

(2) The specific humidity on a dry basis of the intake air (H) is defined as:  

$$H = \frac{(K_H)(P_v)}{(BARO - P_v)}$$

(3) The partial pressure of water vapor may be determined using a dew point device. In that case:

$$P_v = P_{DP}$$

(4) The percent of relative humidity (RH) is defined as:

$$RH = \frac{P_v}{P_{DB}} 100$$

(5) The water-vapor volume concentration on a dry basis of the engine intake air (Y) is defined as:  

$$Y = \frac{(H)(M_{air})}{(M_{H_2O})} = \frac{P_v}{(BARO - P_v)}$$

(d) *NO<sub>x</sub> correction factor.* (1) NO<sub>x</sub> emission rates ( $M_{NO_x, mode}$ ) shall be adjusted to account for the effects of humidity and temperature by multiplying each emission rate by  $K_{NO_x}$ , which is calculated from the following equations:

$$K_{NO_x} = (K)(1 + (0.25(\log K)^2)^{1/2})$$

$$K = (K_H)(K_T)$$

$$K_H = \frac{[C_1 + C_2(\exp((-0.0143)(10.714))]}{[C_1 + C_2(\exp((-0.0143)(1000H))]}$$

$$C_1 = -8.7 + 164.5 \exp(-0.0218(A/F)_{wet})$$

$$C_2 = 130.7 + 3941 \exp(-0.0248(A/F)_{wet})$$

Where:

$(A/F)_{wet}$  = Mass of moist air intake divided by mass of fuel intake.

$K_T = 1/[1 - 0.017(T_{30} - T_A)]$  for tests conducted at ambient temperatures below 30 °C.

$K_T = 1.00$  for tests conducted at ambient temperatures at or above 30 °C.

$T_{30}$  = The measured intake manifold air temperature in the locomotive when operated at 30 °C (or 100 °C, where intake manifold air temperature is not available).

$T_A$  = The measured intake manifold air temperature in the locomotive as tested (or the ambient temperature (°C), where intake manifold air temperature is not available).

(e) *Other calculations.* Calculations other than those specified in this section may be used with the advance approval of the Administrator.

[FR Doc. 01-55530 Filed 11-23-01; 8:45 am]

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 272

[FRL-7092-1]

#### Utah: Final Authorization of State-Initiated Changes and Incorporation by Reference of State Hazardous Waste Management Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Immediate final rule.

**SUMMARY:** During a review of Utah's regulations, EPA identified a variety of

State-initiated changes to Utah's hazardous waste program under the Resource Conservation and Recovery Act (RCRA). We have determined that these changes are minor and satisfy all requirements needed to qualify for Final authorization and are authorizing the State-initiated changes through this Immediate Final action. In addition, today's document corrects technical errors made in the tables published in the May 23, 1991 **Federal Register** (as amended August 6, 1991), October 14, 1994, and January 13, 1999 authorization documents for Utah.

EPA uses the Section of the Code of Federal Regulations (CFR) entitled Approved State Hazardous Waste Management Programs to incorporate by reference those provisions of the State regulations that are part of the authorized State program. This document incorporates the newly authorized State program into the regulations entitled Approved State Hazardous Waste Management Programs and clarifies which of these provisions we have authorized and will enforce under sections 3008, 3013, and 7003 of RCRA.

**DATES:** This Final authorization for Utah and incorporation by reference of the Utah authorized hazardous waste program will become effective on January 25, 2002, unless EPA receives adverse written comment by December 26, 2001. The Director of the Federal Register approves the incorporation by reference of the Utah regulations contained in this rule as of January 25, 2002 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

**ADDRESSES:** Send written comments to Kris Shurr, 8P-HW, U.S. EPA, Region VIII, 999 18th St., Suite 300, Denver, Colorado 80202-2466, phone number: (303) 312-6139. You can view and copy the materials used by EPA to make this determination during normal business hours at the following locations: Utah Department of Environmental Quality, Division of Solid and Hazardous Waste, 288 North 1460 West, Salt Lake City, Utah 84114-4880, phone (801) 538-6776 and EPA Region VIII, 999 18th St., Suite 300, Denver, Colorado 80202-2466, phone (303) 312-6139.

**FOR FURTHER INFORMATION CONTACT:** Kris Shurr, EPA Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, phone (303) 312-6139.

**SUPPLEMENTARY INFORMATION:**

## I. Authorization of State-Initiated Changes

### A. Why Are Revisions to State Programs Necessary?

States which have received Final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal program changes, the States must change their programs and ask EPA to authorize the changes. Changes to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 CFR parts 124, 260 through 266, 268, 270, 273 and 279. States can also initiate their own changes to their hazardous waste program and these changes must then be authorized.

### B. What Authorization Decisions Have We Made in This Rule?

We conclude that Utah's revisions to its authorized program meet all of the statutory and regulatory requirements established by RCRA. We found that the State-initiated changes make Utah's rules more clear or conform more closely to the Federal equivalents and are so minor in nature that a formal application is unnecessary. Therefore, we grant Utah Final authorization to operate its hazardous waste program with the changes described in the table at item I.G. of this document. Utah has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out all authorized aspects of the RCRA program, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Utah, including issuing permits, until the State is granted authorization to do so.

### C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Utah will continue to be subject to the authorized State requirements instead of the equivalent Federal requirements in order to comply

with RCRA. Utah has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to: do inspections, and require monitoring, tests, analyses or reports; enforce RCRA requirements and suspend or revoke permits; and take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Utah is being authorized by today's action are already effective and are not changed by today's action.

*D. Why Wasn't There a Proposed Rule Before Today's Rule?*

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes. If EPA receives comments which oppose this authorization or portion(s) thereof, that document will serve as a proposal to authorize such changes.

*E. What Happens if EPA Receives Comments That Oppose This Action?*

If EPA receives comments that oppose this authorization or the incorporation by reference of the State program, we will withdraw this authorization and/or incorporation by reference of the State program decision by publishing a timely document in the **Federal Register** before the rule becomes effective. We will base any further decision on the authorization of the State program changes, or the incorporation by reference, on the proposed rule mentioned in paragraph I.D. of this document. We will then address all public comments in a later Final rule. If you want to comment on this authorization and incorporation by reference, you must do so at this time. You may not have another opportunity to comment.

If EPA receives comments that oppose only the authorization of a particular change to the State hazardous waste program or the incorporation by reference of the State program, we may withdraw only that part of this rule, but the authorization of the program changes or the incorporation by reference of the State program that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization or incorporation by reference of the State program will become effective and which part is being withdrawn.

*F. What Has Utah Previously Been Authorized For?*

Utah initially received Final authorization for its RCRA hazardous waste base program on 10/10/84, effective 10/24/84 (49 FR 39683). Utah received authorization for revisions to its program on 2/21/89, effective 03/07/89 (54 FR 7417); on 5/23/91 and 8/6/91, effective 07/22/91 (56 FR 23648 as corrected by 56 FR 37291); on 5/15/92, effective 7/14/92 (57 FR 20770); on 2/12/93 and 5/5/93, effective 4/13/93 (58 FR 8232 as corrected by 58 FR 26689); on 10/14/94 and 11/10/94, effective 12/13/94 (59 FR 52084 as corrected by 59 FR 56114); on 5/20/97, effective 7/21/97 (62 FR 27501); on 1/13/99, effective 3/15/99 (64 FR 2144), and on 10/16/00, effective 1/16/01 (65 FR 61109).

*G. What Changes Are We Authorizing With Today's Action?*

Utah has made conforming changes to its regulations for internal consistency relative to the changes made for the authorizations listed in Section I.F. Utah has also changed its regulations to make them more consistent with the Federal requirements.

We are granting Utah Final authorization to carry out the following provisions of the State's program in lieu of the Federal program. These provisions are analogous to the indicated RCRA statutory provisions or RCRA regulations found at 40 CFR as of July 1, 1995 unless otherwise noted. The Utah provisions are from the Utah Administrative Code (UAC) effective as indicated.

State requirement	Federal requirement
Utah Administrative Code (UAC) R315-1-1(c) & (g), effective February 15, 1996.	40 CFR 261.1(c), 279.1
UAC R315-2-4(a)(6) & (7), effective February 15, 1996 .....	40 CFR 261.4(a)(6) & (7)
UAC R315-2-9(c)(3), effective February 15, 1996 .....	40 CFR 261.11(c)
UAC R315-2-9(f)(1)(viii), effective February 15, 1996 .....	40 CFR 261.23(a)(8)
UAC R315-2-11 (introductory paragraph), (a),&(b), effective February 15, 1996.	40 CFR 261.33 (introductory paragraph), (a) & (b)
UAC R315-2-11(d), effective February 15, 1996 .....	40 CFR 261.33(d)
UAC R315-2-15, effective February 15, 1996 .....	40 CFR 260.21
UAC R315-2-22, effective February 15, 1996 .....	40 CFR 260.40
UAC R315-2-23, effective February 15, 1996 .....	40 CFR 260.41
UAC R315-3-3(i)(3), effective February 15, 1996 .....	40 CFR 124.3(d)
UAC R315-3-3(n) (introductory paragraph) through (n)(7) except (n)(2), effective February 15, 1996.	40 CFR 270.1(c)(2) (introductory paragraph) through (c)(2)(vii), except (ii)
UAC R315-3-5(b)(13)-(17), effective February 15, 1996 .....	40 CFR 270.14(b)(13)-(17)
UAC R315-3-5(b)(21), effective February 15, 1996 .....	40 CFR 270.14(b)(21)
UAC R315-3-6.2, effective February 15, 1996 .....	40 CFR 270.16
UAC R315-3-6.4(b), effective February 15, 1996 .....	40 CFR 270.18(b)
UAC R315-3-6.6 except (i), effective February 15, 1996 .....	40 CFR 270.20 except (i)
UAC R315-3-6.8, effective February 15, 1996 .....	40 CFR 270.23
UAC R315-3-7(a)(4)(ii), effective February 15, 1996 .....	40 CFR 270.14(c)(4)(ii)
UAC R315-3-8(d), effective February 15, 1996 .....	40 CFR 270.11(d)
UAC R315-3-10(d), effective February 15, 1996 .....	40 CFR 270.30(d)
UAC R315-3-10(l)(6)(iii), effective February 15, 1996 .....	40 CFR 270.30(l)(6)(iii)
UAC R315-3-11(g), effective February 15, 1996 .....	40 CFR 270.51(d)

State requirement	Federal requirement
UAC R315-3-19(a), effective February 15, 1996 .....	40 CFR 270.61(a)
UAC R315-3-23(b)(1), effective February 15, 1996 .....	40 CFR 270.32(b)(1)
UAC R315-3-23(c) & (d), effective February 15, 1996 .....	40 CFR 270.32(d) & (e)
UAC R315-3-26(c)(2), effective February 15, 1996 .....	40 CFR 124.10(c)(2)
UAC R315-3-33(a)&(b), effective February 15, 1996 .....	40 CFR 270.70(a)&(b)
UAC R315-3-35, effective February 15, 1996 .....	RCRA § 3010(a)
UAC R315-4-2(a), effective February 15, 1996 .....	40 CFR 262.20(a)
UAC R315-4-3(i) & (j), effective February 15, 1996 .....	40 CFR 263.21(a) & (b)
UAC R315-4-4(c), effective February 15, 1996 .....	40 CFR 264.72
UAC R315-5-5, effective February 15, 1996 .....	40 CFR 262.40
UAC R315-5-6(a)(1) & (2), effective February 15, 1996 .....	40 CFR 262.41(a)(1) & (2)
UAC R315-5-6(b), effective February 15, 1996 .....	40 CFR 262.41(b)
UAC R315-5-14, effective February 15, 1996 .....	40 CFR 262.60
UAC R315-7-8.1(c)(9), effective February 15, 1996 .....	40 CFR 265.1(c)(11)
UAC R315-7-10.3(c), effective February 15, 1996 .....	40 CFR 265.32(c)
UAC R315-7-11.3(e), effective February 15, 1996 .....	40 CFR 265.52(e)
UAC R315-7-12.4, effective February 15, 1996 .....	40 CFR 265.73
UAC R315-7-12.5(c), effective February 15, 1996 .....	40 CFR 265.74(c)
UAC R315-7-12.7, effective February 15, 1996 .....	40 CFR 265.76
UAC R315-7-12.8(c), effective February 15, 1996 .....	40 CFR 265.77(c)
UAC R315-7-13.1(a) & (d), effective February 15, 1996 .....	40 CFR 265.90(a) & (d)
UAC R315-7-13.1(e), effective February 15, 1996 .....	40 CFR 265.90(e)
UAC R315-7-13.3(b)(1), effective February 15, 1996 .....	40 CFR 265.92(b)(1)
UAC R315-7-13.4(a), effective February 15, 1996 .....	40 CFR 265.93(a)
UAC R315-7-13.5(a)(2)(i)-(a)(2)(iii) & (b)(2), effective February 15, 1996 ...	40 CFR 265.94(a)(2)(i)-(a)(2)(iii) & (b)(2)
UAC R315-7-16.7(b), effective February 15, 1996 .....	40 CFR 265.177(b)
UAC R315-7-18.4, effective February 15, 1996 .....	40 CFR 265.225
UAC R315-7-18.5(a), effective February 15, 1996 .....	40 CFR 265.226(a)
UAC R315-7-18.8, effective February 15, 1996 .....	40 CFR 265.230
UAC R315-7-19.5(1) & (2), effective February 15, 1996 .....	40 CFR 265.256(a)(1) & (2)
UAC R315-7-19.6(a)(1) & (2), effective February 15, 1996 .....	40 CFR 265.256(a)(1) & (2)
UAC R315-7-19.7, effective February 15, 1996 .....	40 CFR 265.257
UAC R315-7-20.3(c) (including undesignated paragraph), effective February 15, 1996.	40 CFR 265.273(c)
UAC R315-7-20.4(a), effective February 15, 1996 .....	40 CFR 265.276(a)
UAC R315-7-20.4(c)(2)(iv), effective February 15, 1996 .....	40 CFR 265.276(c)(2)(iv)
UAC R315-7-20.6, effective February 15, 1996 .....	40 CFR 265.279
UAC R315-7-20.7(a),(d),(e) & (f), effective February 15, 1996 .....	40 CFR 265.280(a),(d),(e) & (f)
UAC R315-7-20.9, effective February 15, 1996 .....	40 CFR 265.282
UAC R315-7-21.3, effective February 15, 1996 .....	40 CFR 265.309
UAC R315-7-21.4(b) (introductory paragraph), effective February 15, 1996	40 CFR 265.310(b) (introductory paragraph)
UAC R315-7-21.6, effective February 15, 1996 .....	40 CFR 265.313
UAC R315-7-22.1(b), effective February 15, 1996 .....	40 CFR 265.340(b)
UAC R315-7-22.3, effective February 15, 1996 .....	40 CFR 265.341
UAC R315-7-23.3, effective February 15, 1996 .....	40 CFR 265.375
UAC R315-7-24.1, effective February 15, 1996 .....	40 CFR 265.400
UAC R315-7-24.3, effective February 15, 1996 .....	40 CFR 265.402
UAC R315-7-24.7, effective February 15, 1996 .....	40 CFR 265.406
UAC R315-7-25, effective February 15, 1996 .....	40 CFR 265.430
UAC R315-7-26, effective February 15, 1996 .....	40 CFR 265.1030 through 265.1035
UAC R315-8-1(f), effective February 15, 1996 .....	40 CFR 264.1(h)
UAC R315-8-2.1(a) & (b), effective February 15, 1996 .....	40 CFR 264.10(a) & (b)
UAC R315-8-2.5, effective February 15, 1996 .....	40 CFR 264.14
UAC R315-8-2.7, effective February 15, 1996 .....	40 CFR 264.16
UAC R315-8-2.8, effective February 15, 1996 .....	40 CFR 264.17
UAC R315-8-3, effective February 15, 1996 .....	40 CFR 264.30 through 264.37
UAC R315-8-4, except 4.3(a), 4.5(e), and 4.7(d)(2), effective February 15, 1996.	40 CFR 264.50 through 264.56, except 264.52(a)&(b), 264.54(e), & 264.56(d)(2)
UAC R315-8-4.3(a) and 8-4.7(d)(2), effective February 15, 1996 .....	40 CFR 264.52(a) & (b) and 264.56(d)(2)
UAC R315-8-5.1, effective February 15, 1996 .....	40 CFR 264.70
UAC R315-8-5.3, effective February 15, 1996 .....	40 CFR 264.73
UAC R315-8-5.4, effective February 15, 1996 .....	40 CFR 264.72
UAC R315-8-5.5, effective February 15, 1996 .....	40 CFR 264.74
UAC R315-8-5.6 (introductory paragraph), effective February 15, 1996 .....	40 CFR 264.75 (introductory paragraph)
UAC R315-8-5.6(f), effective February 15, 1996 .....	40 CFR 264.75(g)
UAC R315-8-5.7 (introductory paragraph), effective February 15, 1996 .....	40 CFR 264.76 (introductory paragraph)
UAC R315-8-6.1(b)-(d), effective February 15, 1996 .....	40 CFR 264.90(b)-(d)
UAC R315-8-6.4(a), effective February 15, 1996 .....	40 CFR 264.93(a)
UAC R315-8-9.8, effective February 15, 1996 .....	40 CFR 264.177
UAC R315-8-11.5, except (b)(2) through (b)(4), effective February 15, 1996.	40 CFR 264.228, except (b)(2) through (b)(4)
UAC R315-8-11.7, effective February 15, 1996 .....	40 CFR 264.230

State requirement	Federal requirement
UAC R315-8-12.6, effective February 15, 1996 .....	40 CFR 264.258
UAC R315-8-13.1 through 13.8, effective February 15, 1996 .....	40 CFR 264.270 through 264.280
UAC R315-8-13.10, effective February 15, 1996 .....	40 CFR 264.282
UAC R315-8-14.4, effective February 15, 1996 .....	40 CFR 264.309
UAC R315-8-14.5(b) (introductory paragraph), effective February 15, 1996 .....	40 CFR 264.310(b) (introductory paragraph)
UAC R315-8-15.1(b) & (c), effective February 15, 1996 .....	40 CFR 264.340(b) & (c)
UAC R315-8-15.3, effective February 15, 1996 .....	40 CFR 264.342
UAC R315-8-15.7, effective February 15, 1996 .....	40 CFR 264.347
UAC R315-8-16, effective February 15, 1996 .....	40 CFR 264.600 through 264.603
UAC R315-8-17, effective February 15, 1996 .....	40 CFR 264.1030 through 264.1036
UAC R315-14-5, effective February 15, 1996 .....	40 CFR 266.70
UAC R315-50-1, effective February 15, 1996 .....	40 CFR Part 262, Appendix
UAC R315-50-3, effective February 15, 1996 .....	40 CFR Part 265, Appendix III
UAC R315-50-4, effective February 15, 1996 .....	40 CFR Parts 264 and 265, Appendix IV
UAC R315-50-5, effective February 15, 1996 .....	40 CFR Parts 264 and 265, Appendix V
UAC R315-50-6, effective February 15, 1996 .....	40 CFR Part 261, Appendix I

In addition to the above listed changes, EPA is authorizing changes to the following State provisions. These provisions do not have a direct analog in the Federal RCRA regulations; however, none are considered broader-

in-scope than the Federal program. This is because these provisions were either previously authorized as part of Utah's base authorization or have been added to make the State's regulations internally consistent with changes made

for the other authorizations listed in Section F of this document. We have reviewed these provisions and have determined that they are consistent with and no less stringent than the Federal requirements.

#### STATE REQUIREMENT

Utah Code Annotated, Volume 3A, 1998 Replacement and 1999 Supplement: 19-6-102(9), 19-6-102(11), 19-6-102(14), 19-6-102.1, 19-6-103, 19-6-104(1) introductory paragraph, 19-6-105(1)(a), 19-6-106, 19-6-107, 19-6-112, 19-6-113(1), 19-6-113(3)&(4), and 19-6-113(6).

Utah Code Annotated, Volume 6D, 1997 Replacement and 1999 Supplement: 63-2-403, and 63-2-404.

Utah Administrative Code (UAC) R315-1-1(a), effective February 20, 1998.

UAC R315-1-1(e), effective February 15, 1996.

UAC R315-1-2(b), effective February 15, 1996.

UAC R315-2-13(b), effective February 15, 1996.

UAC R315-2-14, effective February 15, 1996.

UAC R315-3-2, effective February 15, 1996.

UAC R315-3-7(a)(9), effective February 15, 1996.

UAC R315-4-1, effective February 15, 1996.

UAC R315-8-5.8(b), effective February 15, 1996.

UAC R315-9-1(b) (introductory paragraph) and (b)(1), effective February 15, 1996.

UAC R315-9-3, effective February 15, 1996.

UAC R315-9-4, effective February 15, 1996.

UAC R315-15-1.3(d)&(e), effective May 15, 1996.

Since the base program, Utah has removed certain provisions from the base regulations that had no Federal analog and which clarified the State's program. These provisions have been reviewed and we have determined that it is appropriate for the State to remove them and that their removal has no impact on the equivalency or consistency with the Federal program. The provisions removed were section 2.1.10, section 2.2, section 3.3.2(b)(3)(iii), section 3.3.2(b)(4)(iv), and the undesignated paragraph after section 7.20.2(d).

#### H. Who Handles Permits After the Authorization Takes Effect?

This authorization does not affect the status of State permits and those permits issued by EPA because no new

substantive requirements are a part of these revisions.

#### I. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Utah?

This program revision does not extend to "Indian Country" as defined in 18 U.S.C. 1151. Indian Country includes lands within the exterior boundaries of the following Indian reservations located within or abutting the State of Utah:

1. Goshute Indian Reservation.
2. Navajo Indian Reservation.
3. Northwestern Band of Shoshoni Nation of Utah (Washakie) Indian Reservation.
4. Paiute Indian Tribe of Utah Indian Reservation.

5. Skull Valley Band of Goshute Indians of Utah Indian Reservation.

6. Uintah and Ouray Indian Reservation (see below).

7. Ute Mountain Indian Reservation.

With respect to the Uintah & Ouray Indian Reservation, Federal courts have determined that certain lands within the exterior boundaries of the Reservation do not constitute Indian Country. This State program revision approval will extend to those lands which the courts have determined are not Indian Country.

In excluding Indian Country from the scope of this program revision, EPA is not making a determination that the State either has adequate jurisdiction or lacks jurisdiction over sources in Indian Country. Should the State of Utah choose to seek program authorization

within Indian Country, it may do so without prejudice. Before EPA would approve the State's program for any portion of Indian Country, EPA would have to be satisfied that the State has authority, either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law, to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks

program approval and that such approval would constitute sound administrative practice.

**II. Corrections**

*A. Corrections to May 23, 1991 (56 FR 23648) as Amended August 6, 1991 (56 FR 37291), Authorization Document*

There were omissions in the table published as part of the May 23, 1991

(56 FR 23648), as amended August 6, 1991 (56 FR 37291), authorization notice for Utah. The affected entries for that table are shown in the table below. The corrections have been bolded and italicized.

Federal Register reference	State equivalent <sup>1</sup>
6. Generators of 100–1,000 kg hazardous waste, 51 FR 10146–10176, 3/24/86.	R450–1, R450–2–1.4, <b>R450–2–1.9(f)</b> , R450–4–2, R450–5–9, R450–5–11, R450–4–3, R450–3–3.2.
11. Standards for hazardous waste storage and treatment tank systems, 51 FR 25422–25486, 7/14/86 as amended on 8/15/86, 51 FR 29430–29431.	R450–1, R450–2–1, R450–5–9, R450–8–2.6, R450–8–5.3, R450–8–7, R450–8–8, R450–8–10, R450–7–9.4, R450–7–9.4, R450–7–9.6, R450–7–12.4, <b>R450–7–14</b> , R450–7–15, R450–7–17, R450–3–3.2, R450–3–20.

*B. Corrections to October 14, 1994 (59 FR 52085) Authorization Document*

There were omissions in the table published as part of the October 14, 1994 (59 FR 52085), as amended November 10, 1994 (59 FR 56114), authorization notice for Utah. The affected entries for that table are shown in the table below. The corrections have been bolded and italicized.

HSWA or FR reference	State equivalent <sup>1</sup>
12. Mining Waste Exclusion II, 55 FR 2322, 1/23/90	R315–1–1, R315–2–4, <b>R315–4–2(m)</b> .
15. Toxicity Characteristic Revision, 55 FR 11798, 3/29/90 and 55 FR 26986, 6/29/90.	R315–2–4, R315–2–8, R315–2–9, R315–2–10, R315–50–7, R315–8–14, R315–7–16, <b>R315–7–20.3(a)</b> , <b>R315–50–12</b> .

*C. Corrections to January 13, 1999 (64 FR 2144) Authorization Document*

There were omissions in the table published as part of the January 13, 1999 (64 FR 2144) authorization notice for Utah. The affected entries for that table are shown in the table below. The corrections have been bolded and italicized.

Federal citation	State analog <sup>1</sup>	Effective date <sup>1</sup>
Recycled Used Oil Management Standards (HSWA/Non-HSWA) [57 FR 41566, 09/10/92] (Checklist 112).	R315–1–1(b); R315–2–3(a)(2)(v); R315–2–3(a)(2)(v)(A)&(B); R315–2–5; R315–2–6; R315–14–4; R315–14–7; R315–15–1.1; 1.1(a)–(b)(2)(iii); R315–15–1.1(b)(3)–1.1(i); R315–15–1.2(a); R315–15–1.2, Table 1; R315–15–1.3(a)–(c)(2)(iii); R315–15–2.1(a)–(b)(5); R315–15–2.2(a)&(b); R315–15–2.3; R315–15–2.3(a)–(d)(4); R315–15–2.4; R315–15–2.4(a)–(c); R315–15–2.5; R315–15–2.5(a)–(c)(3); R315–15–3.1(a)–(b)(2); R315–15–3.3(a)&(b); R315–15–4.1(a)–(d)(5); R315–15–4.2(a)–(b)(2)(vii); R315–15–4.4(a)–(c)(5); R315–15–4.5(a)–(d); R315–15–4.6; R315–15–4.6(a)–(f)(4); R315–15–4.7(a)–(d); R315–15–4.8; R315–15–5.1(a)–(b)(5); R315–15–5.2(a)–(b)(2)(vi); R315–15–5.3(a)–(b)(6)(ix)(G); R315–15–5.4(a)–(c)(2); R315–15–5.5; R315–15–5.5(a)–(h)(2)(ii); R315–15–5.6; R315–15–5.6(a)–(b)(3); R315–15–5.7(a)–(c); R315–15–5.8(a)–(b); R315–15–5.9; R315–15–10; R315–15–6.1(a)–(c); R315–15–6.2(a)–(b)(2); R315–15–6.3(a)–(b)(2)(vi); R315–15–6.4(a)–(d); R315–15–6.5; R315–15–6.5(a)–(g)(4); R315–15–6.6(a)&(b); R315–15–6.7(a)&(b); R315–15–6.8; R315–15–7.1(a)–(c)(4); R315–15–7.2; R315–15–7.2(a)&(b); R315–15–7.3(a)&(b); R315–15–7.4(a)–(b)(2)(v); R315–15–7.5(a)–(c); R315–15–7.6(a)&(b); R315–15–8.1; R315–15–8.2(a)&(b); R315–15–8.3.	02/10/94
	<b>R315–15–1.4; R315–15–1.5, R315–15–1.6; R315–15–1.7; R315–15–3.2(b) introductory paragraph through (b)(2); R315–15–4.3(a); R315–15–4.3(b) introductory paragraph; R315–15–4.3(b)(1); R315–15–4.3(b)(2) through (b)(2)(vii); and R315–15–9.</b>	5/15/96

Federal citation	State analog <sup>1</sup>	Effective date <sup>1</sup>
* Universal Waste Rule (Non- HSWA) [60 FR 25492, 05/11/ 95] (Checklist 142A-E).	<p><b>R315-15-3.2(a)</b> ..... *</p> <p>R315-2-5; R315-2-6; R315-2-17; R315-2-17(b); R315-2-25 <i>introductory paragraph</i>; <b>R315-2-25(a)-(c)</b>; R315-2-25(a)-(c); R315-3-3(n) (8); R315-3-3(n)(8)(i)-(iii); R315-7-8.1(c)(12); R315-7-8.1 (c)(12)(i)-(iii); R315-8-1(e)(10) <i>introductory paragraph</i>; <b>R315-8-1(e)(10)(i)-(iii)</b>; <b>R315-13-1</b>; <b>R315-14-6</b>; <b>R315-16-1.1(a) introductory paragraph through (a)(3)</b>; <b>R315-16-1.1(b)</b>; <b>R315-16-1.2 through 1.5</b>; <b>R315-16-1.7 (a)&amp;(b)</b>; <b>R315-16-1.7(d), (e) and (f)</b>; <b>R315-16-1.7(h), (i), (j) and (k)</b>; <b>R315-16-1.7(l) introductory paragraph through (l)(3)</b>; <b>R315-16-1.7(m) through (o)</b>; <b>R315-16-2.1 through 2.3</b>; <b>R315-16-2.4(a)-(c)</b>; <b>R315-16-2.5 introductory paragraph through 2.5(d)</b>; <b>R315-16-2.6 through 2.11</b>; <b>R315-16-3.1 through 3.3</b>; <b>R315-16-3.4(a) through (c)</b>; <b>R315-16-3.5 introductory paragraph through (d)</b>; <b>R315-16-3.6 through 3.11, except for references to lamp-R315-16-4; R315-16-5.1(a); R315-16-5.1(b) through R315-16-6(c), except for references to lamp-R315-16-7.1 and 7.2.</b></p>	<p><b>10/16/97</b></p> <p>02/15/96</p>

\* \* \* \* \*

The 1/13/99 **Federal Register** article (64 FR 2147, column 1) also contains a list of items which are more stringent and broader-in-scope. Errors in the list are corrected as follows: (1) R315-15-6.5(g) is corrected to R315-15-6.5(e) in the list of more stringent provisions, (2) R315-16-1.1(a)(4) is removed from the list of more stringent provisions, (3) R315-15-7.1(d) is added to the list of broader-in-scope provisions and (4) R315-16-1.1(a) is removed from the list of broader-in-scope provisions.

**III. Incorporation by Reference**

*A. What Is Codification?*

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA uses 40 CFR part 272 for codification of the decision to authorize Utah's program and for incorporation by reference of those regulatory provisions that EPA will enforce under sections 3008, 3013, and 7003 of RCRA. This effort provides clearer notice to the public of the scope of the authorized programs. The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority.

*B. What Codification Decisions Have We Made in this Rule?*

The purpose of today's **Federal Register** document is to codify Utah's base hazardous waste management program and seven (7) revisions to that program. EPA is not incorporating by reference, at this time, any of the changes authorized on 10/16/00, effective 1/16/01 at 65 FR 61109. This

rule incorporates by reference provisions of State hazardous waste regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program.

EPA intends to add subpart TT to 40 CFR part 272 to incorporate by reference the Utah authorized hazardous waste program. The State regulations are incorporated by reference at 40 CFR 272.2251(b)(1) and the Memorandum of Agreement, the Attorney General's Statement and the Program Description are referenced at 40 CFR 272.2251(b)(5), (6), and (7), respectively.

*C. What Is the Effect of Utah's Codification on Enforcement?*

The Agency retains the authority under sections 3007, 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States, regardless of whether the State program is codified. With respect to such an enforcement action, the Agency relies on Federal sanctions, Federal inspection authorities, and the Federal Administrative Procedure Act rather than the authorized State analogs to these requirements. Therefore, the Agency does not intend to incorporate by reference, for purposes of enforcement, authorized Utah enforcement authorities. Section 272.2251(b)(2) of 40 CFR lists those procedural and enforcement authorities that are part of the authorized program but are not incorporated by reference.

*D. What State Provisions Are Not Part of the Codification?*

The public needs to be aware that some provisions of a State's hazardous waste management program are not part of the Federally authorized State program. These unauthorized provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they are "broader-in-scope" than RCRA subtitle C (see 40 CFR 271.1(i));

(2) Federal provisions which the State incorporated into its regulations when the State adopted Federal regulations by reference, but for which the State is not authorized;

(3) Unauthorized amendments to authorized State provisions.

State provisions that are "broader-in-scope" than the Federal program are not part of the RCRA authorized program and EPA will not enforce them. Therefore, they are not incorporated by reference in 40 CFR part 272. For reference and clarity, § 272.2251(b)(3) of 40 CFR lists the Utah statutory and regulatory provisions which are "broader-in-scope" than the Federal program. Although EPA will not enforce these provisions, the State may enforce them under State law.

Utah is not authorized for the following Federal rules: November 8, 1988 (53 FR 45089, Revision Checklist 58); June 29, 1995 (60 FR 33912, Revision Checklist 144); April 8, 1996, April 30, 1996, June 28, 1996, July 10, 1996, August 26, 1996, February 19, 1997 (61 FR 15566, 61 FR 15660, 61 FR 19117, 61 FR 33680, 61 FR 36419, 61 FR 43924, 62 FR 7502, Revision Checklist 151); December 6, 1994 (59 FR 62896, Revision Checklist 154); January 14, 1997 (62 FR 1992 Revision Checklist 155); May 12, 1997 (62 FR 25998, Revision Checklist 157); June 13, 1997 (62 FR 32452, Revision Checklist 158); and June 17, 1997 (62 FR 32974, Revision Checklist 159).

In addition to Federal rules for which the State is not yet authorized, Utah's hazardous waste regulations include amendments which have not been authorized by EPA. Since EPA cannot enforce a State's requirements which

have not been reviewed and authorized in accordance with RCRA section 3006 and 40 CFR part 271, it is important to clarify any limitations on the scope of a State's approved hazardous waste program. Thus, in those instances where a State has made unauthorized amendments to previously authorized sections of State code, EPA will provide clarification by identifying in § 272.2251(b)(4) any requirements which, while adopted, are not authorized by EPA and therefore are not Federally enforceable. Thus, notwithstanding the language in the Utah hazardous waste regulations incorporated by reference at § 272.2251(b)(1), EPA will only enforce the State provisions that are actually authorized by EPA. For the convenience of the regulated community, the actual State regulatory text authorized by EPA for the citations listed at § 272.2251(b)(1) is compiled as a separate document, Addendum to the EPA-Approved Utah Regulatory Requirements Applicable to the Hazardous Waste Management Program, March 1999. This document is available from EPA Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, phone (303) 312-6139. With respect to HSWA requirements for which the State has not yet been authorized, EPA will continue to enforce the Federal HSWA standards until the State receives specific HSWA authorization from EPA.

In addition, EPA has authorized but is not incorporating by reference, at this time, any of the State hazardous waste program changes authorized on 10/16/00, effective 1/16/01 at 65 FR 61109. These changes were not part of Utah's authorized program at the time of EPA's review for this codification action and will be incorporated by reference at a later date.

#### *E. What Will Be the Effect of Federal HSWA Requirements on the Codification?*

The Agency is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are implemented by EPA. Section 3006(g) of RCRA provides that any HSWA requirement or prohibition (including implementing regulations) take effect in authorized and unauthorized States at the same time. A HSWA requirement or prohibition supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (50 FR 28702, July 15, 1985). EPA has the authority to implement HSWA requirements in all States, including authorized States, until the States become authorized for

such requirement or prohibition. Authorized States are required to revise their programs to adopt the HSWA requirements and prohibitions and then to seek authorization for those revisions pursuant to 40 CFR part 271.

Instead of amending the 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA section 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's 40 CFR part 272 incorporation by reference. Until then, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

Some existing State requirements may be similar to the HSWA requirement implemented by EPA. However, until EPA authorizes those State requirements, EPA can only enforce the HSWA requirements and not the State analogs. EPA will not codify those State requirements until the State receives authorization for those requirements.

#### **IV. Administrative Requirements**

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and, therefore, this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Authorization and codification will not impose new burdens on small entities. Accordingly, I certify that this action 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.*). Because implementing this action would authorize pre-existing requirements under State law and would 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 (Public Law 104-4). For the same reason, this action also does not have tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000). It does not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action will not have

substantial direct effects on the States, on the relationship between the Federal 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), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress

and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective January 25, 2002.

**List of Subjects in 40 CFR Part 272**

Environmental protection, Hazardous materials transportation, Hazardous waste, Incorporation by reference, , Intergovernmental relations, Water pollution control, Water supply.

**Authority:** This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 18, 2001.

**Patricia D. Hull,**

*Acting Regional Administrator, Region VIII.*

For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

**PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS**

1. The authority citation for part 272 continues to read as follows:

**Authority:** Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Subpart TT is amended by adding § 272.2251 to read as follows:

**§ 272.2251 Utah State-Administered program: Final authorization.**

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), Utah has Final authorization for the following elements as submitted to EPA in Utah's base program application for Final authorization which was approved by EPA effective on October 24, 1984. Subsequent program revision applications were approved effective on March 7, 1989; July 22, 1991; July 14, 1992; April 13, 1993; December 13,

1994; July 21, 1997; and March 15, 1999.

(b) *State statutes and regulations.* (1) The Utah regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the Utah regulations that are incorporated by reference in this paragraph are available from the Utah Department of Environmental Quality, 288 North 1460 West, Salt Lake City, Utah 84114-4880, Phone (801) 538-6776.

(i) The EPA Approved Utah Regulatory Requirements Applicable to the Hazardous Waste Management Program, dated March 1999.

(ii) [Reserved]

(2) The following statutes and regulations concerning State procedures and enforcement, although not incorporated by reference, are part of the authorized State program:

(i) Utah Code Annotated, Volume 3A, 1998 Replacement and 1999 Supplement, Title 19: Sections 19-1-306(2), 19-1-306(3), 19-6-102 introductory paragraph, 19-6-102(1) & (2), 19-6-102(6)-(9), 19-6-102(11), 19-6-102(13)-(21), 19-6-102.1, 19-6-103, 19-6-104(1) except (1)(j), 19-6-105(1) introductory paragraph, 19-6-105(1)(a)-(f), 19-6-105(1)(i) & (j), 19-6-105(2), 19-6-106, 19-6-107, 19-6-109, 19-6-111, 19-6-112, 19-6-113(1) through (4), 19-6-113(6), 19-6-114, 19-6-115, and 19-6-116.

(ii) Utah Code Annotated, Volume 6D, 1997 Replacement and 1999 Supplement, Title 63: Sections 63-2-103 through 63-2-105, 63-2-201 through 63-2-203 (except 63-2-203(10)), 63-2-204, 63-2-205, 63-2-301 through 63-2-308, 63-2-401 through 63-2-405, and 63-2-802.

(iii) Utah Code Annotated, Volume 3, 1953 as amended 1987, Title 26, Chapter 14: Section 26-14-8.

(iv) Utah Administrative Code revised as of January 3, 1989: R450-3.1.1(b) & (c) and R450-3-2.4(b).

(v) Utah Administrative Code revised as of February 15, 1996: Sections R315-

2-14, R315-3-3(i)&(3), R315-3-11(a), (b) & (f), R315-3-16(b), R315-3-23(b)(1) & (2), R315-3-23(c) & (d), R315-3-24(a) through R315-3-29, and R315-3-34.

(vi) Utah Administrative Code revised as of May 15, 1996: Section R315-15-1.1(j) & (k).

(3) The following statutory and regulatory provisions are broader-in-scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(i) Utah Code Annotated, Volume 3A, 1998 Replacement and 1999 Supplement, Title 19: Sections 19-6-105(3), 19-6-113(5), 19-6-118, 19-6-120, and 19-6-121.

(ii) Utah Administrative Code revised as of February 15, 1996. EPA considers Utah's listing of all P999 and some F999 wastes (specifically: nerve, military, and chemical agents) as more stringent than the Federal rule. To the extent that unused chemical agents, as produced, exhibit a hazardous waste reactivity characteristic, they are considered hazardous waste and, thus, are regulated under Federal rule. Utah's listing of these wastes enhances the degree of regulatory control regarding these wastes. EPA also considers Utah's rule as broader-in-scope than the federal rule for those F999 process wastes which do not exhibit a characteristic for hazardous waste and would not be regulated under Federal rule. R315-2-10(e)(1), 315-2-11(e) introductory paragraph and R315-2-11(e)(1) are broader-in-scope regarding these wastes.

(iii) Utah Administrative Code, as of May 15, 1996: R315-15-7.1(d), R315-15-10, R315-15-11 with respect to used oil transfer and off-specification used oil burning facilities, and R315-15-12 through R315-15-15 except R315-15-13.5(d).

(4) *Unauthorized State provisions:* (i) Although the Federal rules listed in the following table have been adopted by the State and have been included in the materials incorporated by reference in paragraph (b)(1) of this Section, EPA has not authorized the State for these rules at this time. While they may be enforceable under State law, they are not enforceable under RCRA:

Federal requirement	Federal Register reference	Publication date
Standards for Generators of Hazardous Waste; Manifest Renewal (Revision Checklist 58) .....	53 FR 45089	11/8/88
Removal of Legally Obsolete Rules (Non-HSWA provisions) (Revision Checklist 144) .....	60 FR 33912	6/29/95
Testing and Monitoring Activities Amendment III (Revision Checklist 158) .....	62 FR 32452	6/13/97

(ii) Additionally Utah has adopted but is not authorized to implement the HSWA rules that are listed below in lieu of EPA. EPA will continue to implement the Federal HSWA requirements for which Utah is not authorized until the State receives specific authorization for those requirements.



Federal requirement	Federal Register reference	Publication date
Removal of Legally Obsolete Rules (HSWA provisions) (Revision Checklist 144) .....	60 FR 33912	6/29/95
Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners (Revision Checklist 151).	61 FR 15566; 61 FR 15660; 61 FR 19117; 61 FR 33680; 61 FR 36419; 61 FR 43924; 62 FR 7502	4/8/96; 4/8/96; 4/30/96; 6/28/96; 7/10/96; 8/26/96; 2/19/97
Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers—formerly Revision Checklist 138 (Rule 154.1).	59 FR 62896	12/6/94
Land Disposal Restrictions Phase III—Emergency Extension of the K088 Capacity Variance (Revision Checklist 155).	62 FR 1992	1/14/97
Land Disposal Restrictions—Phase IV (Revision Checklist 157) .....	62 FR 25998	5/12/97
Carbamate Production, Identification and Listing of Hazardous Waste; Land Disposal Restrictions (Conformance With the Carbamate Vacatur) (Revision Checklist 159).	62 FR 32974	6/17/97

(5) *Unauthorized State amendments.* The following authorized provisions of the Utah regulations include amendments published in the *Utah State Bulletin* that are not approved by EPA. Such unauthorized amendments are not part of the State's authorized program and are, therefore, not Federally enforceable. Thus,

notwithstanding the language in the Utah hazardous waste regulations incorporated by reference at § 272.2251(b)(1), EPA will only enforce the authorized State provisions with the effective dates indicated in the table below. The actual State regulatory text authorized by EPA for the listed provisions is available as a separate

document, Addendum to the EPA-Approved Utah Regulatory Requirements Applicable to the Hazardous Waste Management Program, March 1999. Copies of the document can be obtained from U.S. EPA Region VIII, 999 18th St., Suite 500, Denver, Colorado 80202-2466, phone (303) 312-6139.

State provision	State reference	Unauthorized State amendments	
		State reference	Effective date
R315-2-1(b)(2)(ii) .....	9/24/86 .....	DAR 12647 .....	5/29/92
R315-7-11.3(b) .....	1/3/89 .....	DAR 12652 .....	5/29/92
R315-7-12.6(g) .....	Base .....	DAR 09632 .....	1/3/89

At R315-3-23(f)(3)(iv), Utah's analog to 40 CFR 270.33(b)(3)(iv), the State has a printing error in its regulations. The State will fix this error in its next rule making. For the codification, the authorized version of the provision will also be included in the Addendum to the EPA-Approved Utah Regulatory Requirements Applicable to the Hazardous Waste Management Program, March 1999.

(6) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VIII and the Utah Department of Environmental Quality, signed by the EPA Regional Administrator on October 4, 1994, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Statement of legal authority.* "Attorney General's Statement for Final Authorization", signed by the Attorney General of Utah on January 16, 1984, and revisions, supplements and addenda to that Statement dated October 29, 1986, March 6, 1991, September 17, 1991, September 22, 1992, November 19, 1993, March 16,

1994, March 20, 1995, November 13, 1997, and March 2, 1999, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(8) *Program description.* The Program description and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to Part 272—State Requirements, is amended by adding in alphabetical order, "Utah" and its listing to read as follows:

**Appendix A to Part 272—State Requirements**

\* \* \* \* \*

**Utah**

The regulatory provisions include: Utah Administrative Code effective February 15, 1996: Sections R315-1 except R315-1-1(a), R315-1-1(f)&(h) and R315-1-2(a); R315-2 except R315-2-3(d)(2), R315-2-5, R315-2-6, R315-2-10(e)&(f), R315-2-11(e)&(f), R315-2-17, and R315-2-25(d); R315-3 except R315-3-1(b)&(c), R315-3-

3(b)(3), R315-3-3(i)(1)-(3), R315-3-3(n)(8)(iv), R315-3-11(a)&(b), R315-3-11(f), R315-3-13(a)(4), R315-3-16(b), R315-3-23(b)(1)&(2), R315-3-23(c)&(d), R315-3-24 through R315-3-29, R315-3-34 and R315-3-36; R315-4 through R315-7, except R315-7-8.1(c)(12)(iv), R315-7-18.9(d)(2)(i)(A) phrase "given the specific site conditions and the nature and extent of contamination"; R315-8 except R315-8-1(e)(10)(iv), R315-8-6.1(a)(3), R315-8-6.12(b), R315-8-11.2(e) phrase "given the specific site conditions and the nature and extent of contamination", R315-8-14.10(b); R315-9; R315-14 except R315-14-3, R315-14-4, and R315-14-7; R315-16 except R315-16-1.1(a)(4), R315-16-1.6, R315-16-1.7(c), R315-16-1.7(g), R315-16-1.7(l)(4), R315-16-2.4(d), R315-16-2.5(e), R315-16-2.12, R315-16-3.4(d), R315-16-3.5(e), R315-16-3.6(c)(2) word "lamp", R315-16-3.10(a)(2) word "lamp", R315-16-3.10(b)(2) word "lamp", R315-16-3.12, R315-16-5.1(a); R315-50 except R315-50-9, R315-50-10, R315-50-12, and R315-50-13.

Utah Administrative Code revised as of May 15, 1996: Section R315-15, except R315-15-1.1(j)&(k), R315-15-1.3(b), R315-15-2.1(a)(1)&(4), R315-15-2.3(c)(1), R315-15.2.3(d), R315-15-2.4(a), R315-15-2.4(d)&(e), R315-15-3.1(b), R315-15-3.2(a), R315-15-4.6(f), R315-15-5.1(c), R315-15-5.5(e), R315-15-6.5(e), R315-15-7.1(d), R315-15-8.3, R315-15-9, R315-15-10, R315-15-11 with respect to used oil transfer

and off-specification used oil burning facilities, R315-15-12, R315-15-13.5(a)-(c) &(e), R315-15-14, and R315-15-15.

Utah Administrative Code revised as of October 16, 1997: R315-2-3(d)(2), R315-2-10(e), R315-8-6.12(b), R315-8-14.10(b), R315-15-1.3(b), R315-15-2.1(a)(1)&(4), R315-15-2.3(c)(1), R315-15.2.3(d), R315-15-2.4(a), R315-15-2.4(d)&(e), R315-15-3.1(b), R315-15-3.2(a), R315-15-4.6(f), R315-15-5.5(e), R315-15-6.5(e), R315-15-8.3, and R315-15-9.

Utah Administrative Code revised as of February 20, 1998: R315-1-1(a), R315-1-2(a), R315-2-5, R315-2-6, R315-2-10(f), R315-2-11(e), R315-2-11(f), R315-2-17, R315-3-3(b)(3), R315-13-1, R315-14-7, R315-16-5.1(a), R315-50-9, R315-50-10, and R315-50-12.

Copies of the Utah regulations that are incorporated by reference are available from the Utah Department of Environmental Quality, 288 North 1460 West, Salt Lake City, Utah 84114-4880, Phone (801) 538-6776.

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 98-203; FCC 01-306]

#### The Ancillary or Supplementary Use of Digital Television Capacity by Noncommercial Licensees

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Commission's rules to require that noncommercial educational ("NCE") television licensees primarily provide a nonbroadcast service over their entire digital bitstream, including ancillary or supplementary services; clarify that they may provide subscription TV service as an ancillary or supplementary service; and apply to them the same program to assess and collect fees as that established for commercial DTV licensees' use of DTV capacity for the provision of ancillary or supplementary services. This document also determines that the Communications Act of 1934 prohibition against the provision of advertising by NCE licensees does not apply to nonbroadcast services, such as subscription services provided on their digital television ("DTV") channels. The intended effect of these actions is to clarify the manner in which NCE licensees may use their excess DTV capacity for remunerative purposes.

**DATES:** Effective on the later of either December 26, 2001, or upon receipt by

Congress of a report in compliance with Contract with America Advancement Act of 1996, Public Law 104-121, except for § 73.624(g)(2)(i), which contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish documents in the **Federal Register** announcing the effective date of these rule and § 73.624(g)(2)(i).

**FOR FURTHER INFORMATION CONTACT:** Jane Gross; Policy and Rules Division, Mass Media Bureau, at (202) 418-2130, TTY (202) 418-2989.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order (R&O) in MM Docket No. 98-203, FCC 01-306, adopted on October 11, 2001, and released on October 17, 2001. The full text of the Commission's R&O is available for inspection and copying during regular business hours in the FCC Reference Center, 445 Twelfth Street, SW., Room CY-A257, Washington DC, and also may be purchased from the Commission's copy contractor, Qualex International, (202) 863-2893, 445 Twelfth Street, SW., Room CY-B402, Washington, DC. The complete text is also available under the file name fcc01306.pdf on the Commission's Internet site at [www.fcc.gov](http://www.fcc.gov).

#### Paperwork Reduction Act

This document contains new or modified information collection requirements. The fee program established herein will require NCE TV licensees annually to file a new reporting form. Licensees will be required to report whether they provided ancillary or supplementary services, what ancillary or supplementary services they provided, which of those services are subject to a fee, and the gross revenues received from all feeable ancillary or ancillary services. NCE licensees providing service subject to a fee additionally will be required annually to file FCC Form 159 in remittance of the fee. So that the Commission may audit NCE licensees records supporting the calculation of the fees due, each NCE licensee will be required to retain such records for three years from the date of remittance of fees. In addition, each NCE TV licensee will be required to maintain documentation sufficient to show compliance at renewal time and in response to any complaint with the requirement to use their entire bitstream primarily for nonbroadcast services on a weekly basis. Implementation of these new or modified reporting and recordkeeping

requirements will be subject to approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act of 1995.

#### Synopsis of Report and Order

##### Introduction

1. With this *Report and Order*, we clarify the manner in which noncommercial educational ("NCE") television licensees may use their excess digital television ("DTV") capacity for remunerative purposes. Among other things, we amend § 73.621 of our rules to apply to the entire digital bitstream, including ancillary or supplementary services, thereby requiring NCE licensees to use their digital capacity primarily for a noncommercial, nonprofit, educational broadcast service. We also amend §§ 73.642 and 73.644 of our rules to clarify that NCE licensees may offer subscription services on their excess digital capacity. We determine that section 399B of the Communications Act of 1934, as amended, the provision restricting advertising by NCE licensees, continues to apply to all broadcasting by NCE licensees, but does not apply to nonbroadcast services, such as subscription services provided on their DTV channels. Finally, we amend § 73.624(g) of our rules to apply to NCE licensees the program for assessing and collecting fees upon feeable ancillary or supplementary services provided on their DTV capacity that we have established for commercial licensees, as required by the Telecommunications Act of 1996 ("1996 Act"), Public Law 104-104, 110 Stat. 56 sec. 201 (1996), codified at 47 U.S.C. 336.

##### Background

2. The 1996 Act provided that initial eligibility for any advanced television licenses that we issue should be limited to existing broadcasters, conditioned upon the requirement that "either the additional license or the original license held by the licensee be surrendered to the Commission for reallocation or reassignment (or both) pursuant to Commission regulation." In our *Fifth Report and Order* in the DTV proceeding, we adopted rules to implement the statute, providing a specific transition process to digital technology for all existing television broadcasters. 62 FR 26996, May 16, 1997. Among other things, we established standards for license eligibility, a transition and construction schedule, and a requirement that broadcasters continue to provide one free over-the-air video programming service. We also adopted rules