardous waste generators. Because handlers receive universal waste from many other handlers, the volume of aerosol cans punctured and drained at a commercial universal waste handler is likely to be much greater than at a typical hazardous waste generator (which can only puncture and drain its own hazardous waste aerosol cans). In addition, under universal waste regulations, handlers may store their universal waste up to a year, which could increase the number of cans punctured and drained at one time if the facility processes the cans in batches. Thus, EPA believes it is appropriate to include performance-

[28] See comment numbers 0063, 0074, 0085, and 0091 in the docket for this rulemaking (EPA–HQ–RCRA–2017–0463).

[29] See comment numbers 0029 and 0080 in the docket for this rulemaking (EPA–HQ–RCRA–2017–0463).

[30] See comment numbers 0077, 0087, and 0093 in the docket for this rulemaking (EPA–HQ–RCRA–2017–0463).

[31] See comment numbers 0075 and 0083 in the docket for this rulemaking (EPA–HQ–RCRA–2017–0463).

[32] See comment number 0087 in the docket for this rulemaking (EPA–HQ–RCRA–2017–0463).

[33] See comment number 0077 in the docket for this rulemaking (EPA–HQ–RCRA–2017–0463).

[34] See comment numbers 0073 and 0085 in the docket for this rulemaking (EPA–HQ–RCRA–2017–0463).

[35] See comment number 0074 in the docket for this rulemaking (EPA–HQ–RCRA–2017–0463).

[36] See comment numbers 0073 and 0085 in the docket for this rulemaking (EPA–HQ–RCRA–2017–0463).

[37] See comment numbers 0001, 0073, and 0085 in the docket for this rulemaking (EPA–HQ–RCRA–2017–0463).

[38] See comment number 0073 in the docket for this rulemaking (EPA–HQ–RCRA–2017–0463).

[39] See comment number 0001 in the docket for this rulemaking (EPA–HQ–RCRA–2017–0463).

[40] See comment numbers 0073 and 0085 in the docket for this rulemaking (EPA–HQ–RCRA–2017–0463).

[41] See comment number 0064 in the docket for this rulemaking (EPA–HQ–RCRA–2017–0463).

based management standards to address the risk of puncturing and draining aerosol cans at universal waste handlers.

Despite the differences between recycling of aerosol cans at hazardous waste generators versus recycling of aerosol cans at universal waste handlers, under the final rule, EPA is not limiting off-site handlers from puncturing and draining aerosol cans collected from other handlers. Based on an observed lack of damage cases from puncturing and draining aerosol cans in the manner described in this rule, it appears that risks posed by universal waste handlers puncturing and draining aerosol cans collected from other handlers is relatively low. EPA has determined that the final management standards for the puncturing and draining of aerosol cans at universal waste handlers at 40 CFR 273.13(e)(4) and 40 CFR 273.33(e)(4) adequately address the low risks. Additionally, the five of the six states that have added aerosol cans to their list of universal wastes allow off-site handlers to puncture and drain aerosol cans collected from other handlers, and EPA is not aware of any damage cases resulting specifically from the puncturing and draining under universal waste in these states.[42] In particular, State officials from Colorado stated to EPA that their respective aerosol can universal waste programs have been in effect for over 15 years, and they have not identified any damage cases associated with puncturing and draining.[43]

As mentioned, EPA is finalizing management standards for the puncturing and draining of aerosol cans at universal waste handlers to increase protections. Under the final rule, puncturing and draining activities must be conducted by a device specifically designed to safely puncture aerosol cans and effectively contain the residual contents and any emissions thereof. EPA is not finalizing that the puncturing and draining activities must be conducted in a commercial device or a commercially-manufactured device and is instead finalizing a performance-based standard. In response to comments, EPA is not limiting universal waste handlers that have designed their own equipment for puncturing and draining and operated it safely from continuing to use that equipment. If a universal waste handler uses specifically custom designed or retrofitted equipment to ensure that the device safely punctures aerosol cans, it should ensure the equipment is designed or retrofitted according to accepted engineering practices based on established codes, standards, published technical reports, or similar peer reviewed documents. Although EPA received comments from the waste management industry arguing that their members have safely designed and operated their own equipment for puncturing and draining aerosol cans, EPA expects most universal waste handlers will choose to purchase commercial devices designed to puncture aerosol cans. Puncturing and draining systems for aerosol cans are available from multiple commercial vendors. These devices generally consist of an enclosed puncturing device that punctures an aerosol can, allowing the contents to be drained into an attached container. In many cases, these containers are 55-gallon drums with a filter made of carbon or similar materials to capture any gases that may escape the 55-gallon drum during the puncturing and draining process.

Manufacturers of aerosol can puncturing and draining devices include instructions for their use.[44] These instructions include operating devices in a well-ventilated area that is free from sparks and ignition sources in order to prevent fires, use of personal protective equipment such as safety goggles, and segregating incompatible products from being drained into the same container. Operators of puncturing and draining devices are also instructed to ensure that the container remains closed, that it does not become overfilled, and that the container or tank storing the contents of the drained aerosol cans is also kept in a well-ventilated area free from sparks or ignition sources.

EPA received multiple comments arguing that the requirement that puncturing and draining activities be conducted in a device designed to effectively contain the residual contents and emissions needs to be clarified.[45] Specifically, commenters requested EPA clarify what ''effectively contain'' means in relation to emissions.[46] The performance of aerosol can puncturing and draining devices will vary by manufacturer and it remains the responsibility of the operator to ensure breakthrough is not occurring. Although commenters pointed out that handlers could ensure devices are equipped with ''end of life'' filters that show when breakthrough is occurring, it is impractical to impose this requirement on all universal waste handlers who use puncturing and draining equipment because the manufacturer's guidance with respect to containing emissions varies across the industry.[47] For example, some manufacturers recommend limiting the number of cans drained per filter while other manufacturers recommend weighing the filter before and during use.[48] Given the variability in the market, it is impractical for EPA to determine a single, appropriate standard for ensuring breakthrough is not occurring. Rather, EPA is finalizing as proposed the performance-based standard that universal waste handlers must use a device designed to safely puncture aerosol cans and effectively contain the residual contents and any emissions thereof. Universal waste handlers can minimize the potential for breakthrough by maintaining the puncturing and draining device and replacing air filters according to the manufacturer's specifications.

Because handlers are responsible for ensuring that the puncturing device is properly draining the contents of the aerosol cans into the drum, EPA is finalizing that handlers must establish and follow a written procedure to ensure that handlers take the necessary precautions to protect human health and the environment while puncturing and draining universal waste aerosol cans. At a minimum, EPA is requiring that the written procedure address the operation and maintenance of the unit, including its proper assembly; segregation of incompatible wastes; and proper waste management practices (*e.g.,* ensuring that ignitable wastes are stored away from heat or open flames). In order to increase protections, EPA is clarifying in the final rule that handlers must follow the written procedure. Additionally, EPA is finalizing that handlers must maintain a copy of the manufacturers' instructions on site and ensure employees operating the device are trained in the proper procedures.

Although some states have issued guidelines for recommending against puncturing and draining certain types of aerosol cans, there is limited publicly

[42] See supporting document number 0004 in the docket for this rulemaking (EPA–HQ–RCRA–2017–0463).

[43] See docket for this rulemaking (EPA–HQ–RCRA–2017–0463).

[44] See supporting document 0003 in the docket for this rulemaking (EPA–HQ–RCRA–2017–0463).

[45] See comment numbers 0073 and 0085 in the docket for this rulemaking (EPA–HQ–RCRA–2017–0463).

[46] See comment numbers 0001, 0073, and 0085 in the docket for this rulemaking (EPA–HQ–RCRA–2017–0463).

[47] See supporting document 0003 in the docket for this rulemaking (EPA–HQ–RCRA–2017–0463).

[48] See comment number 0005 and supporting document 0003 in the docket for this rulemaking (EPA–HQ–RCRA–2017–0463).

available data on the subset of aerosol cans that pose an incompatibility risk. Additionally, since new products enter the market and products are constantly changing, it is not practical to codify a finite list of aerosol cans that pose an incompatibility risk. Therefore, EPA is not providing a list of certain types of aerosol cans that might pose incompatibility issues with puncturing devices or the contents of other aerosol cans that are drained. However, it remains the responsibility of the operator to ensure that the puncturing device does not puncture aerosol cans that are incompatible with its materials or the contents of other aerosol cans that are being drained. Because aerosol cans are consumer products, aerosol cans have labels that identify the products contained within, including any hazardous posed by the contents which can assist handlers in ensuring they have addressed incompatibility issues. As mentioned above, EPA is requiring handlers to establish and follow a written procedure that addresses the operation of the unit, including the segregation of incompatible wastes. The operator can look to state guidance and manufacturer's guidance for information. For example, manufacturers make information available regarding potential incompatibilities between aerosol can propellants and puncturing devices container rubber seals or gaskets.[49]

EPA is also finalizing that the actual puncturing of the cans be done in a manner designed to prevent fires and to prevent the release of the aerosol can contents to the environment so as to minimize human exposure. This manner includes, but is not limited to, locating the equipment on a solid, flat surface in a well-ventilated area. Commenters pointed out that it is common practice to operate puncturing and draining devices on spill catchment pallets to aid in capturing accidental leaks or spills, which is allowed under the final rule if the spill catchment pallet is located on a solid, flat surface.

In addition, EPA is finalizing that the handler must immediately transfer the contents from the waste aerosol can, or the puncturing device (if applicable), to a container or tank and conduct a hazardous waste determination of the contents under 40 CFR 262.11. The handler becomes the generator of any hazardous aerosol can contents and must manage those wastes in accordance with applicable RCRA regulations.

The final rule also requires that a written procedure be in place in the event of a spill or leak and a spill clean-up kit should be provided. All spills or leaks of the contents of the aerosol cans should be cleaned up promptly.

Finally, EPA notes that all puncturing, waste collection, and disposal must be conducted in compliance with all applicable Federal, state and local waste (solid and hazardous waste) and occupational safety and health laws and regulations.

3. Requirements for Transporters

This final rule will not change any of the existing requirements applicable to universal waste transporters. Under 40 CFR 273.9, the definition of a universal waste transporter is a person engaged in the off-site transportation of universal waste by air, rail, highway, or water. Persons meeting the definition of universal waste transporter include those persons who transport universal waste from one universal waste handler to another, to a processor, to a destination facility, or to a foreign destination. These persons are subject to the universal waste transporter requirements of part 273, subpart D. EPA notes that this final rule also will not affect the applicability of shipping requirements under the hazardous waste materials regulations of DOT. Transporters continue to be subject to these requirements, if applicable (*e.g.,* 49 CFR 173.306 for shipping of limited quantities of aerosol cans, or 49 CFR 173.115(l), which sets limits in the definition of ''aerosol'' for the purpose of shipping flammable gas).

4. Requirements for Destination Facilities

This final rule will not change any of the existing requirements applicable to universal waste destination facilities (subpart E of part 273). Under 40 CFR 273.9, the definition of a destination facility is a facility that treats, disposes of, or recycles a particular category of universal waste (except certain activities specified in the regulations at §§ 273.13(a) and (c) and 273.33(a) and (c)).

5. Effect of This Rule on Household Wastes and Very Small Quantity Generators

Adding hazardous waste aerosol cans to the Federal definition of universal wastes would not impose any requirements on households or VSQGs for managing these cans. Household waste continues to be exempt from RCRA Subtitle C regulations under 40 CFR 261.4(b)(1). However, under the Universal Waste Rule provisions, VSQGs may choose to manage their hazardous waste aerosol cans in accordance with either the VSQG regulations under 40 CFR 262.14 or as a universal waste under part 273 (40 CFR 273.8(a)(2)). It should be noted, however, that 40 CFR 273.8(b) will continue to apply. Under this provision, if household or VSQG wastes are mixed with universal waste subject to the requirements of 40 CFR part 273 (*i.e.,* universal waste that is not generated by households or VSQGs), the commingled waste must be handled as universal waste in accordance with part 273. Under this final rule, handlers of universal waste who accumulate 5,000 kilograms or more of this commingled aerosol can waste at any time will be considered large quantity handlers of universal waste and must meet the requirements of that category of universal waste handler.

Hazardous waste aerosol cans that are managed as a universal waste under 40 CFR part 273 will not be required to be included in a facility's determination of hazardous waste generator status (40 CFR 262.13(c)(6)). Therefore, a generator that manages such cans under the requirements for universal waste and does not generate any other hazardous waste will not be subject to other Subtitle C hazardous waste management regulations, such as the hazardous waste generator regulations in part 262. A universal waste handler that meets the definition of a small quantity generator or large quantity generator in 40 CFR 260.10 for its other hazardous waste will be subject to the hazardous waste generator regulations in part 262.

6. Applicability of Land Disposal Restriction Requirements

This final rule does not change the applicability of land disposal restriction (LDR) requirements to universal waste. Under the existing regulations (40 CFR 268.1(f)), universal waste handlers and transporters are exempt from the LDR requirements regarding testing, tracking, and recordkeeping in 40 CFR 268.7, and the storage prohibition in 40 CFR 268.50. EPA is amending 40 CFR 268.1(f) to add aerosol can universal waste for consistency. This final rule also does not change the regulatory status of destination facilities; they remain subject to the full LDR requirements.

VI. Technical Corrections

As part of this rulemaking, EPA is finalizing four technical corrections to the universal waste standards for mercury-containing equipment in 40

[49] See *Compilation of Manufacturer's Guidance on Devices for Puncturing and Draining Aerosol Cans,* December 2017, in the docket for this rulemaking (EPA–HQ–RCRA–2017–0463).

CFR 273.13(c)(2)(iii) and (iv) and 273.33(c)(2)(iii) and (iv). Each of these paragraphs contained a reference to 40 CFR 262.34, which was removed and reserved as part of the November 28, 2016, Hazardous Waste Generator Improvements Rule (81 FR 85732). EPA neglected to update these references as part of its corresponding changes in that rule and is correcting that mistake here. In all four places, EPA proposed revisions to make the regulations refer to 40 CFR 262.16 or 262.17, as applicable. As a result of a comment stating that this revision did not include references to other potentially applicable paragraphs of the hazardous waste generator regulations in part 262, EPA has revised the language and is finalizing language that matches references in §§ 273.13(a) and 273.33(a). The final language states that mercury from broken ampules must be transferred to a container subject to all applicable requirements of 40 CFR parts 260 through 272.

VII. State Authority

A. Applicability of Final Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA hazardous waste program within the state. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized states have 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 EPA promulgated new, more stringent Federal requirements for these pre-HSWA regulations, 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

This final rule will be less stringent than the current Federal program. Because states are not required to adopt less stringent regulations, they will not have to adopt the universal waste regulations for aerosol cans, although EPA encourages them to do so. Some states have already added aerosol cans to the list of universal wastes, and others may do so in the future. If a state's standards for aerosol cans are less stringent than those in the final rule, the state would have to amend its regulations to make them at least equivalent to the Federal standards and pursue authorization.

VIII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *http://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 regulatory action was determined to be not significant and was therefore not submitted to the Office of Management and Budget (OMB) for review. This regulatory action was determined to be not significant for purposed E.O. 12866 review. 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. Details on the estimated cost savings of this final rule can be found in EPA's analysis of the costs and benefits associated with this action.

C. Paperwork Reduction Act (PRA)

The information collection activities in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) documents that the EPA prepared have been assigned EPA ICR number 1597.13 and ICR number 2513.04. You can find a copy of the ICRs in the docket for this rule, and they are briefly summarized here.

Because aerosol cans managed under the final rule are not counted toward a facility's RCRA generator status, respondents will see a reduction in burden. This reduction is because the aerosol cans will not be subject to recordkeeping and reporting requirements as hazardous waste, and the respondent may no longer be subject to hazardous waste generator recordkeeping and reporting requirements, depending on the quantity of hazardous waste they generate (that is not hazardous waste aerosol cans or other universal wastes). The existing universal waste requirements currently applicable to SQHUWs and LQHUWs will also be applicable to handlers of aerosol can universal waste. For both SQHUWs and LQHUWs, these requirements include labeling and marking, employee training, response to releases, and export requirements. LQHUWs are also subject to additional notification and tracking requirements. EPA ICR number 1597.13 focuses on the increased burden to the universal waste program resulting from new facilities becoming universal waste handlers. EPA ICR number 2513.04 focuses on the decrease in burden associated with this regulation.

Respondents/affected entities: The information collection requirements of the final rule affect facilities that handle aerosol can universal waste and vary based on facility generator and handler status.

Respondent's obligation to respond: The recordkeeping and notification requirements are required to obtain a benefit under 40 CFR part 273.

Estimated number of respondents: 970.

Frequency of response: One-time notification for LQHUWs; annual

training requirements for all universal waste handlers; per-shipment costs for labeling (all handlers) and tracking (LQHUWs).

Total estimated burden: EPA estimates the annual burden to respondents to be *a net reduction in burden of* approximately 62,621 hours. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The total estimated annual cost of this rule is a *cost savings* of approximately $2.77 million. This cost savings is composed of approximately $2.65 million in annualized avoided labor costs and $23,000 in avoided capital or operation and 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 in 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

D. 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. 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. As documented in the Regulatory Impact Analysis found in the docket for this final rule, EPA does not expect the rule to result in an adverse impact to a significant number of small entities, since the rule is expected to result in net cost savings for all entities affected by the rule. We have therefore concluded that this action will either relieve regulatory burden or have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

As documented in the Regulatory Impact Analysis found in the docket for this rule, 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.

F. Executive Order 13132: Federalism

As documented in the Regulatory Impact Analysis found in the docket for this rule, this action does not have federalism implications. 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. Because the rule is expected to result in net cost savings, EPA does not expect that it will result in any adverse impacts on tribal entities. 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 the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in the Regulatory Impact Analysis found in the docket for this rule.

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

The 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). The documentation for this decision is contained in the Regulatory Impact Analysis found in the docket for this rule.

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, Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 273

Environmental protection, Hazardous materials transportation, Hazardous waste.

Dated: November 15, 2019.

Andrew R. Wheeler,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations, parts 260, 261, 264, 265, 268, 270, and 273 are amended 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, 6939g, and 6974.

Subpart B—Definitions

■ 2. Section 260.10 is amended by:
■ a. Adding the definition of ''Aerosol can'' in alphabetical order;
■ b. Republishing the introductory text for the definition ''Universal waste'' and revising paragraphs (3) and (4) and adding paragraph (5); and
■ c. In the definition of ''Universal waste handler,'' revising paragraph (2)(i).

The additions and revisions read as follows:

§ 260.10 Definitions.

* * * * *

Aerosol can means a non-refillable receptacle containing a gas compressed, liquefied, or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.

* * * * *

Universal waste means any of the following hazardous wastes that are managed under the universal waste requirements of part 273 of this chapter:

* * * * *

(3) Mercury-containing equipment as described in § 273.4 of this chapter;

(4) Lamps as described in § 273.5 of this chapter; and

(5) Aerosol cans as described in § 273.6 of this chapter.

* * * * *

Universal waste handler:

* * * * *

(2) * * *

(i) A person who treats (except under the provisions of 40 CFR 273.13(a) or (c), or 40 CFR 273.33(a) or (c)), disposes of, or recycles (except under the provisions of 40 CFR 273.13(e) or 40 CFR 273.33(e)) universal waste; or

* * * * *

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.

Subpart A—General

■ 4. Section 261.9 is amended by revising paragraphs (c) and (d) and adding paragraph (e) to read as follows:

§ 261.9 Requirements for Universal Waste.

* * * * *

(c) Mercury-containing equipment as described in § 273.4 of this chapter;

(d) Lamps as described in § 273.5 of this chapter; and

(e) Aerosol cans as described in § 273.6 of this chapter.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 5. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6939g.

Subpart A—General

■ 6. Section 264.1 is amended by revising paragraphs (g)(11)(iii) and (iv) and adding paragraph (g)(11)(v) to read as follows:

§ 264.1 Purpose, scope and applicability.

* * * * *

(g) * * *

(11) * * *

(iii) Mercury-containing equipment as described in § 273.4 of this chapter;

(iv) Lamps as described in § 273.5 of this chapter; and

(v) Aerosol cans as described in § 273.6 of this chapter.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 7. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, 6937, and 6939g.

Subpart A—General

■ 8. Section 265.1 is amended by revising paragraphs (c)(14)(iii) and (iv) and adding paragraph (c)(14)(v) to read as follows:

§ 265.1 Purpose, scope, and applicability.

* * * * *

(c) * * *

(14) * * *

(iii) Mercury-containing equipment as described in § 273.4 of this chapter;

(iv) Lamps as described in § 273.5 of this chapter; and

(v) Aerosol cans as described in § 273.6 of this chapter.

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

■ 9. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

■ 10. Section 268.1 is amended by revising paragraphs (f)(3) and (4) and adding paragraph (f)(5) to read as follows:

§ 268.1 Purpose, scope, and applicability.

* * * * *

(f) * * *

(3) Mercury-containing equipment as described in § 273.4 of this chapter;

(4) Lamps as described in § 273.5 of this chapter; and

(5) Aerosol cans as described in § 273.6 of this chapter.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

■ 11. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

Subpart A—General Information

■ 12. Section 270.1 is amended by revising the section heading and paragraphs (c)(2)(viii)(C) and (D) and adding paragraph (c)(2)(viii)(E) to read as follows:

§ 270.1 Purpose and scope of the regulations in this part.

* * * * *

(c) * * *

(2) * * *

(viii) * * *

(C) Mercury-containing equipment as described in § 273.4 of this chapter;

(D) Lamps as described in § 273.5 of this chapter; and

(E) Aerosol cans as described in § 273.6 of this chapter.

* * * * *

PART 273—STANDARDS FOR UNIVERSAL WASTE MANAGEMENT

■ 13. The authority for part 273 continues to read as follows:

Authority: 42 U.S.C. 6922, 6923, 6924, 6925, 6930, and 6937.

Subpart A—General

■ 14. Section 273.1 is amended by revising paragraphs (a)(3) and (4) and adding paragraph (a)(5) to read as follows:

§ 273.1 Scope.

(a) * * *

(3) Mercury-containing equipment as described in § 273.4;

(4) Lamps as described in § 273.5; and

(5) Aerosol cans as described in § 273.6.

* * * * *

■ 15. Section 273.3 is amended by revising paragraph (b)(2) to read as follows:

§ 273.3 Applicability—pesticides.

* * * * *

(b) * * *

(2) Pesticides not meeting the conditions set forth in paragraph (a) of this section. These pesticides must be managed in compliance with the hazardous waste regulations in 40 CFR parts 260 through 272, except that aerosol cans as defined in § 273.9 that contain pesticides may be managed as aerosol can universal waste under § 273.13(e) or § 273.33(e);

* * * * *

■ 16. Section 273.6 is added to read as follows:

§ 273.6 Applicability—Aerosol cans.

(a) *Aerosol cans covered under this part.* The requirements of this part apply to persons managing aerosol cans, as described in § 273.9, except those listed in paragraph (b) of this section.

(b) *Aerosol cans not covered under this part.* The requirements of this part do not apply to persons managing the following types of aerosol cans:

(1) Aerosol cans that are not yet waste under part 261 of this chapter. Paragraph (c) of this section describes when an aerosol can becomes a waste;

(2) Aerosol cans that are not hazardous waste. An aerosol can is a hazardous waste if the aerosol can exhibits one or more of the characteristics identified in part 261, subpart C, of this chapter or the aerosol can contains a substance that is listed in part 261, subpart D, of this chapter; and

(3) Aerosol cans that meet the standard for empty containers under § 261.7 of this chapter.

(c) *Generation of waste aerosol cans.* (1) A used aerosol can becomes a waste on the date it is discarded.

(2) An unused aerosol can becomes a waste on the date the handler decides to discard it.

■ 17. Section 273.9 is amended by:

■ a. Adding the definition of ''Aerosol can'' in alphabetical order;

■ b. Revising the definitions of ''Large Quantity Handler of Universal Waste'' and ''Small Quantity Handler of Universal Waste'';

■ c. Revising the introductory text and paragraphs (3) and (4) and adding paragraph (5) to the definition of ''Universal Waste'';

■ d. In the definition of ''Pesticide'':

■ i. Redesignating paragraphs (a), (b), and (c) as paragraphs (1), (2), and (3), respectively;

■ ii. In newly redesignated paragraphs (1) and (2), removing the comma and adding a semicolon in its place; and

■ iii. In newly redesignated paragraph (3), removing ''(a) or (b) of this section'' and adding in its place ''(1) or (2)'' of this definition;

■ e. In the definition of ''Universal Waste Handler'':

■ i. Removing ''Waste Handler'' and adding ''waste handler'' in its place;

■ ii. Redesignating paragraphs (a) introductory text, (a)(1) and (2), (b) introductory text, and (b)(1) and (2) as paragraphs (1) introductory text, (1)(i) and (ii), (2) introductory text, and (2)(i) and (ii), respectively; and

■ iii. Revising newly redesignated paragraph (2)(i);

■ f. In the definition of ''Universal Waste Transfer Facility,'' removing ''Waste Transfer Facility'' and adding ''waste transfer facility'' in its place; and

■ g. In the definition of ''Universal Waste Transporter,'' removing ''Waste Transporter'' and adding ''waste transporter'' in its place.

The revisions and additions read as follows:

§ 273.9 Definitions.

Aerosol can means a non-refillable receptacle containing a gas compressed, liquefied, or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.

* * * * *

Large quantity handler of universal waste means a universal waste handler (as defined in this section) who accumulates 5,000 kilograms or more total of universal waste (batteries, pesticides, mercury-containing equipment, lamps, or aerosol cans, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which the 5,000-kilogram limit is met or exceeded.

* * * * *

Small quantity handler of universal waste means a universal waste handler (as defined in this section) who does not accumulate 5,000 kilograms or more of universal waste (batteries, pesticides, mercury-containing equipment, lamps, or aerosol cans, calculated collectively) at any time.

* * * * *

Universal waste means any of the following hazardous wastes that are subject to the universal waste requirements of this part:

* * * * *

(3) Mercury-containing equipment as described in § 273.4;

(4) Lamps as described in § 273.5; and

(5) Aerosol cans as described in § 273.6.

* * * * *

Universal waste handler:

* * * * *

(2) * * *

(i) A person who treats (except under the provisions of § 273.13(a) or (c), or § 273.33(a) or (c)), disposes of, or recycles (except under the provisions of § 273.13(e) or § 273.33(e)) universal waste; or

* * * * *

Subpart B—Standards for Small Quantity Handlers of Universal Waste

■ 18. Section 273.13 is amended by revising paragraphs (c)(2)(iii) and (iv) and adding paragraph (e) to read as follows:

§ 273.13 Waste management.

* * * * *

(c) * * *

(2) * * *

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules from that containment device to a container that is subject to all applicable requirements of 40 CFR parts 260 through 272;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that is subject to all applicable requirements of 40 CFR parts 260 through 272;

* * * * *

(e) *Aerosol cans.* A small quantity handler of universal waste must manage universal waste aerosol cans in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) Universal waste aerosol cans must be accumulated in a container that is structurally sound, compatible with the contents of the aerosol cans, lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and is protected from sources of heat.

(2) Universal waste aerosol cans that show evidence of leakage must be packaged in a separate closed container or overpacked with absorbents, or immediately punctured and drained in accordance with the requirements of paragraph (e)(4) of this section.

(3) A small quantity handler of universal waste may conduct the following activities as long as each individual aerosol can is not breached and remains intact:

(i) Sorting aerosol cans by type;

(ii) Mixing intact cans in one container; and

(iii) Removing actuators to reduce the risk of accidental release; and

(4) A small quantity handler of universal waste who punctures and drains their aerosol cans must recycle the empty punctured aerosol cans and meet the following requirements while puncturing and draining universal waste aerosol cans:

(i) Conduct puncturing and draining activities using a device specifically designed to safely puncture aerosol cans and effectively contain the residual contents and any emissions thereof.

(ii) Establish and follow a written procedure detailing how to safely puncture and drain the universal waste aerosol can (including proper assembly, operation and maintenance of the unit, segregation of incompatible wastes, and proper waste management practices to prevent fires or releases); maintain a copy of the manufacturer's specification and instruction on site; and ensure employees operating the device are trained in the proper procedures.

(iii) Ensure that puncturing of the can is done in a manner designed to prevent fires and to prevent the release of any component of universal waste to the environment. This manner includes, but is not limited to, locating the equipment on a solid, flat surface in a well-ventilated area.

(iv) Immediately transfer the contents from the waste aerosol can or puncturing device, if applicable, to a container or tank that meets the applicable requirements of 40 CFR 262.14, 262.15, 262.16, or 262.17.

(v) Conduct a hazardous waste determination on the contents of the emptied aerosol can per 40 CFR 262.11. Any hazardous waste generated as a result of puncturing and draining the aerosol can is subject to all applicable requirements of 40 CFR parts 260 through 272. The handler is considered the generator of the hazardous waste and is subject to 40 CFR part 262.

(vi) If the contents are determined to be nonhazardous, the handler may manage the waste in any way that is in compliance with applicable Federal, state, or local solid waste regulations.

(vii) A written procedure must be in place in the event of a spill or leak and a spill clean-up kit must be provided. All spills or leaks of the contents of the aerosol cans must be cleaned up promptly.

■ 19. Section 273.14 is amended by adding paragraph (f) to read as follows:

§ 273.14 Labeling/marking.

* * * * *

(f) Universal waste aerosol cans (*i.e.,* each aerosol can), or a container in which the aerosol cans are contained, must be labeled or marked clearly with any of the following phrases: ''Universal Waste—Aerosol Can(s),'' ''Waste Aerosol Can(s),'' or ''Used Aerosol Can(s)''.

Subpart C—Standards for Large Quantity Handlers of Universal Waste

■ 20 Section 273.32 is amended by revising paragraph (b)(4) to read as follows:

§ 273.32 Notification.

* * * * *

(b) * * *

(4) A list of all the types of universal waste managed by the handler (*e.g.,* batteries, pesticides, mercury-containing equipment, lamps, and aerosol cans); and

* * * * *

■ 21. Section 273.33 is amended by revising paragraphs (c)(2)(iii) and (iv) and adding paragraph (e) to read as follows:

§ 273.33 Waste management.

* * * * *

(c) * * *

(2) * * *

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks of broken ampules from that containment device to a container that is subject to all applicable requirements of 40 CFR parts 260 through 272;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container is subject to all applicable requirements of 40 CFR parts 260 through 272;

* * * * *

(e) *Aerosol cans.* A large quantity handler of universal waste must manage universal waste aerosol cans in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) Universal waste aerosol cans must be accumulated in a container that is structurally sound, compatible with the contents of the aerosol cans, lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and is protected from sources of heat.

(2) Universal waste aerosol cans that show evidence of leakage must be packaged in a separate closed container or overpacked with absorbents, or immediately punctured and drained in accordance with the requirements of paragraph (e)(4) of this section.

(3) A large quantity handler of universal waste may conduct the following activities as long as each individual aerosol can is not breached and remains intact:

(i) Sorting aerosol cans by type;

(ii) Mixing intact cans in one container; and

(iii) Removing actuators to reduce the risk of accidental release; and

(4) A large quantity handler of universal waste who punctures and drains their aerosol cans must recycle the empty punctured aerosol cans and meet the following requirements while puncturing and draining universal waste aerosol cans:

(i) Conduct puncturing and draining activities using a device specifically designed to safely puncture aerosol cans and effectively contain the residual contents and any emissions thereof.

(ii) Establish and follow a written procedure detailing how to safely puncture and drain the universal waste aerosol can (including proper assembly, operation and maintenance of the unit, segregation of incompatible wastes, and proper waste management practices to prevent fires or releases); maintain a copy of the manufacturer's specification and instruction on site; and ensure employees operating the device are trained in the proper procedures.

(iii) Ensure that puncturing of the can is done in a manner designed to prevent fires and to prevent the release of any component of universal waste to the environment. This includes, but is not limited to, locating the equipment on a solid, flat surface in a well ventilated area.

(iv) Immediately transfer the contents from the waste aerosol can or puncturing device, if applicable, to a container or tank that meets the applicable requirements of 40 CFR 262.14, 262.15, 262.16, or § 262.17.

(v) Conduct a hazardous waste determination on the contents of the emptied can per 40 CFR 262.11. Any hazardous waste generated as a result of puncturing and draining the aerosol can is subject to all applicable requirements of 40 CFR parts 260 through 272. The handler is considered the generator of the hazardous waste and is subject to 40 CFR part 262.

(vi) If the contents are determined to be nonhazardous, the handler may manage the waste in any way that is in compliance with applicable Federal, state, or local solid waste regulations.

(vii) A written procedure must be in place in the event of a spill or release and a spill clean-up kit must be provided. All spills or leaks of the contents of the aerosol cans must be cleaned up promptly.

■ 22. Section 273.34 is amended by adding paragraph (f) to read as follows:

§ 273.34 Labeling/marking.

* * * * *

(f) Universal waste aerosol cans (*i.e.,* each aerosol can), or a container in which the aerosol cans are contained, must be labeled or marked clearly with any of the following phrases: ''Universal Waste—Aerosol Can(s)'', ''Waste Aerosol Can(s)'', or ''Used Aerosol Can(s)''.

[FR Doc. 2019–25674 Filed 12–6–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10–90; FCC 19–104]

Connect America Fund

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) reviews performance measures established by the Wireline Competition Bureau (WCB), the Wireless Telecommunications Bureau, and the Office of Engineering and Technology (collectively the Bureaus) for recipients of Connect America Fund (CAF) high-cost universal service support to ensure that those standards strike the right balance between ensuring effective use of universal service funds while granting the flexibility providers need given the practicalities of network deployment in varied circumstances.

DATES: Effective January 8, 2020.

FOR FURTHER INFORMATION CONTACT: Suzanne Yelen, Wireline Competition Bureau, (202) 418–7400 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration in WC Docket No. 10–90; FCC 19–104, adopted on October 25, 2019 and released on October 31, 2019. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW, Washington, DC 20554 or at the following internet address: *https://docs.fcc.gov/public/attachments/FCC–19–104A1.pdf*

I. Introduction

1. The Commission has long recognized that ''[a]ll Americans [should] have access to broadband that is capable of enabling the kinds of key applications that drive the Commission's efforts to achieve universal broadband, including education (*e.g.,* distance/online learning), health care (*e.g.,* remote health monitoring), and person-to-person communications (*e.g.,* Voice over internet Protocol (VoIP) or online video chat with loved ones serving overseas).'' To that end, the Commission has invested significant Universal Service Fund support for the deployment of broadband-capable networks in high cost, rural areas.

2. But only fast and responsive networks will allow Americans to fully realize the benefits of connectivity. That is why the Commission requires recipients of universal service support in high cost areas to deploy broadband networks capable of meeting minimum service standards. These standards protect taxpayers' investment and ensure that carriers receiving this support deploy networks that meet the performance standards they promised to deliver to rural consumers. At the same time, the Commission recognizes that each carrier faces unique circumstances, and that one set of prescriptive rules may not make sense for every one of them. To accommodate this practical reality, the Commission's rules provide flexibility, taking into account the operational, technical, and size differences among providers when establishing minimum standards, to ensure that even the smallest rural carriers can meet testing requirements without facing excessive burdens.

3. In the Order on Reconsideration, the Commission reviews performance measures established by the Bureaus for recipients of CAF high-cost universal service support to ensure that those standards strike the right balance between ensuring effective use of universal service funds while granting the flexibility providers need given the practicalities of network deployment in varied circumstances. Several petitions for reconsideration and applications for review of the Performance Measures Order, 83 FR 42052, August 20, 2018, propose changes to these performance measures. Here, the Commission rejects the proposed changes where it finds that the Bureaus' approach strikes the right balance. Where the Commission finds that the Bureaus' approach does not—for example, where it concludes that greater flexibility is warranted than was offered under the Bureaus' original methodology—the Commission adjusts its rules accordingly. Finally, the Commission clarifies the Bureaus' approach where doing so will help resolve stakeholder confusion.

II. Discussion

4. In the Order on Reconsideration, the Commission reexamines each of the described performance measure requirements in this document. As a result, the Commission adopts several modifications. The Commission believes these changes will alleviate concerns expressed by carriers by increasing the time for carriers to meet certain deadlines and further minimizing the costs associated with compliance, yet still ensure that carriers meet their performance obligations. In short, the refinements to the Bureau's approach adopted in the Performance Measures Order will further the overarching goal of the *Performance Measures Order;* namely, to ensure that carriers deliver broadband services with the speed and latency required while providing flexibility to enable carriers of all sizes to choose how to conduct the required performance testing in the manner most appropriate for each individual carrier.

5. Under the Performance *Measures Order,* all high-cost support recipients serving fixed locations must perform speed and latency tests from the customer premises of an active subscriber to a remote test server located at or reached by passing through an FCC-designated internet Exchange Point (IXP). In the *USF/ICC Transformation Order,* 76 FR 73830, November 29, 2011, the Commission decided that speed and latency should be measured on each eligible telecommunications carriers (ETCs) access network from the end-user interface to the nearest internet access point, *i.e.,* the internet gateway, which is the closest peering point between the broadband provider and the public internet for a given consumer connection. Subsequently, in the *CAF Phase II Price Cap Service Obligation Order,* 78 FR 70881, November 27, 2013, WCB stated that latency should be tested to an IXP, defined as occurring in any of ten different U.S. locations, almost all of which are locations used in the MBA program because they are geographically distributed major peering locations. The Bureaus expanded the list to permit testing to six additional metropolitan areas to ensure that most mainland U.S. locations are within 300 miles of an FCC-designated IXP and that all are within approximately 500 air miles of one. Further, the Bureaus permitted providers to use any FCC-

WASTE MANAGEMENT AND RADIATION CONTROL BOARD

Executive Summary

Public Comment -- Proposed Rule Changes

UAC R313-16-290

September 9, 2021

What is the issue before the Board?	Approval from the Board to proceed with formal rulemaking and public comment on proposed changes to R313-16-290 to amend the inspection frequency found in Table I of Subsection R315-16-260(2) for facilities using fluoroscopic or computed tomography units to include veterinary facilities.
What is the historical background or context for this issue?	When the rules were written it was not envisioned that veterinary offices would be using fluoroscopic or computed tomography x-ray units. Because the x-ray units being used by veterinarians at the time were lower power with less scatter than a fluoroscopic or computed tomography x-ray unit, they posed a lower risk to employees and animals if they were operating improperly so the inspection frequency for veterinary offices was set at five years like other facilities using similar equipment. Currently 9 veterinary offices in Utah have installed and are using fluoroscopic or computed tomography units. These units produce more scatter and therefore pose a higher risk. Current rules specify that medical facilities using fluoroscopic or computed tomography units have an inspection frequency of one year due to the higher risk. Th proposed change will amend the inspection frequency found in Table I of Subsection R315-16-260(2) for facilities using fluoroscopic or computed tomography units to include veterinary facilities. In addition to the proposed changes detailed above the Division, at the request of the Governor's Office, is correcting typographical and formatting errors found in the rules. The proposed changes to R313-16-290 follow this Executive Summary.
What is the governing statutory or regulatory citation?	The Board is authorized under Subsection 19-6-104 to make rules that are necessary to implement the provision of the Radiation Control Act. The rule changes also meet existing DEQ and state rulemaking procedures.
Is Board action required?	Yes. Board approval is necessary to begin the formal rulemaking process by filing the appropriate documents with the Office of Administrative Rules for publishing the proposed rule changes in the *Utah State Bulletin* and conducting a public comment period.

What is the Division Director's recommendation?	The Director recommends the Board approve proceeding with formal rulemaking and public comment by publishing in the October 1, 2021, *Utah State Bulletin* the proposed changes to UAC R313-16-290 and conducting a public comment period from October 1 to November 1, 2021.
Where can more information be obtained?	Please contact Tom Ball by email at tball@utah.gov at (801) 536-0251.

State of Utah
Administrative Rule Analysis
Revised June 2021

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New ___; Amendment _X__; Repeal ___; Repeal and Reenact ___		
	Title No. - Rule No. - Section No.	
Utah Admin. Code Ref (R no.):	**R313-16-290**	**Filing ID (Office Use Only)**
Changed to Admin. Code Ref. (R no.):	**R**	

Agency Information

1. Department:	Environmental Quality	
Agency:	Waste Management and Radiation Control	
Room no.:	Second Floor	
Building:	MASOB	
Street address:	195 N. 1950 W.	
City, state and zip:	Salt Lake City, Utah 84116	
Mailing address:	PO Box 144880	
City, state and zip:	Salt Lake City, Utah 84114-4880	
Contact person(s):		
Name:	**Phone:**	**Email:**
Thomas Ball	801-536-0251	tball@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R313-16-290, General Requirements Applicable to the Installation, Registration, Inspection, and Use of Radiation Machines, Inspection of Radiation Machines and Facilities.

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

When the rules were written it was not envisioned that veterinary offices would be using fluoroscopic or computed tomography x-ray units. Because the x-ray units being used at the time were lower power with less scatter, they posed a lower risk to employees and animals if they were operating improperly so the inspection frequency for veterinary offices was set at five years like other facilities using similar equipment. Currently 9 veterinary offices in Utah have installed and are using fluoroscopic or computed tomography units. These units produce more scatter and therefore pose a higher risk. Current rules specify that medical facilities using fluoroscopic or computed tomography units have an inspection frequency of one year due to the higher risk.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

This change will amend the inspection frequency found in Table I of Subsection R315-16-260(2) for facilities using fluoroscopic or computed tomography units to include veterinary facilities. Rule formatting errors have also been corrected.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

It is not anticipated that there will be any cost or savings to the state budget due to this change because the state does not operate a veterinary facility with either a fluoroscopic or computed tomography x-ray unit.

B) Local governments:

It is not anticipated that there will be any cost or savings to local governments due to this change because there no local governments operating veterinary facilities with either a fluoroscopic or computed tomography x-ray unit.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

There are approximately 422 small businesses in Utah providing Veterinary Services (NAICS 541940) and Pet Care (812910). Of these, 177 have registered x-ray units, six of these registered units are computed tomography units. Veterinary facilities with x-ray units that are not computed tomography units are inspected once every five years at a cost of $75.00 which, when divided across the five years is $15.00 per year. Computed tomography units are required to be inspected by a qualified expert once a year. The fee for a qualified expert inspection ranges from $250.00 to $1500.00. A small business that installs a computed tomography unit would see a maximum increased cost of approximately $1485.00 per year.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

There are five non-small businesses in Utah providing Veterinary Services (NAICS 541940). All of them have registered x-ray units and three of these registered units are computed tomography units. Veterinary facilities with x-ray units that are not computed tomography units are inspected once every five years at a cost of $75.00 which, when divided across the five years is $15.00 per year. Computed tomography units are required to be inspected by a qualified expert once a year. The fee for a qualified expert inspection ranges from $250.00 to $1500.00. A non-small business that installs a computed tomography unit would see a maximum increased cost of approximately $1485.00 per year.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

It is not anticipated that there will be any cost or savings to persons other than small businesses, non-small businesses, state, or local government entities due to this change because there are no persons other than small businesses, non-small businesses, state, or local government entities operating veterinary facilities with either a fluoroscopic or computed tomography x-ray unit.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

It is not anticipated that there will be any additional compliance costs for affected persons due to the adoption of this rule other than those mentioned above.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

Due to the increased risk to patients, employees, and the public of unnecessary exposure to radiation from the higher power and potential for increased scatter posed by fluoroscopic or computed tomography x-ray units the Department of Environmental Quality believes that the fiscal impact of this rule change is overcome by the need to protect patients, employees, and the public from over exposure to man-made radiation. By requiring fluoroscopic or computed tomography x-ray units used by veterinarians to be inspected at the same frequency as those used by other medical facilities the Department is safeguarding human health with balanced regulations.
Kimberly D. Shelley, Executive Director

6. A) Regulatory Impact Summary Table (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 will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$8910.00	$8910.00	$8910.00
Non-Small Businesses	$4455.00	$4455.00	$4455.00
Other Persons	$0	$0	$0
Total Fiscal Cost	**$13,365.00**	**$13,365.00**	**$13.365.00**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$(13,365.00)**	**$(13.365.00)**	**$(13,365.00)**

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Environmental Quality, Kimberly D. Shelley, has reviewed and approved this fiscal analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 19-3-104		

Incorporations by Reference Information

(If this rule incorporates more than two items by reference, please include additional tables.)

8. A) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*)**:**	
	First Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

B) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*)**:**	
	Second Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)		
A) Comments will be accepted until (mm/dd/yyyy)**:**		11/01/2021
B) A public hearing (optional) will be held:		
On (mm/dd/yyyy)**:**	**At** (hh:mm AM/PM)**:**	**At** (place)**:**

10. This rule change MAY become effective on (mm/dd/yyyy)**:**	12/13/2021
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin* and delaying the first possible effective date.			
Agency head or designee, and title:		**Date** (mm/dd/yyyy)**:**	

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.
R313-16. General Requirements Applicable to the Installation, Registration, Inspection, and Use of Radiation Machines.

R313-16-290. Inspection of Radiation Machines and Facilities.

(1) Registrants shall assure that radiation machines registered pursuant to Section R313-16-230 are compliant with these rules. Radiation machines, facilities, and radiation safety programs are subject to inspection to assure compliance with these rules and to assist in lowering radiation exposure to as low

as reasonably achievable levels, see Section R313-15-101. Inspections may be performed by representatives of the [~~D~~]director or by independent qualified experts.

(2) Inspections may, at the [~~D~~]director's discretion, be done after the installation of equipment, or after a change in the facility or equipment which might cause a significant change in radiation output or hazards. Inspections may be completed in accordance with the schedule as defined in Table I.

TABLE I

FACILITY TYPE	MAXIMUM TIME BETWEEN INSPECTIONS
Hospital or Radiation Therapy Facility	one year
Medical or Veterinary Facility using Fluoroscopic or Computed Tomography (CT) Units	one year
Medical Facility Using General Radiographic Devices	two years
Chiropractic	two years
Dental	five years
Podiatry	five years
Veterinary	five years
Industrial Facility with High or Very High Radiation Areas Accessible to Individuals	one year
Industrial Facility Using Cabinet X-Ray Units or Units Designed for Other Industrial Purposes	five years
Other	one to five years

(3) The registrant, in a timely manner, shall pay the appropriate inspection fee after completion of the inspection.

(4) Ionizing radiation producing machines which have been officially placed in storage are exempt from inspection fees but are subject to visual verification of their status by representatives of the [~~D~~]director.

KEY: x-rays, inspections
Date of Enactment or Last Substantive Amendment: April 13, 2020
Notice of Continuation: April 8, 2021
Authorizing, and Implemented or Interpreted Law: 19-3-104

WASTE MANAGEMENT AND RADIATION CONTROL BOARD
Executive Summary
Final Adoption of Amendments to Radiation Control Rules UAC R313-19-100, Requirements of General Applicability to Licensing of Radioactive Material
September 9, 2021

What is the issue before the Board?	Board approval for final adoption of the proposed changes to R313-19-100 of the Radiation Control Rules to incorporate changes requested by the Nuclear Regulatory Commission (NRC) to maintain the compatibility of Utah Radiation Control Rules with the federal regulations.
What is the historical background or context for this issue?	The Division of Waste Management and Radiation Control received a comment from the Nuclear Regulatory Commission (NRC) in March of 2021 indicating that they had discovered an incompatibility in our rules. The purpose of this amendment is to correct that incompatibility. Section R313-19-100 incorporates by reference 10 CFR 71.97. This federal regulation requires certain transportation notifications to be submitted to state and federal agencies. Subsections R313-19-100(4)(a)(ii) and (iii) substitute the Director of the Division of Waste Management and Radiation Control for the Directors of two different NRC offices. The NRC commented that the notifications need to be sent to the NRC as well as the state agency and indicated that to remain compatible with the federal program Utah needs to delete Subsections R313-19-100(4)(a)(ii) and (iii). Deleting these two subsections will not impact the Utah radiation control program because the federal regulations already require the notifications to be submitted to the states as well as the federal agencies. At its May 13, 2021 meeting, the Board approved the proposed changes to be filed and published in the *Utah State Bulletin*, initiating formal rulemaking and a public comment period. The proposed rule changes were published in the June 15, 2021 issue of the Bulletin. A copy of the pertinent pages of that issue follows this Executive Summary. The public comment period concluded on July 15, 2021. No comments were received.
What is the governing statutory or regulatory citation?	The Board is authorized under Subsection 19-3-104(4) 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 19-3-103.1(1)(a) to make rules necessary to implement the Radiation Control Act. The proposed rule changes also meet existing DEQ and state rulemaking procedures.
Is Board action required?	Yes. Board action is required for final adoption of the rule changes published in the *Utah State Bulletin* and to set an effective date of September 13, 2021.

What is the Division Director's recommendation?	The Director recommends that the Board adopt the rule changes published in the June 15, 2021 issue of the *Utah State Bulletin* and set an effective date of September 13, 2021.
Where can more information be obtained?	For questions or additional information, please contact Tom Ball by email at tball@utah.gov or by phone at (801) 536-0251.

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed May 15, 2021, 12:00 a.m. through June 01, 2021, 11:59 p.m.

Number 2021-12
June 15, 2021

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 801-957-7110. 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

Utah state bulletin.
Semimonthly.
1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.
I. Utah. Office of Administrative Rules.

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[~~e~~]Executive [~~d~~]Director. Otherwise, the person making the determination to change from one security level to another, shall notify the [~~e~~]Executive [~~d~~]Director as soon as practicable after the decision is made.

(3) The [~~e~~]Executive [~~d~~]Director shall notify the members of the [~~b~~]Board when the security level is changed. Any member of the [~~b~~]Board may request a meeting of the full [~~b~~]Board to examine further the decision to move to higher security levels. The Board may lower or raise the security level by a majority vote of the members present [~~forming a quorum of the Board~~]at the meeting. [~~The Commander~~]Capitol Hill security personnel may also reduce the security level depending on the security information received.

(4) The [~~b~~]Board and Capitol Hill security personnel, while using magnetometers in Capitol Hill [~~f~~]Facilities [~~under the authority of the board, shall not impact or infringe upon the rights of persons to keep and bear arms in accordance with Utah Constitution Article I, Section 6, and Title 76, Chapter 10, Part 5. A person carrying a concealed weapon by permit may be asked to show a valid, current concealed weapons permit before being allowed to enter the facility.~~]shall not impact or infringe upon the rights of persons to keep and bear arms in accordance with Utah Constitution Article I, Section 6, Title 53, Chapter 5, Part 7 and Title 76, Chapter 10, Part 5. A person carrying a concealed firearm may be reasonably questioned by Capitol Hill security personnel as to facts relevant to the lawfulness of the person's carrying of a concealed firearm before being allowed to enter Capitol Hill Facilities with a concealed firearm.

KEY: public buildings, state buildings, facilities use
Date of Enactment or Last Substantive Amendment: 2021[~~May 30, 2002~~]
Notice of Continuation: May 2, 2017
Authorizing, and Implemented or Interpreted Law: 63C-9-301(3)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R313-19-100**	**Filing No. 53543**

Agency Information

1. Department:	Environmental Quality	
Agency:	Waste Management and Radiation Control, Radiation	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state:	Salt Lake City, UT	
Mailing address:	PO Box 144880	
City, state, zip:	Salt Lake City, UT 84114-4880	
Contact person(s):		
Name:	**Phone:**	**Email:**
Thomas Ball	801-536-0251	tball@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

R313-19-100. Transportation

3. Purpose of the new rule or reason for the change:

The Division of Waste Management and Radiation Control (Division) received a comment from the Nuclear Regulatory Commission (NRC) in March of 2021 indicating that they had discovered an incompatibility in the Division's rule. The purpose of this amendment is to correct that incompatibility.

4. Summary of the new rule or change:

Section R313-19-100 incorporates by reference 10 CFR 71.97. This federal regulation requires certain transportation notifications to be submitted to state and federal agencies. Subsections R313-19-100(4)(a)(ii) and (iii) substitute "Director" for "Director, Division of Nuclear Safety, Office of Nuclear Security and Incident Response" and for "Director, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001".

The NRC commented that the notifications need to be sent to the NRC, as well as the state agency and indicated that to remain compatible with the federal program Utah needs to delete Subsections R313-19-100(4)(a)(ii) and (iii). Deleting these two subsections will not impact the Utah program because the federal regulations require the notifications to be submitted to the states as well as the federal agencies.

This amendment deletes Subsections R313-19-100(4)(a)(ii) and (iii).

Additionally, the Division has made minor formatting changes in this rule to correct formatting that does not conform to proper rulewriting format.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

It is not anticipated that there will be any cost or savings to the state budget due to this change because the change does not result in any changes to state agency operations.

B) Local governments:

It is not anticipated that there will be any cost or savings to local governments due to this change because the change does not result in any changes to local government agency operations.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

It is not anticipated that there will be any cost or savings to small businesses due to this change because the change does not require any small businesses that are required to comply with this rule to do anything different than they are currently doing.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

It is not anticipated that there will be any cost or savings to non-small businesses due to this change because the change does not require any non-small businesses that are required to comply with this rule to do anything different than they are currently doing.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

It is not anticipated that there will be any cost or savings to any other persons due to this change because the change does not require any persons that are required to comply with this rule to do anything different than they are currently doing.

F) Compliance costs for affected persons:

It is not anticipated that there will be any additional compliance costs for affected persons due to the amendment to this rule because the amended rule does not require any affected persons to do anything different than they are currently doing.

G) Regulatory Impact Summary Table (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 will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2021**	**FY2022**	**FY2023**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Environmental Quality, Kimberly D. Shelley, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

It is not anticipated that this rule change will have a fiscal impact on anyone who is required to comply with this rule. The change is being made in accordance with comments from the Nuclear Regulatory Commission and is necessary for the radiation control program in the to maintain compatibility with the federal regulations.

B) Name and title of department head commenting on the fiscal impacts:

Kimbery D. Shelley, Executive Director

Public Notice Information

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

A) Comments will be accepted until:	07/15/2021

10. This rule change MAY become effective on:	07/22/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a

Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Jalynn Knudsen, Interim Director	**Date:**	05/13/2021

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.
R313-19. Requirements of General Applicability to Licensing of Radioactive Material.
R313-19-100. Transportation.

For purposes of Section R313-19-100, 10 CFR 71.0(c), 71.1(a), 71.3, 71.4, 71.13, 71.14(a), 71.15, 71.17, 71.19(a), 71.19(b), 71.19(c), 71.20 through 71.23, 71.47, 71.83 through 71.89, 71.97, 71.101(a), 71.101(b), 71.101(c)(1), 71.101(g), 71.105, 71.127 through 71.137, and Appendix A to Part 71 (2019) are incorporated by reference with the following clarifications or exceptions:

(1) The exclusion of the following:

(a) In 10 CFR 71.4 the following definitions:

(i) "close reflection by water";

(ii) "licensed material";

(iii) "optimum interspersed hydrogenous moderation";

(iv) "spent nuclear fuel or spent fuel"; and

(v) "state."

(2) The substitution of the [~~following~~]date reference[~~:~~ ~~(a)~~] "October 1, 2011" for "October 1, 2008".

(3) The substitution of the following rule references:

(a) "Rule R313-36 (incorporating 10 CFR 34.31(b) by reference)" for "Sec. 34.31(b) of this chapter" as found in 10 CFR 71.101(g);

(b) "Section R313-15-502" for reference to "10 CFR 20.1502";

(c) "Rule R313-14" for reference to "10 CFR Part 2 Subpart B";

(d) "Rule R313-32, 10 CFR Part 35," for reference to "10 CFR part 35";

(e) "Subsection R313-15-906(5)" for reference to "10 CFR 20.1906(e)";

(f) "Subsection R313-19-100(5)" for "Sec.71.5";

(g) "10 CFR 71.101(a), 71.101(b), 71.101(c)(1), 71.101(g), 71.105, and 71.127 through 71.137" for "subpart H of this part" or for "subpart H" except in 10 CFR 71.17(b), 71.20(b), 71.21(b), 71.22(b), 71.23(b);

(h) "10 CFR 71.0(c), 71.1(a), 71.3, 71.4, 71.17(c)(2), 71.20(c)(2), 71.21(d)(2), 71.83 through 71.89, 71.97, 71.101(a), 71.101(b), 71.101(c)(1), 71.101(g), 71.105, and 71.127 through 71.137" for "subparts A, G, and H of this part";

(i) "10 CFR 71.47" for "subparts E and F of this part"; and

(j) "10 CFR 71.101(a), 71.101(b), 71.101(c)(1), 71.101(g), 71.105, and 71.127 through 71.137" for "Sec. Sec. 71.101 through 71.137."

(4) The substitution of the following terms:

(a) "Director" for:

(i) "Commission" in 10 CFR 71.0(c), 71.17(a), 71.20(a), 71.21(a), 71.22(a), 71.23(a), and 71.101(c)(1);

(ii) [~~"Director, Division of Nuclear Safety, Office of Nuclear Security and Incident Response" in 10 CFR 71.97(e)(1), and 71.97(f)(1);~~

~~(iii) "Director, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001" in 10 CFR 71.97(e)(3)(iii);~~

~~(iv) ~~]"NRC" in 10 CFR 71.101(f);

(b) "Director, the U.S. Nuclear Regulatory Commission, or an Agreement State" for "Commission" in 10 CFR 71.3;

(c) "The Governor of Utah" for:

(i) "the governor of a State" in 71.97(a);

(ii) "each appropriate governor" in 10 CFR 71.97(c)(1);

(iii) "the governor" in 10 CFR 71.97(c)(3);

(iv) "the governor of the state" in 10 CFR 71.97(e);

(v) "the governor of each state" in 10 CFR 71.97(f)(1);

(vi) "a governor" in 10 CFR 71.97(e);

(d) "State of Utah" for "State" in 71.97(a), 71.97(b)(2), and 71.97(d)(4);

(e) "the Governor of Utah's" for:

(i) "the governor's" in 10 CFR 71.97(a), 71.97(c)(3), 71.97(c)(3)(iii), 71.97(e), and 71.97(f)(1);

(ii) "governor's" in 10 CFR 71.97(c)(1), and 71.97(e);

(f) "Specific or general" for "NRC" in 10 CFR 71.0(c);

(g) "The Director at the address specified in SecR313-12-110" for reference to "ATTN: Document Control Desk, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards" in 10 CFR 71.101(c)(1);

(h) "Each" for "Using an appropriate method listed in Sec. 71.1(a), each" in 10 CFR 71.101(c)(1);

(i) "The material must be contained in a Type A package meeting the requirements of 49 CFR 173.417(a)." for "The fissile material need not be contained in a package which meets the standards of subparts E and F of this part; however, the material must be contained in a Type A package. The Type A package must also meet the DOT requirements of 49 CFR 173.417(a)." as found in 10 CFR 71.22(a) and 71.23(a);

(j) "Licensee" for "licensee, certificate holder, and applicant for a COC"; and

(k) "Licensee is" for reference to "licensee, certificate holder, and applicant for a COC are."

(5) Transportation of licensed material

(a) Each licensee who transports licensed material outside the site of usage, as specified in the license issued by the Director, the U.S. Nuclear Regulatory Commission or an Agreement State, or where transport is on public highways, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the U.S. Department of Transportation regulations in 49 CFR parts 107, 171 through 180, and 390 through 397 (2009), appropriate to the mode of transport.

(i) The licensee shall particularly note DOT regulations in the following areas:

(A) Packaging--49 CFR part 173: subparts A (49 CFR 173.1 through 49 CFR 173.13), B (49 CFR 173.21 through 49 CFR 173.40), and I (49 CFR 173.401 through 49 CFR 173.477).

(B) Marking and labeling--49 CFR part 172: subpart D (49 CFR 172.300 through 49 CFR 172.338); and 49 CFR 172.400 through 49 CFR 172.407 and 49 CFR 172.436 through 49 CFR 172.441 of subpart E.

(C) Placarding--49 CFR part 172: subpart F (49 CFR 172.500 through 49 CFR 172.560), especially 49 CFR 172.500 through 49 CFR 172.519 and 49 CFR 172.556; and appendices B and C.

(D) Accident reporting--49 CFR part 171: 49 CFR 171.15 and 171.16.

(E) Shipping papers and emergency information--49 CFR part 172: subparts C (49 CFR 172.200 through 49 CFR 172.205) and G (49 CFR 172.600 through 49 CFR 172.606).

(F) Hazardous material employee training--49 CFR part 172: subpart H (49 CFR 172.700 through 49 CFR 172.704).

(G) Security plans--49 CFR part 172: subpart I (49 CFR 172.800 through 49 CFR 172.804).

(H) Hazardous material shipper[~~/~~] or carrier registration--49 CFR part 107: subpart G (49 CFR 107.600 through 49 CFR 107.606).

(ii) The licensee shall also note DOT regulations pertaining to the following modes of transportation:

(A) Rail--49 CFR part 174: subparts A through D (49 CFR 174.1 through 49 CFR 174.86) and K (49 CFR 174.700 through 49 CFR 174.750).

(B) Air--49 CFR part 175.

(C) Vessel--49 CFR part 176: subparts A through F (49 CFR 176.1 through 49 CFR 176.99) and M (49 CFR 176.700 through 49 CFR 107.720).

(D) Public Highway--49 CFR part 177 and parts 390 through 397.

(b) If DOT regulations are not applicable to a shipment of licensed material, the licensee shall conform to the standards and requirements of the DOT specified in Subsection R313-19-100(5)(a)[~~paragraph (a) of this section~~] to the same extent as if the shipment or transportation were subject to DOT regulations. A request for modification, waiver, or exemption from those requirements, and any notification referred to in those requirements, must be filed with, or made to, the Director, P.O. Box 144850, Salt Lake City, Utah 84114-4850.

KEY: licenses, reciprocity, transportation, exemptions
Date of Enactment or Last Substantive Amendment: 2021[~~February 14, 2020~~]
Notice of Continuation: April 8, 2021
Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-6-104

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal		
Utah Admin. Code Ref (R no.):	**R380-200**	**Filing No. 53445**

Agency Information

1. Department:	Health	
Agency:	Administration	
Room no.:	106	
Building:	Cannon	
Street address:	288 N 1460 W	
City, state:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144004	
City, state, zip:	Salt Lake City, UT 84114-4004	
Contact person(s):		
Name:	**Phone:**	**Email:**
Carl Letamendi	801-538-7072	cletamendi@utah.gov
Stephanie Saperstein	801-538-6430	stephaniesaperstein@utah.gov
Mike Martin	801-538-9205	mikemartin@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R380-200. Patient Safety Surveillance and Improvement Program (PSSIP)
3. Purpose of the new rule or reason for the change:
This rule is being renumbered and also moved under a new title to better identify ownership of the PSSIP within the Utah Department of Health (UDOH).
4. Summary of the new rule or change:
Rule R380-200 is being repealed and then recreated within the new Title R429 under a separate filing. Rule R380-200 can be repealed without any effect on work currently performed by the UDOH. Therefore, this rule is no longer needed and is repealed in its entirety. (EDITOR'S NOTE: The proposed new Rule R429-1 is under Filing No. 53439 in this issue, June 15, 2021, of the Bulletin.)

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There will be no fiscal impact to state budget because all requirements outlined in this rule will still exist. The requirements are only being moved to a different title and rule.
B) Local governments:
There will be no fiscal impact to local governments because all requirements outlined in this rule will still exist. The requirements are only being moved to a different title and rule.
C) Small businesses ("small business" means a business employing 1-49 persons)**:**
There will be no fiscal impact to small businesses because all requirements outlined in this rule will still exist. The requirements are only being moved to a different title and rule.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**
There will be no fiscal impact to non-small businesses because all requirements outlined in this rule will still exist.

WASTE MANAGEMENT AND RADIATION CONTROL BOARD
Executive Summary
REQUEST FOR A SITE-SPECIFIC TREATMENT VARIANCE
Energy*Solutions*, LLC
September 9, 2021

What is the issue before the Board?	On June 16, 2021, Energy*Solutions*, LLC submitted a request to the Director of the Division of Waste Management and Radiation Control for a one-time site-specific treatment variance from the Utah Hazardous Waste Management Rules. Energy*Solutions* seeks authorization to receive ash contaminated with dioxins and furans as UHCs for treatment and disposal.
What is the historical background or context for this issue?	EnergySolutions requests approval to receive ash from incinerator and metal recycling processes that contains dibenzo-p-dioxin and dibenzofuran UHCs above their respective treatment standards denoted with the Universal Treatment Standards (UTS) in R315-268-48. All other required treatment standards associated with the waste will be met prior to disposal. Requiring the waste to meet the dioxin and furan treatment standards is inappropriate based on the processes that generated the waste. Because of the waste generation processes, all the ash waste contains dioxins and furans; however, in accordance with regulations, only a portion of the waste needs to be treated for those contaminants. The generator has previously analyzed each container of ash for metals contamination. If metals were below the toxicity characteristic concentrations described in 40 CFR 261.24 (R315-261-24), the waste would be shipped to the Clive facility as Low-Level Radioactive Waste (LLRW) and disposed in the Class A Embankment. If metals were above the Toxicity Characteristic concentrations, then the waste would need treated for those metals as well as all UHCs, including dioxins and furans. It is inappropriate to require treatment of dioxin and furan contaminants in instances where characteristic metals are found in the waste when treatment is not required if metals are below characteristic concentrations in the waste. Furthermore, the stabilized ash was re-incinerated in an attempt to reduce the concentration of dioxins and furans in the ash. Re-incineration resulted in very little reduction in the concentrations. It is inappropriate to require this additional incineration in order to attempt to meet the standards. Final disposal of the waste will occur in the Mixed Waste Disposal Cell at the EnergySolutions Mixed Waste Facility. A notice for public comment was published in the Salt Lake Tribune, the Deseret News and the Tooele County Transcript Bulletin. The comment period began July 12, 2021 and ended August 10, 2021. No comments were received.

What is the governing statutory or regulatory citation?	Variances are provided for in 19-6-111 of the Utah Solid and Hazardous Waste Act. This is a one-time site-specific variance from an applicable treatment standard as allowed by R315-268.44 of the Utah Administrative Code.
Is Board action required?	Yes, this is an action item before the Board.
What is the Division/Director's recommendation?	The Director recommends approval of this variance request. The Director's recommendation is based on the following findings: the proposed alternative treatment method meets the regulatory basis for a variance and will be as safe to human health and the environment as the required method.
Where can more information be obtained?	For technical questions, please contact Tyler Hegburg (801) 536-4271. For legal questions, please contact Bret Randall at (801) 536-0284. A copy of the variance request was included in the July 8, 2021 Board packet.

DSHW-2021-013042

WASTE MANAGEMENT AND RADIATION CONTROL BOARD
Executive Summary
Energy*Solutions*, LLC
Proposed Stipulation and Consent Order No. 2105037
September 9, 2021

What is the issue before the Board?	This is a proposed Stipulation and Consent Order (SCO), No. 2105037, to resolve Notice of Violation (NOV) No. 2007067, issued to Energy*Solutions*, LLC on April 3, 2020.
What is the historical background or context for this issue?	The NOV was based on self-reported violations documented in letters from the facility dated April 27, 2020 and May 1, 2020. The SCO includes a penalty of $51,181.00 A 30-day public comment period was held from July 5, 2021 to August 3, 2021. No comments were received.
What is the governing statutory or regulatory citation?	§19-6-104 of the Utah Solid and Hazardous Waste Act authorizes the Board to issue orders and approve or disapprove settlements negotiated by the Director with a civil penalty over $25,000.
Is Board action required?	Yes, this in an action item. The draft SCO was presented to the Board on July 8, 2021.
What is the Division Director's recommendation?	The Director recommends approval of the proposed SCO, including the penalty, in the amount of $51,181.00.
Where can more information be obtained?	For technical information, please contact Otis Willoughby at (801) 536-0220. For legal information, please contact Connie Nakahara at (385) 414-0450. Copies of the NOV, the SCO, and the penalty narrative worksheet were included in the July 8, 2021 Board packet.

DSHW-2021-013106