R68. Agriculture and Food, Plant Industry.
R68-19. Compliance Procedures.
R68-19-1. Authority.

This rule is promulgated by the Division of Plant Industry (Division), within the Department of Agriculture and Food (Department) under authority of Section 4-2-2 (j).

R68-19-2. Definition of Terms.

(A) An Emergency Order means a written action by the division, which is issued to a person, as a result of information that is known by the division, which identifies an immediate and significant danger to the public's health, safety or welfare, and warrants prompt action pursuant to Section 63-46b-20.

Emergency orders include: "stop sale", "stop use", "removal-order", "quarantine ", "regulate-control order", and may be issued when division action is warranted to stop the sale of a product, or halt an immediate condition or service from occurring, pursuant to Sections 4-11-12, 4-12-7(2), 4-13-8(1), 4-14-8(2), 4-15-11(1), 4-16-8(1), and 4-17-3(8).

(B) A Citation means a lawful notice, issued by the division, which is intended to immediately remedy a violation of agricultural statutes or rules by a person, business, operator, etc. Pursuant to Section 4-2-15, a citation may include a penalty assessment, or provide for a fine to take effect within a stated time period.

R68-19-3. Emergency Order.

The division may issue an emergency order when it determines that there is an immediate and significant danger to public health, safety or welfare , and may be issued to secure the well-being, safety, or removal of danger to state citizens. Orders are intended to protect the public from unlawful agricultural and food products and services.

When an emergency order is justified, and conditions warrant immediate action by the division, it shall: Promptly issue a written order, that includes the following information:

(1) name, street address, city, state, zip-code, phone-number, and title or position of the person being given the order, or name, street-address, city, state, zip-code, phone-number of the business, organization, corporation, firm, limited liability company, etc., and the name and title or position of the person in the business or organization to whom the order is given.

(2) a brief statement of findings of fact as determined by the division,

(3) references to statutes or administrative rules violated,

(4) the reasons for issuance of the emergency order,

(5) the signature of the agency representative, and

(6) a space/line for the signature of the person (a signature is not required if the person refuses)

The order shall be written and no product, condition, or service subject to the order shall be released, except upon the subsequent written release by the department.

Pursuant to 4-11-11(3), 4-12-7(2), 4-13-8(2), 4-14-8(2), 4-15-8(2) and 4-17-8(2) the person subject to the written order may be required to pay the expense incurred by the department in connection with the withdrawal of the product, condition or service from the market.

R68-19-4. Citation.

The commissioner or persons designated by the commissioner, may enforce this rule by the issuance of a citation for violation, in order to secure subsequent payments of fines or the imposition of penalties:

The citation will include the following information:

(1) name, street address, city, state, zip-code, phone-number, and title or position of the person being given the order, or name, street-address, city, state, zip-code, phone-number of the business, organization, corporation, firm, limited liability company, etc., and the name and title or position of the person in the business or organization to whom the order is given.

(2) references to the statutes or rules violated,

(3) a brief statement of findings of fact as determined by the division,

(4) a penalty or fine amount

(5) the signature of the agency representative,

(6) a space/line for the signature of the person (a signature is not required if the person refuses)

(7) a statement to the effect that a person is allowed to request an administrative hearing if the person feels that a citation was not warranted.

Fine or penalty amounts will be set by the department or the division, under the direction of the commissioner, for amounts up to $5,000 per violation, or if the citation involves a criminal proceeding, the person may be found guilty of a class B misdemeanor. In accordance with Section 4-2-15, fine or penalty amounts shall be determined according to the following: PENALTY AMOUNTS: Citation per violation up to, but not to exceed $500; if not paid within 15 days, 2 times citation amount; if not paid within 30 days, 4 times citation amount

R68-19-5. Request for Hearing.

When any order or citation, as defined above, is issued, the person being charged with the violation may elect to file, within allowable time limits, a request for the department to schedule an informal Administrative Hearing in accordance with the provisions of Section 4-1-3.5.

KEY: agricultural law
April 15, 1998 **4-2-2(j)**

R70. Agriculture and Food, Regulatory Service.
R70-201. Compliance Procedures.
R70-201-1. Authority.

This rule is promulgated by the Division of Regulatory Service (Division), within the Department of Agriculture and Food (Department) under authority of Section 4-2-2(j).

R70-201-2. Definition of Terms.

(A) An Emergency Order means a written action by the Division, which is issued to a person, as a result of information that is known by the Division, which identifies an immediate and significant danger to the public's health, animal health, safety or welfare, and warrants prompt action pursuant to Section 63-46b-20.

Emergency orders include: "quarantine", "seized", "Utah Inspection and Condemned", "sealed", "reject", "retain", "denatured", "detained", and "suspect", and may be issued when division action is warranted to stop the sale of a product, or halt an immediate condition or service from occurring, pursuant to Sections 4-3-6, 4-3-9, 4-5-5(1)(a), 4-9-6, 4-9-7, 4-10-11(1) and 4-33-8(1).

(B) A Citation means a lawful notice, issued by the division, which is intended to immediately remedy a violation of agricultural statutes or rules by a person, business, operator, etc. Pursuant to Section 4-2-15, a citation may include a penalty assessment, or provide for a fine to take effect within a stated time period.

R70-201-3. Emergency Order.

The Division may issue an emergency order when it determines that there is an immediate and significant danger to public health, animal health, safety or welfare may be issued to secure the well-being, safety, or removal of danger to state citizens. Orders are intended to protect the public from unlawful agricultural and food products and services.

When an emergency order is justified, and conditions warrant immediate action by the Division, it shall: Promptly issue a written order, that includes the following information:

(1) name, street address, city, state, zip-code, phone-number, and title or position of the person being given the order, or name, street-address, city, state, zip-code, phone-number of the business, organization, corporation, firm, limited liability company, etc., and the name and title or position of the person in the business or organization to whom the order is given.

(2) a brief statement of findings of fact as determined by the division,

(3) references to statutes or administrative rules violated,

(4) the reasons for issuance of the emergency order,

(5) the signature of the agency representative, and

(6) a space/line for the signature of the person (a signature is not required if the person refuses).

This order shall be written and no product, condition, or service subject to the order shall be released, except upon the subsequent written release by the department.

R70-201-4. Citation.

The Commissioner or persons designated by the Commissioner, may enforce this rule by the issuance of a citation for violation, in order to secure subsequent payments of fines or the imposition of penalties:

The citation will include the following information:

(1) name, street address, city, state, zip-code, phone-number, and title or position of the person being given the order, or name, street-address, city, state, zip-code, phone-number of the business, organization, corporation, firm, limited liability company, etc., and the name and title or position of the person in the business or organization to whom the order is given.

(2) references to the statutes or rules violated,

(3) a brief statement to the findings of fact as determined by the division,

(4) a penalty or fine amount,

(5) the signature of the agency representative,

(6) a space or line for the signature of the person (a signature is not required if the person refuses),

(7) a statement to the effect that a person is allowed to request an administrative hearing if the person feels that a citation was not warranted.

Fine or penalty amounts will be set by the department or the division, under the direction of the commissioner, for amounts up to $5,000 per violation, or if the citation involves a criminal proceeding, the person may be found guilty of a class B misdemeanor. In accordance with Section 4-2-15, fine or penalty amounts shall be determined according to the following: PENALTY AMOUNTS: Citation per violation up to, but not to exceed $500; if not paid within 15 days, 2 times citation amount; if not paid within 30 days, 4 times citation amount.

R70-201-5. Request for Hearing.

When any order or citation, as defined above, is issued, the person being charged with the violation may elect to file, within allowable time limits, a request for the department to schedule an informal Administrative Hearing in accordance with the provisions of Section 4-1-3.5.

KEY: agricultural law
April 15, 1998 **4-2-2(j)**

R162. Commerce, Real Estate.
R162-1. Authority and Definitions.
R162-1-1. Authority.

1.1. The following administrative Rules, applicable to the Division of Real Estate, Department of Commerce have been established under the authority granted by Section 61-2-5.5, et seq.

1.1.1. The Division shall charge and collect fees for the (a) issuance of a new or duplicate license; (b) issuance of license history or certifications; (c) issuance of certified copies of official documents, orders, and other papers and transcripts; (d) certification of real estate schools, courses and instructors; and (e) costs of administering other duties.

1.1.2. The authority to collect the above fees is authorized by Section 61-2-9(5) and Section 61-2a-4.

R162-1-2. Definitions.

1.2. Terms used in these rules are defined as follows:

1.2.1. Active Licensee: One who: (a) has paid all applicable license fees; and (b) is affiliated with a principal brokerage.

1.2.2. Branch Manager: An associate broker who manages a branch office under the supervision of the principal broker.

1.2.3. Branch Office: A real estate office affiliated with and operating under the same name as a Principal Brokerage but located at an address different from the main office.

1.2.4. Business Opportunity: The sale, lease, or exchange of any business which includes an interest in real estate.

1.2.5. Brokerage: A real estate sales brokerage or a property management company.

1.2.6. Certification: The authorization issued by the Division to: (a) establish and operate a real estate school which provides courses approved for licensing requirements, (b) provide courses approved for renewal requirements, or (c) function as a real estate instructor.

1.2.7. Company Registration: A Registration issued to a corporation, partnership, Limited Liability Company, association or other legal entity of a real estate brokerage. A Company Registration is also issued to an individual or an individual's professional corporation.

1.2.8. Continuing Education: Professional education required as a condition of renewal in accordance with Subsection 61-2-9(2)(a).

1.2.9. Expired License: A license will be deemed "expired" when the licensee fails to pay the fees due by the close of business on the expiration date. If the expiration date falls on a Saturday, Sunday or holiday the effective date of expiration shall be the next business day.

1.2.10. Inactivation: The placing of a license on an inactive status, either voluntarily or involuntarily.

1.2.10.1. Voluntary inactivation means the process initiated by an active licensee terminating affiliation with a principal brokerage.

1.2.10.2. Involuntary inactivation means the process of (a) inactivation of a sales agent or associate broker license resulting from the suspension, revocation, or non-renewal of the license of the licensee's principal broker, or death of the licensee's principal broker, or (b) inactivation of a sales agent or associate broker license by a principal broker when the licensee is unavailable to execute the transfer forms.

1.2.11. Inactive Licensee: One who: (a) has paid all applicable license fees; and (b) is not affiliated with a principal brokerage.

1.2.12. Net listing means a listing wherein the amount of real estate commission is the difference between the selling price of the property and a minimum price set by the seller.

1.2.13. Non-resident Licensee: A person who holds a Utah real estate principal broker, associate broker, or sales agent license whose primary residence is in a jurisdiction other than Utah.

1.2.14. Principal Brokerage: The main real estate or property management office of a principal broker.

1.2.15. Property Management: The business of providing services relating to the rental or leasing of real property, including: advertising, procuring prospective tenants or lessees, negotiating lease or rental terms, executing lease or rental agreements, supervising repairs and maintenance, collecting and disbursing rents.

1.2.16. Regular Salaried Employees: For purposes of this Chapter, "regular salaried employee" shall mean an individual employed other than on a contract basis, who has withholding taxes taken out by the employer.

1.2.17. Reinstatement: To restore to active or inactive status, a license which has expired or been suspended.

1.2.18. Reissuance: The process by which a licensee may obtain a license following revocation.

1.2.19. Renewal: To extend an active or inactive license for an additional licensing period.

1.2.20. DBA (doing business as): The authority issued by the Division of Corporations and Commercial Code to transact business under an assumed name.

1.2.21. Real Estate Sales Agent or Sales Agent: Any person employed or engaged as an independent contractor by or on behalf of a licensed Principal Broker to provide the acts set out in Subsections 61-2-2(12) or 61-2-2(13).

KEY: real estate business, licensing
April 23, 1998 **61-2-5.5**
Notice of Continuation July 1, 1997

R162. Commerce, Real Estate.
R162-2. Exam and License Application Requirements.
R162-2-1. Exam Application.

2.1. Any person 18 years of age or older desiring to become a licensed broker or sales agent shall deliver an application for examination together with the applicable examination fee to the testing service designated by the Division. If the applicant fails to take the scheduled examination, the fee will be forfeited.

2.1.1. Applicants previously licensed out-of-state

(a) If an applicant is now and has been actively licensed for the preceding two years in another state which has substantially equivalent licensing requirements and is either a new resident or a non-resident of this state, the Division shall waive the national portion of the exam.

(b) If an applicant has been on an inactive status for any portion of the past two years he may be required to take both the national and Utah state portions of the exam.

R162-2-2. Licensing Procedure.

2.2. Within 90 days after successful completion of the exam, the applicant shall return to the Division each of the following:

2.2.1. A report of the examination indicating that both portions of the exam have been passed within a six-month period of time.

2.2.2. The license application form required by the Division. The application form shall include the licensee's business and home address. A post office box without a street address is unacceptable as a business or home address. The licensee may designate any address to be used as a mailing address.

2.2.3. The non-refundable fees which will include the appropriate license fee as authorized by Section 61-2-9(5) and the Recovery Fund fee as authorized by Section 61-2a-4.

2.2.4. Documentation indicating successful completion of the required education taken within the year prior to licensing. If the applicant has been previously licensed in another state which has substantially equivalent licensing requirements, he may apply to the Division for a waiver of all or part of the educational requirement.

2.2.4.1. Candidates for the license of sales agent will successfully complete 90 classroom hours of approved study in principles and practices of real estate. Experience will not satisfy the education requirement. Membership in the Utah State Bar will waive this requirement.

2.2.4.2. Candidates for the license of associate broker or principal broker will successfully complete 120 classroom hours of approved study consisting of at least 24 classroom hours in brokerage management, 24 classroom hours in advanced appraisal, 24 classroom hours in advanced finance, 24 hours in advanced property management and 24 classroom hours in advanced real estate law. Experience will not satisfy the education requirement. The Division may waive all or part of the educational requirement by virtue of equivalent education.

2.2.5. The principal broker and associate broker applicant will submit the forms required by the Division documenting a minimum of three years real estate experience and a total of at least 60 points accumulated within the five years prior to licensing. A minimum of two years (24 months) and at least 45 points will be accumulated from Tables I and/or II. The remaining 15 points may be accumulated from Tables I, II or III.

TABLE I - REAL ESTATE TRANSACTIONS

RESIDENTIAL - points can be accumulated from either the selling or the listing side of a real estate closing:

(a) One unit dwelling	2.5 points
(b) Two- to four-unit dwellings	5 points
(c) Apartments, 5 units or over	10 points
(d) Improved lot	2 points
(e) Vacant land/subdivision	10 points
COMMERCIAL	
(f) Hotel or motel	10 points
(g) Industrial or warehouse	10 points
(h) Office building	10 points
(i) Retail building	10 points
(j) Leasing of commercial space	5 points

TABLE II - PROPERTY MANAGEMENT

RESIDENTIAL	
(a) Each unit managed	.25 pt/month
COMMERCIAL - hotel/motel, industrial/warehouse, office, or retail building	
(b) Each contract OR each separate property address or location for which licensee has direct responsibility	1 pt/month

2.2.6. The Principal Broker may accumulate additional experience points by having participated in real estate related activities such as the following:

TABLE III - OPTIONAL

Real Estate Attorney	1 pt/month
CPA-Certified Public Accountant	1 pt/month
Mortgage Loan Officer	1 pt/month
Licensed Escrow Officer	1 pt/month
Licensed Title Agent	1 pt/month
Designated Appraiser	1 pt/month
Licensed General Contractor	1 pt/month
Bank Officer in Real Estate Loans	1 pt/month
Certified Real Estate Prelicensing Instructor	.5 pt/month

2.2.7. If the review of an application has been performed by the Division and the Division has denied the application based on insufficient experience, and if the applicant belives that the Experience Points Tables do not adequately reflect the amount of the applicant's experience, the applicant may petition the Real Estate Commission for reevaluation by making a written request within 30 days after the denial stating specific grounds upon which relief is requested. The Commission shall thereafter consider the request and issue a written decision.

2.2.8. An applicant previously licensed in another state will provide a written record of his license history from that state and documentation of disciplinary action, if any, against his license.

2.2.9. Determining fitness for licensure. The Commission and the Division will consider information necessary to determine whether an applicant meets the requirements of honesty, integrity, truthfulness, reputation and competency, which shall include the following:

2.2.9.1. Whether an applicant has been denied a license to practice real estate, property management, or any regulated

profession, business, or vocation, or whether any license has been suspended or revoked or subjected to any other disciplinary sanction by this or another jurisdiction;

2.2.9.2. Whether an applicant has been guilty of conduct or practices which would have been grounds for revocation or suspension of license under Utah law had the applicant then been licensed;

2.2.9.3. Whether a civil judgement has been entered against the applicant based on a real estate transaction, and whether the judgement has been fully satisfied;

2.2.9.4. Whether a civil judgment has been entered against the applicant based on fraud, misrepresentation or deceit, and whether the judgment has been fully satisfied.

2.2.9.5. Whether restitution ordered by a court in a criminal conviction has been fully satisfied;

2.2.9.6. Whether the probation in a criminal conviction or a licensing action has been completed and fully served; and

2.2.9.7. Whether there has been subsequent good conduct on the part of the applicant. If, because of lapse of time and subsequent good conduct and reputation or other reason deemed sufficient, it shall appear to the Commission and the Division that the interest of the public will not likely be in danger by the granting of a license, the Commission and the Division may approve the applicant relating to honesty, integrity, truthfulness, reputation and competency.

R162-2-3. Company Registration.

2.3.1. A Principal Broker shall register with the Division the name under which his real estate brokerage or property management company will operate. Registration will require payment of applicable non-refundable fees and evidence that the name of the new company has been approved by the Division of Corporations, Department of Commerce.

2.3.1.1. The real estate brokerage shall at all times have affiliated with it a principal broker who shall demonstrate that he is authorized to use the company name.

2.3.1.2. Misleading or deceptive business names. The Division will not accept a proposed business name when there is a substantial likelihood that the public will be misled by the name into thinking that they are not dealing with a licensed real estate brokerage or property management company.

2.3.2. Registration of Entities Operating a Principal Brokerage.

2.3.2.1. A corporation, partnership, Limited Liability Company, association or other entity which operates a principal brokerage shall comply with R162-2.3 and the following conditions:

2.3.2.2. Individuals associated with the entity shall not engage in activity which requires a real estate license unless they are affiliated with the principal broker and licensed with the Division. Upon a change of principal broker, the entity shall be responsible to insure that the outgoing and incoming principal brokers immediately provide to the Division, on forms required by the Division, evidence of the change.

2.3.2.2.1. If the outgoing principal broker is not available to properly execute the form required to effect the change of principal brokers, the change may still be made provided a letter advising of the change is mailed by the entity by certified mail to the last known address of the outgoing principal broker. A verified copy of the letter and proof of mailing by certified mail shall be attached to the form when it is submitted to the Division.

2.3.2.3. If the change of members in a partnership either by the addition or withdrawal of a partner creates a new legal entity, the new entity cannot operate under the authority of the registration of the previous partnership. The dissolution of a corporation, partnership, Limited Liability Company, association or other entity which has been registered terminates the registration. The Division shall be notified of any change in a partnership or dissolution of a corporation which has registered prior to the effective date of the change.

R162-2-4. Licensing of Non-Residents.

2.4. In addition to meeting the requirements of rules 2.1 and 2.2, an applicant living outside of the state of Utah may be issued a license in Utah by successfully completing specific educational hours required by the Division with the concurrence of the Commission, and by passing the real estate licensing examination. The applicant shall also meet each of the following requirements:

2.4.1. If the applicant is an associate broker or sales agent, the principal broker with whom he will be affiliated shall hold an active license in Utah.

2.4.2. If the applicant is a principal broker, he shall establish a real estate trust account in this state. He shall also maintain all office records in this state at a principle business location as outlined in R162-4.1.

2.4.3. The application for licensure in Utah shall be accompanied by an irrevocable written consent allowing service of process on the Commission or the Division.

2.4.4. The applicant shall provide a written record of his license history, if any, and documentation of disciplinary action, if any, against his license.

R162-2-5. Reciprocity.

2.5. The Division, with the concurrence of the Commission, may enter into specific reciprocity agreements with other states on the same basis as Utah licensees are granted licenses by those states.

KEY: real estate business
April 23, 1998 **61-2-5.5**
Notice of Continuation July 1, 1997

R162. Commerce, Real Estate.
R162-3. License Status Change.
R162-3-1. Status Changes.

3.1. A licensee must notify the Division within ten working days of any status change. Status changes are effective on the date the properly executed forms and appropriate non-refundable fees are received by the Division. Notice must be on the forms required by the Division.

3.1.1. Change of name requires submission of official documentation such as a marriage or divorce certificate, or driver's license.

3.1.2. Change of business, home address or mailing address requires written notification. A post office box without a street address is unacceptable as a business or home address. The licensee may designate any address to be used as a mailing address.

3.1.3. Change of name of a brokerage must be accompanied by evidence that the new name has been approved by the Division of Corporations, Department of Commerce.

3.1.4. Change of Principal Broker of a real estate brokerage which is a sole proprietorship, requires closure of the registered entity. The new principal broker will activate the Registered Company and provide proof from the Division of Corporations of the authorization to use the DBA. Change cards will be required for the terminating Principal Broker, new Principal Broker and all licensees affiliated with the brokerage.

3.1.5. Change of a Principal Broker within an entity which is not a sole proprietorship requires written notice from the entity signed by both the terminating Principal Broker and the new Principal Broker.

R162-3-2. Unavailability of Licensee.

3.2. If a licensee is not available to properly execute the form required for a status change, the status change may still be made provided a letter advising of the change is mailed by certified mail to the last known address of the unavailable licensee. A verified copy of the letter and proof of mailing by certified mail must be attached to the form when it is submitted to the Division.

R162-3-3. Transfers.

3.3. Prior to transferring from one principal broker to another principal broker, the licensee must mail or deliver to the Division written notice of the change on the form required by the Division.

R162-3-4. Inactivation.

3.4. To voluntarily inactivate a license, the licensee must deliver or mail to the Division a written request for the change signed by both the licensee and principal broker.

3.4.1. Prior to placing his license on an inactive status, a principal broker must provide written notice to each licensee affiliated with him of that licensing status change. Evidence of that written notice must be provided to the Division in order to process the status change. The inactivation of the license of a principal broker will also cause the licenses of all affiliated licensees to be immediately inactivated if they do not transfer their licenses in accordance with R162-3.3 prior to the effective date of the principal broker's status change.

3.4.2. The non-renewal, suspension, or revocation of the license of a principal broker will cause the licenses of all affiliated licensees to be immediately inactivated if they do not transfer their licenses in accordance with R162-3.3 prior to the effective date of the principal broker's status change.

3.4.2.1. When a principal broker is notified that his license will be suspended or revoked, he must, prior to the effective date of the suspension or revocation, provide written notice to each licensee affiliated with him of that status change. In addition, the Division shall send written notice to each sales agent, associate broker, or branch broker of the effective date of inactivation and the process for transfer.

3.4.3. The principal broker may involuntarily inactivate the license of the sales agent or associate broker by complying with R162-3.2.

R162-3-5. Activation.

3.5. All licensees changing to active status must submit to the Division the applicable non-refundable activation fee and a written request for activation on the form required by the Division. If the license has been on an "inactive" status in excess of one year, the licensee must provide to the Division a certificate evidencing completion of the education or examination requirements set forth in Section 61-2-9. At the time of the licensee's next renewal, education which was used to activate the license may not be used again for continuing education purposes.

R162-3-6. Renewal.

3.6. A license renewal notice shall be sent by the Division to the licensee at the mailing address shown on the division records. The licensee must return the completed renewal notice, proof of completion of 12 hours of continuing education and the applicable non-refundable renewal fee to the Division on or before the expiration shown on the notice. Renewal of an active Principal Broker license requires certification that the business name under which the licensee is operating is still current and in good standing with the Division of Corporations and that all real estate trust accounts are current.

3.6.1. If the renewal fee and documentation are not received within the prescribed time period, the license shall expire.

3.6.2. When an active license expires, the licensee's affiliation with a principal brokerage automatically terminates. The license may be renewed for a period of thirty days after the expiration date upon payment of a non-refundable late fee in addition to the requirements of R162-3.5 and R162-3.6.

3.6.3. After this 30-day period and until six months after the expiration date the license may be reinstated by paying a non-refundable reinstatement fee, and providing proof of satisfactory completion of the Utah portion of the prelicensing education required under Section 61-2-6 or passing the Utah portion of the real estate examination, in addition to the requirements of R162-3.5 and R162-3.6.

3.6.4. A principal broker's failure to renew his license when due, which causes the licenses of those affiliated with him to be placed on an inactive status, shall be separate grounds for disciplinary action against the principal broker.

3.6.5. If the Division has received a licensee's renewal

documents in a timely manner but the information is incomplete, the licensee shall be extended a 15-day grace period to complete the application.

3.6.6. Education credit will be given for a course taken in another state provided the course has been certified for continuing education purposes in another state. These courses shall meet the Utah requirement of protection of the public, except that credit will not be given for education where the subject matter pertains to another state's license laws.

3.6.6.1. Prior approval must be obtained from the division before credit will be granted. Evidence must be provided to the Division that the course was certified by another licensing jurisdiction at the time the course was taken.

KEY: real estate business
April 23, 1998 **61-2-5.5**
Notice of Continuation July 1, 1997

R162. Commerce, Real Estate.
R162-4. Office Procedures - Real Estate Principal Brokerage.
R162-4-1. Records and Copies of Documents.

4.1. The principal broker must maintain in his office and make available for inspection and copying by the Division all records pertaining to a real estate transaction for a period of at least three calendar years following the year in which an offer was rejected or the transaction either closed or failed.

4.1.1. Location of Records. Unless otherwise authorized by the Division in writing, the business records of the principal broker shall be maintained at his principal business location or, where applicable, at the branch office. If a brokerage closes its operation the principal broker must, within ten days after the closure, notify the Division in writing of where the records will be maintained in order to comply with R162-4.1 above. If a brokerage files for bankruptcy, the principal broker must, upon filing, notify the Division in writing of the filing and the current location of brokerage records.

4.1.2. Transaction Identification. All transactions, whether pending, closed or failed, must be numbered consecutively and identifiable in a manner that, in the opinion of the representative of the Division, the transaction can be readily followed in all pertinent documents. A sequential transaction number is to be assigned to every offer, and a separate transaction file is to be maintained for every offer, including rejected offers involving funds deposited to the brokerage trust account. A sequential transaction number need not be assigned to rejected offers which do not involve funds deposited to trust. The principal broker may, at his option, maintain a separate transaction file for each rejected offer which does not involve funds deposited to trust or keep such rejected offers in a single file.

4.1.3. Statement of Account. At the expiration of 30 days after an offer has been made by a buyer and accepted by a seller, either party may demand, and the principal broker must furnish, a detailed statement showing the current status of the transaction. On demand by either party, the principal broker must furnish an updated statement at 30-day intervals thereafter until the transaction is closed.

4.1.4. Closing Statements. A principal broker charged with closing a sale shall cause to be prepared and delivered to the buyer and seller, upon completion of a transaction, a detailed closing statement of all their respective accounts showing receipts and disbursement.

4.1.4.1. Closing statements for all real estate transactions in which a real estate principal broker participates must show the following: the date of closing; the total purchase price of the property; an itemization of all adjustments, money, or things of value received or paid, and to whom each item is credited or debited. The dates of the adjustments must be shown if they are not the same as the date of the closing. Also shown must be the balances due from the respective parties to the transaction, and the names of the payees, makers, and assignees of all notes paid, made, or assumed. The statements furnished to each party to the transaction must contain an itemization of credits and debits as pertain to each party.

4.1.4.2. The principal broker or his authorized representative must attend all closings. The principal broker is responsible for the content and accuracy of all closing statements regardless of who closes the transaction.

4.1.4.3. The principal broker closing the transaction must show proof of delivery of the closing statement to the buyer and seller. Signatures of the buyer and seller on the file copy of the closing statement or a copy of a transmittal letter sent by certified mail, return receipt requested, when signatures are not attainable, will satisfy this requirement.

4.1.5. Death or Disability of Principal Broker: Upon the death or inability of a principal broker to act as a principal broker the following procedures shall apply:

4.1.5.1. In the case of a corporation, partnership, Limited Liability Company, association, or other legal entity the provisions of R162-2-2.3.2. shall apply.

4.1.5.2. In the case of a sole proprietor all brokerage activity must cease and a family attorney or representative shall: (1) notify the Division and all licensees affiliated with the principal broker in writing of the date of death or disability; (2) advise the Division as to the location where records will be stored; (3) notify each listing and management client in writing to the effect that the principal broker is no longer in business and that the client may enter a new listing or management agreement with the firm of his choice; (4) notify each party and cooperating broker to any existing contracts; and (5) retain trust account monies under the control of the administrator, executor or co-signer on the account until all parties to each transaction agree in writing to disposition or until a court of competent jurisdiction issues an order relative to disposition.

R162-4-2. Trust Accounts.

4.2 All monies received in a real estate transaction regulated under Section 61-2-1, et seq., must be deposited in a separate non-interest bearing "Real Estate Trust Account," or, if the broker and the parties to the transaction agree in writing, into an "Interest Bearing Real Estate Trust Account," in a Utah bank, credit union, or other approved escrow depository in this state. The principal broker will be held personally responsible for deposits at all times. The principal broker must notify the Division in writing of the location and account numbers of all real estate trust accounts which he maintains. The "Real Estate Trust Account" and the "Interest Bearing Real Estate Trust Account" shall be used exclusively for real estate transactions regulated under Section 61-2-1, et seq. Funds received in connection with rental of tourist accommodations for any period of less than 30 consecutive days shall not be deposited in the "Real Estate Trust Account" or the "Interest Bearing Real Estate Trust Account."

4.2.1. Deposits. All monies received by a licensee in a real estate transaction, whether it be cash or check, must be delivered to the principal broker and deposited within three banking days after receipt of the funds by the licensee. This rule does not apply when:

4.2.1.1. The Real Estate Purchase Contract or other agreement states that the earnest money or other funds are to be held for a specific length of time or are to be deposited upon acceptance by the seller; or

4.2.1.2. The Real Estate Purchase Contract or other agreement states that the earnest money or other funds are to be made out and paid to the seller, or to the person or company named as the escrow closing agent; or

4.2.1.3. A promissory note is given as the earnest money deposit or otherwise credited to the transaction. The promissory note must name the seller as payee and be retained in the principal broker's file until closing. If a promissory note is used in a real estate transaction, the Real Estate Purchase Contract or other agreement must disclose that the consideration is in the form of a promissory note.

4.2.2. Commingling. Not more than $100 of the principal broker's own funds can remain in the "Real Estate Trust Account" or the "Property Management Trust Account," or the Division will consider the account to be commingled.

4.2.3. Builder Deposits. If a principal broker, who is also a builder or developer, receives deposit money under a Real Estate Purchase Contract, construction contract, or other agreement which provides for the construction of a dwelling, the deposit money must be placed in the "Real Estate Trust Account" or if the broker and the parties to the transaction agree in writing, the "Interest Bearing Real Estate Trust Account" and not be used for construction purposes unless specifically provided in the document or by separate written consent of the purchaser.

4.2.4. Interest Bearing Account. If an earnest money deposit is received and the parties believe that it would be uneconomical to place the money on demand in the "Real Estate Trust Account," or the parties want interest earned on the deposit to be used for an affordable housing program , such as the Utah Association of REALTORS Housing Opportunity Fund (UARHOF), the principal broker may, upon the written request of the parties, place the money in a separate "Interest Bearing Real Estate Trust Account." The written request must designate to whom the interest will be paid upon completion or failure of the sale.

4.2.5. Liability for Receipt. All consideration represented as received by a licensee on a Real Estate Purchase Contract or other document must have, in fact, been received by the licensee. A licensee must not rely on a buyer's or a lessee's promise to deliver the consideration at a future date.

4.2.6 Property Management Trust Account. Each principal broker engaged in property management shall establish a separate "Property Management Trust Account." A principal broker who collects rents for others only occasionally or who does so as a convenience for his clients, and manages no more than six accounts, may use the "Real Estate Trust Account" for this purpose and need not maintain a "Property Management Trust Account".

4.2.7. Disbursements. All cash and like payments in lieu of cash received by a principal broker in a real estate transaction are to be disbursed only in accordance with the terms of the Real Estate Purchase Contract which authorizes such disbursement, other proper written authorization of the parties having an interest in the payments, or by court order.

4.2.7.1. The withdrawal of any portion of the principal broker's sales commission must not take place without written authorization from the seller and buyer or until the closing statements have been delivered to the buyer and seller and the buyer or seller has been paid for the amount due as determined by the closing statement.

4.2.7.2. Commissions due the principal broker, other licensees associated with the principal broker, or other principal brokers may be paid directly from the trust account only after the transaction is closed or otherwise terminated. If commissions are so disbursed, a record of each disbursement is to be recorded on the trust account ledger sheet for the transaction.

4.2.7.3. When it becomes apparent to the principal broker that a transaction has failed, or if a party to the failed transaction requests disbursement of the earnest money or other trust funds, those funds may only be disbursed by the principal broker as provided in R162-4.2.7 above.

4.2.7.4. In the event a dispute arises over the return or forfeiture of the earnest money or other trust funds, and no party has filed a civil suit arising out of the transaction, the principal broker shall, within 15 days of notice of the dispute, provide the parties written notice of the dispute and request them to meet to mediate the matter. If the parties have contractually agreed to submit disputes arising out of their contract to mediation, the principal broker shall notify the parties of their obligation to submit the dispute over funds to an independent mediator agreed upon by the parties. If the parties have not contractually agreed to independent mediation, the principal broker holding the earnest money or trust funds shall use good faith best efforts to mediate.

4.2.7.4.1. In the event the dispute is not resolved in either a broker or independent mediation attempt, the principal broker shall maintain the disputed funds in a non-interest bearing real estate trust account. If the parties authorize, or if they previously authorized, deposit into a separate interest bearing trust account as provided in R162-4.2.4, the disputed funds may be maintained in a separate interest bearing trust account for disputed funds. The funds shall only be disbursed by the principal broker: (1) upon written authorization of the parties who will not receive the funds; (2) pursuant to the order of a court of competent jurisdiction; or (3) as provided in Section 4.2.7.4.2.

4.2.7.4.2. If the principal broker has not received written notice of a claim to the funds, including interest if any, within five years after the failure of the transaction, the principal broker may remit the funds to the State Treasurer's Office as "abandoned" property according to the provisions of Utah Code Section 67-4a-101, et seq.

4.2.8. Records. A principal broker must maintain at his principal business location a complete record of all consideration received or escrowed for real estate transactions in the following manner:

4.2.8.1. A duplicate deposit slip must show the amount of money received, the transaction number, and the date and place of deposit.

4.2.8.2. A set of checks and deposit slips must be used denoting the principal broker's business name and address, stating "Real Estate Trust Account" or "Property Management Trust Account," with the checks numbered consecutively. Checks drawn on this account are to be identified to the specific transaction. Deposits to this account are to be identified to the specific transaction. Voided trust checks are to be marked "Void" and the original check retained in the principal broker's file. A principal broker may establish as many bank trust accounts as desired. However, each trust account must be identified with the type of activity for which the account is to be

used and the Division must be notified in writing when each account is established.

4.2.8.3. A check register or check stubs must be maintained which itemize deposits and disbursements in consecutive order showing the date, payee or payor, the transaction information, check number, amount of disbursement or deposit, and the current balance remaining in the account.

4.2.8.4. An individual trust ledger sheet must be established upon deposit of any consideration and assigned a sequential transaction number for each transaction--be it rental, sale, or other. The ledger sheet must show the names of the parties, location of the property, the date and amount of each deposit or disbursement, the name of the payee and payor, the current balance remaining, and any other relevant transaction information. Each ledger sheet, after the transaction is closed, must show the final disposition of the consideration and be retained in the principal broker's file for a minimum of three years following the year in which the transaction was closed.

4.2.8.5. The trust account is to be reconciled with the bank statement at least monthly. The trust liability, which is the total of ledger cards, and similar books, records, and accounts must be kept up to date.

R162-4-3. Branch Office.

4.3 A branch office must be registered with the Division prior to operation.

4.3.1. Exemptions. A branch office does not include a model home, a project sales office, or a facility established for twelve months or less as a temporary site for marketing activity, such as an exhibit booth.

4.3.2. Operation. A branch office must operate under the same business name as the principal brokerage.

4.3.3. Trust Account. The principal broker or branch broker must notify the Division in writing of the location and account number of all real estate trust accounts in which the funds received at each branch office will be deposited.

4.3.4. Branch Broker. Each branch office must have a branch broker who will actively manage the office. The branch broker must be an associate broker. The principal broker must actively supervise the branch broker.

4.3.5. Registration. To register a branch office, the principal broker must submit to the Division, on the forms required by the Division, the location of the branch, the name of the branch broker and the names of all associate brokers and sales agents assigned to the branch, accompanied by the applicable fee.

4.3.6. Change of Branch Broker. The principal broker must notify the Division in writing on the forms required by the Division at the time of a change of branch broker.

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R162. Commerce, Real Estate.
R162-5. Property Management.
R162-5-1. Definition.

5.1. For purposes of this rule, property management requiring a real estate license includes advertising real estate for lease or rent, procuring prospective tenants or lessees, negotiating lease or rental terms, executing lease or rental agreements, collecting rent and accounting for and disbursing the money collected, arranging for repairs to be made to the real estate, and all other acts listed in Section 61-2-2(9)(c). It does not include the leasing or management of surface or subsurface minerals, or oil and gas interests, which is separate from a sale or lease of the surface estate.

R162-5-2. Exemptions.

5.2. The following individuals are not required to hold active real estate licenses to engage in property management:

5.2.1. Owners. An owner of real estate who manages his own property;

5.2.2. Employees. A regular salaried employee of an owner of real estate who manages property owned by his employer;

5.2.3. Apartment Managers. An individual who manages the apartments at which he resides in exchange for free or reduced rent on his apartment.

5.2.4. Homeowner's Association Employees. A full time salaried employee of a homeowner's association who manages units subject to the declaration of condominium which established the homeowner's association.

R162-5-3. Property Management by Real Estate Brokerage.

5.3. All property management performed by a real estate brokerage which has not obtained a separate property management company registration, or any licensees or unlicensed assistants affiliated with the brokerage, shall be done under the name of the brokerage and not under a separate business name.

5.3.1. All property management activities by a sales agent or associate broker affiliated with a principal broker shall be actively supervised by that principal broker. In the case of a branch office, the branch broker shall also actively supervise the licensees and unlicensed assistants affiliated with that branch.

R162-5-4. Property Management by Separate Property Management Company.

5.4. A separate property management company registration must be obtained in order to conduct property management business under a name different than that of the real estate brokerage.

5.4.1. The business of a separate property management company shall be exclusively property management. No real estate sales activity may be conducted by a property management company.

5.4.2. A license to operate a property management company will be granted upon compliance with the following conditions:

5.4.2.1. Application. Submission of the property management company application form required by the division, signed by an actively licensed principal broker, together with the proper application fees.

5.4.2.2. Business Name Approval. Compliance with the name approval provisions in R162-2.3. in the case of a principal broker who registers the name of his property management company with the division or R162-2.4. in the case of a property management company registration issued to a corporation, partnership, Limited Liability Company or association.

5.4.2.3. Property management by unlicensed principals or owners prohibited. Individuals who are principals or owners of a corporation, partnership, Limited Liability Company or association which is issued a property management company registration shall not engage in activity which requires a license unless they are licensed with the division and properly affiliated with the management broker for the corporation, partnership, Limited Liability Company or association.

5.4.3. The principal broker shall sign and submit the forms required by the division to affiliate with the property management company of each associate broker, branch broker and sales agent who will conduct property management services for the property management company.

5.4.4. Support Services Personnel. Individuals who are employees of a property management company may perform the following services under the supervision of the principal broker without holding active real estate licenses: providing a prospective tenant with access to a vacant apartment; providing secretarial, bookkeeping, maintenance, or rent collection services; quoting predetermined rent and lease terms; and filling out pre-printed lease or rental agreements.

5.4.5. Supervision. All property management activities by an associate broker or sales agent affiliated with the management company and all activities on behalf of the company by support services personnel shall be actively supervised by the principal broker of the company. In the case of a branch office, the branch broker shall also actively supervise the licensees and support services personnel affiliated with that branch.

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R162. Commerce, Real Estate.
R162-6. Licensee Conduct.
R162-6-1. Improper Practices.

6.1.1. False devices. A licensee shall not propose, prepare, or cause to be prepared any document, agreement, closing statement, or any other device or scheme, which does not reflect the true terms of the transaction, nor shall a licensee knowingly participate in any transaction in which a similar device is used.

6.1.1.1. Loan Fraud. A licensee shall not participate in a transaction in which a buyer enters into any agreement that is not disclosed to the lender, which, if disclosed, may have a material effect on the terms or the granting of the loan.

6.1.1.2. Double Contracts. A licensee shall not use or propose the use of two or more purchase agreements, one of which is not made known to the prospective lender or loan guarantor.

6.1.2. Signs. It is prohibited for any licensee to have a sign on real property without the written consent of the property owner.

6.1.3. Licensee's Interest in a Transaction. A licensee shall not buy, sell, or lease or rent any real property as a principal, either directly or indirectly, without first disclosing in writing on the purchase agreement or the lease or rental agreement his true position as principal in the transaction. A licensee will be considered to be a principal for the purposes of this rule if he is an owner, officer, director, partner, member, or employee of an entity which is a principal in the transaction. In the case of a licensee who is a stockholder but who is not an officer, director or employee of a corporation which is a principal in the transaction, the licensee will be considered to be a principal for the purposes of this rule if he owns more than 10% of the stock of the corporation.

6.1.4. Listing Content. The real estate licensee completing a listing agreement is responsible to make reasonable efforts to verify the accuracy and content of the listing.

6.1.4.1. Net listings are prohibited and shall not be taken by a licensee.

6.1.5. Advertising. This rule applies to all advertising materials, including newspaper, magazine, radio, and television advertising, direct mail promotions, business cards, door hangers, and signs.

6.1.5.1. Any advertising by active licensees that does not include the name of the real estate brokerage as shown on Division records is prohibited except as otherwise stated herein.

6.1.5.2 If the licensee advertises property in which he has an ownership interest and the property is not listed, the ad need not appear over the name of the real estate brokerage if the ad includes the phrase "owner-agent" or the phrase "owner-broker".

6.1.5.3. Names of individual licensees may be advertised in addition to the brokerage name. If the names of individual licensees are included in advertising, the brokerage must be identified in a clear and conspicuous manner. This requirement may be satisfied by identifying the brokerage in lettering which is at least one-half the size of the lettering which identifies the individual licensees.

6.1.5.4. Advertising teams, groups, or other marketing entities which are not licensed as brokerages is prohibited if the advertising states "owner-agent" or "owner-broker" instead of the brokerage name.

6.1.5.5. Advertising teams, groups, or other marketing entities which are not licensed as brokerages is permissible in advertising which includes the brokerage name upon the following conditions:

(a) The brokerage must be identified in a clear and conspicuous manner. This requirement may be satisfied by identifying the brokerage in lettering which is at least one-half the size of the lettering which identifies the team, group, or other marketing entity; and

(b) The advertising shall clearly indicate that the team, group, or other marketing entity is not itself a brokerage and that all licensees involved in the entity are affiliated with the brokerage named in the advertising.

6.1.5.6 If any photographs of personnel are used, the actual roles of any individuals who are not licensees must be identified in terms which make it clear that they are not licensees.

6.1.5.7. Any artwork or text which states or implies that licensees have a position or status other than that of sales agent or associate broker affiliated with a brokerage is prohibited.

6.1.5.8. Under no circumstances may a licensee advertise or offer to sell or lease property without the written consent of the owner of the property or the listing broker. Under no circumstances may a licensee advertise or offer to sell or lease property at a lower price than that listed without the written consent of the seller or lessor.

6.1.6. Double Commissions. In order to avoid subjecting the seller to paying double commissions, licensees must not sell listed properties other than through the listing broker. A licensee shall not subject a principal to paying a double commission without the principal's informed consent.

6.1.6.1. A licensee shall not enter or attempt to enter into a concurrent agency representation agreement with a buyer or a seller, a lessor or a lessee, when the licensee knows or should know of an existing agency representation agreement with another licensee.

6.1.7. Retention of Buyer's Deposit. A principal broker holding an earnest money deposit shall not be entitled to any of the deposit without the written consent of the buyer and the seller.

6.1.8. Unprofessional conduct. No licensee shall engage in any of the practices described in Section 61-2-2, et seq., whether acting as agent or on his own account, in a manner which fails to conform with accepted standards of the real estate sales, leasing or management industries and which could jeopardize the public health, safety, or welfare and includes the violation of any provision of Section 61-2-2, et seq. or the rules of this chapter.

6.1.9. Finder's Fees. A licensee may not pay a finder's fee or give any valuable consideration to an unlicensed person or entity for referring a prospect in a real estate transaction, except as provided in this rule.

6.1.9.1. Token gifts. A licensee may give a gift valued at $50 or less to an individual in appreciation for an unsolicited referral of a prospect which resulted in a real estate transaction.

6.1.10. Referral fees from lenders. A licensee may not receive a referral fee from a lender.

6.1.11. Failure to have written agency agreement. To avoid representing more than one party without the informed

consent of all parties, principal brokers and licensees acting on their behalf shall have written agency agreements with their principals. The failure to define an agency relationship in writing will be considered unprofessional conduct and grounds for disciplinary action by the Division.

6.1.11.1. A principal broker and licensees acting on his behalf who represent a seller shall have a written agency agreement with the seller defining the scope of the agency.

6.1.11.2. A principal broker and licensees acting on his behalf who represent a buyer shall have a written buyer agency agreement with the buyer defining the scope of the agency.

6.1.11.3. A principal broker and licensees acting on his behalf who represent both buyer and seller shall have written agency agreements with both buyer and seller which define the scope of the limited agency and which demonstrate that the principal broker has obtained the informed consent of both buyer and seller to the limited agency as set forth in Section R162-6.2.16.3.1.

6.1.11.4. A licensee affiliated with a brokerage other than the listing brokerage who wishes to act as a sub-agent for the seller, shall, prior to showing the seller's property:

(a) obtain permission from the principal broker with whom he is affiliated to act as a sub-agent;

(b) notify the listing brokerage that sub-agency is requested;

(c) enter into a written agreement with the listing brokerage consenting to the sub-agency and defining the scope of the agency; and

(d) obtain from the listing brokerage all information about the property which the listing brokerage has obtained.

6.1.11.5. A principal broker and licensees acting on his behalf who act as a property manager shall have a written property management agreement with the owner of the property defining the scope of the agency.

6.1.11.6. A principal broker and licensees acting on his behalf who represent a tenant shall have a written agreement with the tenant defining the scope of the agency.

R162-6-2. Standards of Practice.

6.2.1. Approved Forms. The following standard forms are approved by the Utah Real Estate Commission and the Office of the Attorney General for use by all licensees:

(a) June 12, 1996, Real Estate Purchase Contract (mandated use of this form is January 1, 1997);

(b) October 1, 1988, Earnest Money Sales Agreement for Residential Construction;

(c) January 1, 1987, Uniform Real Estate Contract;

(d) October 1, 1983, All Inclusive Trust Deed;

(e) October 1, 1983, All Inclusive Promissory Note Secured by All Inclusive Trust Deed;

(f) June 12, 1996, Addendum/Counteroffer to Real Estate Purchase Contract (mandated use of this form is January 1, 1997);

(g) June 12, 1996, Seller Financing Addendum to Real Estate Purchase Contract (mandated use of this form is January 1, 1997);

(h) June 12, 1996, Survey Addendum to Real Estate Purchase Contract (mandated use of this form is January 1, 1997);

(i) June 12, 1996, Buyer Financial Information Sheet (mandated use of this form is January 1, 1997);

(j) November 22, 1996, FHA/VA Loan Addendum to Real Estate Purchase Contract (mandated use of this form is January 1, 1997);

(k) June 12, 1996, Assumption Addendum to Real Estate Purchase Contract (mandated use of this form is January 1, 1997);

(l) September 5, 1996, Lead-based Paint Addendum to Real Estate Purchase Contract;

(m) September 5, 1996, Disclosure and Acknowledgment Regarding Lead-based Paint and/or Lead-based Paint Hazards.

6.2.1.1. Forms Required for Closing. Principal brokers and associate brokers may fill out forms in addition to the standard state-approved forms if the additional forms are necessary to close a transaction. Examples include closing statements, and warranty or quit claim deeds.

6.2.1.2. Forms Prepared by an Attorney. Any licensee may fill out forms prepared by the attorney for the buyer or lessee or the attorney for the seller or lessor to be used in place of any form listed in R162-6.2.1 (a) through (g) if the buyer or lessee or the seller or lessor requests that other forms be used and the licensee verifies that the forms have in fact been drafted by the attorney for the buyer or lessee, or the attorney for the seller or lessor.

6.2.1.3. Additional Forms. If it is necessary for a licensee to use a form for which there is no state-approved form, for example, the licensee may fill in the blanks on any form which has been prepared by an attorney, regardless of whether the attorney was employed for the purpose by the buyer, seller, lessor, lessee, brokerage, or an entity whose business enterprise is selling blank legal forms.

6.2.1.4. Standard Supplementary Clauses. There are Standard Supplementary Clauses approved by the Utah Real Estate Commission which may be added to Real Estate Purchase Contracts by all licensees. The use of the Standard Supplementary Clauses will not be considered the unauthorized practice of law.

6.2.2. Copies of Agreement. After a purchase agreement is properly signed by both the buyer and seller, it is the responsibility of each participating licensee to cause copies thereof, bearing all signatures, to be delivered or mailed to the buyer and seller with whom the licensee is dealing. The licensee preparing the document shall not have the parties sign for a final copy of the document prior to all parties signing the contract evidencing agreement to the terms thereof. After a lease is properly signed by both landlord and tenant, it is the responsibility of the principal broker to cause copies of the lease to be delivered or mailed to the landlord or tenant with whom the brokerage or property management company is dealing.

6.2.3. Residential Construction Agreement. The Earnest Money Sales Agreement for Residential Construction must be used for all transactions for the construction of dwellings to be built or presently under construction for which a Certificate of Occupancy has not been issued.

6.2.4. Employee Licensee. A real estate licensee working as a regular salaried employee as defined in section 1 of these rules, who sells real estate owned by the employer or leases real estate owned by the employer, may only do so and may only be

compensated directly by the employer under one of the following conditions: (1) the licensee is a principal broker; (2) the employer has on its staff a principal broker with whom the licensee affiliates for sales or management transactions; or (3) the employer contracts with a principal broker so that all employed licensees are affiliated with and supervised by a principal broker.

6.2.5. Real Estate Auctions. A principal broker who contracts or in any manner affiliates with an auctioneer or auction company which is not licensed under the provisions of Section 61-2-1 et seq. for the purpose of enabling that auctioneer or auction company to auction real property in this state, shall be responsible to assure that all aspects of the auction comply with the requirements of this section and all other laws otherwise applicable to real estate licensees in real estate transactions. Auctioneers and auction companies who are not licensed under the provisions of Section 61-2-1 et seq. may conduct auctions of real property located within this state upon the following conditions:

6.2.5.1. Advertising. All advertising and promotional materials associated with an auction must conspicuously disclose that the auction is conducted under the supervision of a named principal broker licensed in this state; and

6.2.5.2. Supervision. The auction must be conducted under the supervision of a principal broker licensed in this state who must be present at the auction; and

6.2.5.3. Use of Approved Forms. Any purchase agreements used at the auction must meet the requirements of Section 61-2-20 and must be filled out by a Utah real estate licensee; and

6.2.5.4. Placement of Deposits. All monies deposited at the auction must be placed either in the real estate trust account of the principal broker who is supervising the auction or in an escrow depository agreed to in writing by the parties to the transaction.

6.2.5.5. Closing Arrangements. The principal broker supervising the auction shall be responsible to assure that adequate arrangements are made for the closing of each real estate transaction arising out of the auction.

6.2.6. Guaranteed Sales. As used herein, the term "guaranteed sales plan" includes: (a) any plan in which a seller's real estate is guaranteed to be sold or; (b) any plan whereby a licensee or anyone affiliated with a licensee will purchase a seller's real estate if it is not purchased by a third party in the specified period of a listing or within some other specified period of time.

6.2.6.1. In any real estate transaction involving a guaranteed sales plan, the licensee shall provide full disclosure as provided herein regarding the guarantee:

(a) Written Advertising. Any written advertisement by a licensee of a "guaranteed sales plan" shall include a statement advising the seller that if the seller is eligible, costs and conditions may apply and advising the seller to inquire of the licensee as to the terms of the guaranteed sales agreement. This information shall be set forth in print at least one-fourth as large as the largest print in the advertisement.

(b) Radio/Television Advertising. Any radio or television advertisement by a licensee of a "guaranteed sales plan" shall include a conspicuous statement advising if any conditions and limitations apply.

(c) Guaranteed Sales Agreements. Every guaranteed sales agreement must be in writing and contain all of the conditions and other terms under which the property is guaranteed to be sold or purchased, including the charges or other costs for the service or plan, the price for which the property will be sold or purchased and the approximate net proceeds the seller may reasonably expect to receive.

6.2.7. Agency Disclosure. In every real estate transaction involving a licensee, as agent or principal, the licensee shall clearly disclose in writing to his respective client(s) or any unrepresented parties, his agency relationship(s). The disclosure shall be made prior to the parties entering into a binding agreement with each other. The disclosure shall become part of the permanent file.

6.2.7.1. When a binding agreement is signed in a sales transaction, the prior agency disclosure shall be confirmed in the currently approved Real Estate Purchase Contract or, with substantially similar language, in a separate provision incorporated in or attached to that binding agreement.

6.2.7.2. When a lease or rental agreement is signed, a separate provision shall be incorporated in or attached to it confirming the prior agency disclosure. The agency disclosure shall be in the form stated in R162-6.2.7.1, but shall substitute terms applicable for a rental transaction for the terms "buyer", "seller", "listing agent", and "selling agent".

6.2.7.3. Disclosure to other agents. An agent who has established an agency relationship with a principal shall disclose who he or she represents to another agent upon initial contact with the other agent.

6.2.8. Duty to Inform. Sales agents and associate brokers must keep their principal broker or branch broker informed on a timely basis of all real estate transactions in which the licensee is involved, as agent or principal, in which the licensee has received funds on behalf of the principal broker or in which an offer has been written.

6.2.9. Broker Supervision. Principal brokers and associate brokers who are branch brokers shall be responsible for exercising active supervision over the conduct of all licensees affiliated with them.

6.2.9.1. A broker will not be held responsible for inadequate supervision if:

(a) An affiliated licensee violates a provision of Section 61-2-1, et seq., or the rules promulgated thereunder, in contravention of the supervising broker's specific written policies or instructions; and

(b) Reasonable procedures were established by the broker to ensure that licensees receive adequate supervision and the broker has followed those procedures; and

(c) Upon learning of the violation, the broker attempted to prevent or mitigate the damage; and

(d) The broker did not participate in the violation; and

(e) The broker did not ratify the violation; and

(f) The broker did not attempt to avoid learning of the violation.

6.2.9.2. The existence of an independent contractor relationship or any other special compensation arrangement between the broker and affiliated licensees shall not release the broker and licensees of any duties, obligations, or

responsibilities.

6.2.10. Disclosure of Fees. If a real estate licensee who is acting as an agent in a transaction will receive any type of fee in connection with a real estate transaction in addition to a real estate commission, that fee must be disclosed in writing to all parties to the transaction.

6.2.11. Fees from Builders. All fees paid to a licensee for referral of prospects to builders must be paid to the licensee by the principal broker with whom he is licensed and affiliated. All fees must be disclosed as required by R162-6.2.10.

6.2.12. Fees from Manufactured Housing Dealers. If a licensee refers a prospect to a manufactured home dealer or a mobile home dealer, under terms as defined in Section 58-56-1, et seq., any fee paid for the referral of a prospect must be paid to him by the principal broker with whom he is licensed

6.2.13. Gifts and Inducements. A gift given by a principal broker to a buyer or seller, lessor or lessee, in a real estate transaction as an inducement to use the services of a real estate brokerage, or in appreciation for having used the services of a brokerage, is permissible and is not an illegal sharing of commission. If an inducement is to be offered to a buyer or seller, lessor or lessee, who will not be obligated to pay a real estate commission in a transaction, the principal broker must obtain from the party who will pay the commission written consent that the inducement be offered.

6.2.14. "Due-On-Sale" Clauses. Real estate licensees have an affirmative duty to disclose in writing to buyers and sellers the existence or possible existence of a "due-on-sale" clause in an underlying encumbrance on real property, and the potential consequences of selling or purchasing a property without obtaining the authorization of the holder of the underlying encumbrance.

6.2.15. Personal Assistants. With the permission of the principal broker with whom the licensee is affiliated, the licensee may employ an unlicensed individual to provide services in connection with real estate transactions which do not require a real estate license, including the following examples:

(a) Clerical duties, including making appointments for prospects to meet with real estate licensees, but only if the contact has been initiated by the prospect and not by the unlicensed person;

(b) At an open house, distributing preprinted literature written by a licensee, so long as a licensee is present and the unlicensed person furnishes no additional information concerning the property or financing and does not become involved in negotiating, offering, selling or filling in contracts;

(c) Acting only as a courier service in delivering documents, picking up keys, or similar services, so long as the courier does not engage in any discussion of, or filling in of, the documents;

(d) Placing brokerage signs on listed properties;

(e) Having keys made for listed properties; and

(f) Securing public records from the County Recorders' Offices, zoning offices, sewer districts, water districts, or similar entities.

6.2.15.1. If personal assistants are compensated for their work, they shall be compensated at a predetermined rate which is not contingent upon the occurrence of real estate transactions. Licensees may not share commissions with unlicensed persons who have assisted in transactions by performing the services listed in this rule.

6.2.15.2. The licensee who hires the unlicensed person will be responsible for supervising the unlicensed person's activities, and shall ensure that the unlicensed person does not perform activity which requires a real estate license.

6.2.15.3. Unlicensed individuals may not engage in telephone solicitation or other activity calculated to result in securing prospects for real estate transactions, except as provided in R162-6.2.15.(a) above.

6.2.16. Fiduciary Duties. A principal broker and licensees acting on his behalf owe the following fiduciary duties to the principal:

6.2.16.1. Duties of a seller's or lessor's agent. A principal broker and licensees acting on his behalf who act solely on behalf of the seller or the lessor owe the seller or the lessor the following fiduciary duties:

(a) Loyalty, which obligates the agent to act in the best interest of the seller or the lessor instead of all other interests, including the agent's own;

(b) Obedience, which obligates the agent to obey all lawful instructions from the seller or lessor;

(c) Full disclosure, which obligates the agent to tell the seller or lessor all material information which the agent learns about the buyer or lessee or about the transaction;

(d) Confidentiality, which prohibits the agent from disclosing any information given to the agent by the seller or lessor which would likely weaken the seller's or lessor's bargaining position if it were known, unless the agent has permission from the seller or lessor to disclose the information. This duty does not require the agent to withhold any known material fact concerning a defect in the property or the seller's or lessor's ability to perform his obligations;

(e) Reasonable care and diligence;

(f) Holding safe and accounting for all money or property entrusted to the agent; and

(g) Any additional duties created by the agency agreement.

6.2.16.2. Duties of a buyer's or lessee's agent. A principal broker and licensees acting on his behalf who act solely on behalf of the buyer or lessee owe the buyer or lessee the following fiduciary duties:

(a) Loyalty, which obligates the agent to act in the best interest of the buyer or lessee instead of all other interests, including the agent's own;

(b) Obedience, which obligates the agent to obey all lawful instructions from the buyer or lessee;

(c) Full Disclosure, which obligates the agent to tell the buyer or lessee all material information which the agent learns about the property or the seller's or lessor's ability to perform his obligations;

(d) Confidentiality, which prohibits the agent from disclosing any information given to the agent by the buyer or lessee which would likely weaken the buyer's or lessee's bargaining position if it were known, unless the agent has permission from the buyer or lessee to disclose the information. This duty does not permit the agent to misrepresent, either affirmatively or by omission, the buyer's or lessee's financial condition or ability to perform;

(e) Reasonable care and diligence;

(f) Holding safe and accounting for all money or property entrusted to the agent; and

(g) Any additional duties created by the agency agreement.

6.2.16.3. Duties of a limited agent. A principal broker and licensees acting on his behalf who act as agent for both seller and buyer, or lessor and lessee, commonly referred to as "dual agents," are limited agents since the fiduciary duties owed to seller and to buyer, or to lessor and lessee, are inherently contradictory. A principal broker and licensees acting on his behalf may act in this limited agency capacity only if the informed consent of both buyer and seller, or lessor and lessee, is obtained.

6.2.16.3.1. In order to obtain informed consent, the principal broker or a licensee acting on his behalf shall clearly explain to both buyer and seller, or lessor and lessee, that they are each entitled to be represented by their own agent if they so choose, and shall obtain written agreement from both parties that they will each be giving up performance by the agent of the following fiduciary duties:

(a) The principal broker or a licensee acting on his behalf shall explain to buyer and seller, or lessor and lessee, that they are giving up their right to demand undivided loyalty from the agent, although the agent, acting in this neutral capacity, shall advance the interest of each party so long as it does not conflict with the interest of the other party. In the event of conflicting interests, the agent will be held to the standard of neutrality; and

(b) The principal broker or a licensee acting on his behalf shall explain to buyer and seller, or lessor and lessee, that there will be a conflict as to a limited agent's duties of confidentiality and full disclosure, and shall explain what kinds of information will be held confidential if told to a limited agent by either buyer or seller, or lessor and lessee, and what kinds of information will be disclosed if told to the limited agent by either party. The limited agent may not disclose any information given to the agent by either principal which would likely weaken that party's bargaining position if it were known, unless the agent has permission from the principal to disclose the information; and

(c) The principal broker or a licensee acting on his behalf shall explain to the buyer and seller, or lessor and lessee, that the limited agent will be required to disclose information given to the agent in confidence by one of the parties if failure to disclose the information would be a material misrepresentation regarding the property or regarding the abilities of the parties to fulfill their obligations.

(d) The Division and the Commission shall consider use of consent language approved by the Division and the Commission to be informed consent.

6.2.16.3.2. In addition, a limited agent owes the following fiduciary duties to all parties:

(a) Obedience, which obligates the limited agent to obey all lawful instructions from either the buyer or the seller, lessor and lessee, consistent with the agent's duty of neutrality;

(b) Reasonable care and diligence;

(c) Holding safe all money or property entrusted to the limited agent; and

(d) Any additional duties created by the agency agreement.

6.2.16.4. Duties of a sub-agent. A principal broker and licensees acting on his behalf who act as sub-agents owe the same fiduciary duty to a principal as the brokerage retained by the principal.

KEY: real estate business
April 23, 1998 **61-2-5.5**
Notice of Continuation July 1, 1997

R162. Commerce, Real Estate.
R162-7. Enforcement.
R162-7-1. Filing of Complaint.

7.1. An aggrieved person may file a complaint in writing against a licensee; or the Division or the Commission may initiate a complaint upon its own motion for alleged violation of the provisions of these rules or of Section 61-2-1, et seq. The Division will not entertain complaints between licensees regarding claims to commissions.

R162-7-2. Notice of Complaint.

7.2. When the Division notifies a licensee of a complaint against him the licensee must respond to the complaint within ten business days after receipt of the notice from the Division. Failure to respond to the notice of complaint or any subsequent requests for information from the Division within the required time period will be considered an additional violation of these rules and separate grounds for disciplinary action against the licensee.

R162-7-3. Investigation and Enforcement.

7.3. The investigative and enforcement activities of the Division shall include the following: investigation of information provided on new license applications; evaluation and investigation of complaints; auditing licensees' business records, including trust account records; meeting with complainants, respondents, witnesses and attorneys; making recommendations for dismissal or prosecution; preparation of cases for formal or informal hearings, restraining orders or injunctions; working with the assistant attorney general and representatives of other state and federal agencies; and entering into proposed stipulations for presentation to the Commission and the director.

R162-7-4. Corrective Notice.

7.4. In addition to disciplinary action under Section 61-2-11, the Division may give a licensee written notice of specific violations of these rules and may grant a licensee a reasonable period of time, not exceeding 30 days, to correct a defect in that licensee's practices or operations. The licensee's failure to correct the defect within the time granted shall constitute separate grounds for disciplinary action against the licensee. The Division is not required to give a corrective notice and allow an opportunity to correct a defect before it may commence disciplinary action against a licensee.

KEY: real estate business
April 23, 1998 **61-2-5.5**
Notice of Continuation July 1, 1997

R162. Commerce, Real Estate.
R162-10. Administrative Procedures.
R162-10-1. Formal Adjudicative Proceedings.

10.1. Any adjudicative proceeding as to the following matters shall be conducted on a formal basis:

10.1.1. Except as otherwise expressly provided herein, the revocation, suspension or probation of a real estate license, school or instructor certification or fine levied against a licensee.

10.1.2. The revocation, suspension or probation of any registration issued pursuant to the Time Share and Camp Resort Act.

10.1.3. Any proceedings conducted subsequent to the issuance of cease and desist orders.

R162-10-2. Informal Adjudicative Proceedings.

10.2. Any adjudicative proceedings as to the following matters shall be conducted on an informal basis:

10.2.1. The issuance of a real estate license, the renewal of an active, inactive or expired license, or the activation of an inactive license.

10.2.2. Any action on a sales agent's license based upon the revocation or suspension of a principal broker's license or the failure of the principal broker to renew his license.

10.2.3. The issuance of renewal or certification of real estate schools or instructors.

10.2.4. The revocation of a real estate license due to payment made from the Real Estate Recovery Fund.

10.2.5. The issuance, renewal, suspension or revocation of registration pursuant to the Land Sales Practices Act.

10.2.6. The exemption from, or the amendment of, registration pursuant to the Land Sales Practices Act.

10.2.7. The issuance or renewal of any registration pursuant to the Time Share and Camp Resort Act.

10.2.8. Any waiver of, or exemption from, registration requirements pursuant to the Time Share and Camp Resort Act.

10.2.9. The issuance of any declaratory order determining the applicability of a statute, rule or order when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the Division of Real Estate.

10.2.10. The post-revocation hearing following the revocation of license pursuant to Utah Code Section 61-2-9(1)(e)(i) for failure to accurately disclose a criminal history.

R162-10-3. Proceedings Not Designated.

10.3. All adjudicative proceedings as to any other matters not specifically listed herein shall be conducted on an informal basis.

KEY: real estate business
April 23, 1998 **61-2-5.5**
Notice of Continuation December 1, 1995 **63-46b-1(5)**

R223. Community and Economic Development, Community Development, Library.
R223-1. Adjudicative Procedures.
R223-1-1. Authority and Purpose.

The State Library Division, Department of Community and Economic Development, State of Utah, hereby declares, in accordance with Utah Code Annotated Section 63-46b-4(2), that all programs, actions, or proceedings carried out under the authority of the State Library Division by State Library Division personnel which require adjudicative procedures in accordance with the provisions of the Utah Administrative Procedures Act, Utah Code Annotated Title 63, Chapter 46b, shall be conducted informally according to the provisions of rules adopted under Utah Code Annotated 63-46b-4 and 63-46b-5.

R223-1-2. Procedures.

The requirement that all adjudicative procedures be conducted informally shall apply to all current programs, actions, or proceedings for which adjudicative procedures are required and to all future programs, actions, or proceedings carried out under the authority of the State Library Division for which adjudicative procedures are required.

KEY: administrative procedure, adjudicative procedures*, informal procedures*

1988	**63-46b-4**
Notice of Continuation May 1, 1998	**63-46b-4(2)**
	63-46b-5

R277. Education, Administration.
R277-469. Textbook Commission Operating Procedures.
R277-469-1. Definitions.

A. "Pilot program" or "pilot use" means the use by a school or schools on a limited basis of previously unreviewed instructional materials and materials not yet submitted to the Utah State Textbook Commission for formal review, consistent with Section R277-469-10.

B. "Pilot approval" means approval authorized under Section R277-469-10 using the form developed and provided by the USOE Instructional Materials Specialist.

C. "Instructional materials" means systematically arranged text materials, in harmony with the state curriculum framework and courses of study, which may be used by students as principal sources of study and which cover any portion of the course. These materials:

(1) shall be designed for student use;

(2) may be accompanied by or contain teaching guides and study helps;

(3) shall appear on the list of state-adopted instructional materials or be approved for pilot use by the State Textbook Commission.

D. "Core Curriculum" means minimum academic standards provided through courses as established by the Board which shall be completed by all students K-12 as a requisite for graduation from Utah's secondary schools.

E. "Comprehensive materials" means instructional materials that satisfy the Core Curriculum in a specific subject area.

F. "Supportive materials" means instructional materials that satisfy a portion or portions of the Core Curriculum in a specific subject area.

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

H. "USOE" means the Utah State Office of Education.

I. "Commission" means the Utah State Textbook Commission.

J. "Previously unreviewed materials" means instructional materials that have neither been approved by the State Textbook Advisory Commission through the formal approval process nor approved as pilot materials under Section R277-469-10.

R277-469-2. Authority and Purpose.

A. This rule is authorized under Utah Constitutional Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-14-101 through 53A-14-106 which directs the Board to appoint a State Textbook Commission and directs the Commission to recommend instructional materials for adoption by the Board, and by Subsection 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities.

B. The purpose of this rule is to provide definitions, operating procedures and provisions for pilot and limited approvals of instructional materials.

R277-469-3. Use of State Funds for Instructional Materials.

A. Districts may use funds designated for state instructional materials only for materials on the approved instructional materials list or on materials approved under Section R277-469-10 for pilot use.

B. Schools that use any funding source to purchase materials that have not been approved through the formal Commission process or consistent with Section R277-469-10 for pilot use, may have funds withheld to the extent of the actual costs of those materials pursuant to Subsection 53A-1-401(3).

R277-469-4. Textbook Commission Members Terms of Service.

A. Members shall be appointed from categories designated in Subsection 53A-14-102(1).

B. Members shall serve four year staggered terms beginning with the 1998 appointments with the option for reappointment for one additional term.

C. The Commission may establish subcommittees as needed.

R277-469-5. Commission Review of Materials.

A. All materials used in Utah schools shall be reviewed by the Commission consistent with this rule or qualify under the adoption categories of Section R277-469-6.

B. The Commission may review materials in the following subject areas on timelines as determined by the Commission based upon district needs and requests and using forms and procedures provided by the USOE Instructional Materials Specialist:

(1) Bilingual education/English as a second language (Elementary and Secondary),

(2) Character education (Elementary and Secondary),

(3) Driver education (Secondary),

(4) Early childhood education,

(5) Fine arts (Elementary and Secondary),

(6) Foreign language (Elementary and Secondary),

(7) Health education and fitness (Elementary and Secondary),

(8) Information technology (Elementary and Secondary),

(9) Language arts (Elementary and Secondary),

(10) Mathematics (Elementary and Secondary),

(11) Science (Elementary and Secondary),

(12) Social studies (Elementary and Secondary),

(13) Applied technology/vocational subjects,

(14) Technology education, and

(15) Technology and industrial arts.

R277-469-6. Review and Adoption Categories.

A. Materials may be considered for review and categorized under the following:

(1) Comprehensive:

(a) Consistent with Core Curriculum;

(b) Provides comprehensive overview of course content;

(c) Designed for student use;

(d) Accompanied by or includes teaching guides or study aids or both;

(2) Supportive:

(a) Consistent with Core Curriculum;

(b) May not provide comprehensive overview of course;

(c) Used to complement or supplement comprehensive materials.

(3) Limited Adoption:

(a) Not consistent with Core Curriculum;

(b) Narrow or restricted in scope and sequence;

(c) Use of limited-adoption materials by a school or district requires specific USOE approval for the use of those materials prior to purchase. Prior approval process:

(i) District shall submit plan for using limited materials in conjunction with other resources to fulfill Core requirements.

(ii) Plan shall be reviewed by the USOE subject area specialist and Instructional Materials Specialist who shall make recommendations for desired use of materials.

(iii) If, after recommendations and modifications by USOE specialists, the plan is not acceptable, the district may petition the Commission for direct approval of materials.

(4) Teacher Resource:

(a) Materials shall be consistent with Core Curriculum as course resource materials;

(b) If the content of materials originally intended for student use is inconsistent with state law or the Core Curriculum, those materials may only be used by teachers as teacher resource materials;

(c) Materials may be accompanied by or contain teaching guides or study aids or both;

(d) Materials may provide information on only a portion of a course.

(5) Resource materials not evaluated by the Commission--these materials are not designed as organized instructional programs and may include:

(a) Encyclopedias and similar reference books;

(b) Library or trade books;

(c) Audiovisual or manipulative materials which are not parts of an integrated system or program;

(d) Consumable workbooks;

(e) Resource file materials such as learning experiences and evaluation;

(f) Teachers' manuals and teachers' professional materials in specific subject areas.

(6) Materials not recommended: Materials of questionable value to the schools due to:

(a) inaccuracies in content;

(b) misleading connotations;

(c) undesirable presentation of visual or textual material;

(d) content, style, or wording in conflict with expressed Board philosophy; or

(e) the failure of materials to be based on current research or best strategies.

(7) Rejected materials: Materials containing objectionable visual or textual content, unsuitable for use by students or teachers in Utah's public schools, either as text or enrichment materials, as part of prescribed curriculum.

(8) Inappropriate materials: Materials judged by the Commission to be inappropriate for use by students or teachers in the content category under which they were submitted by the publisher.

(9) Incomplete materials: Materials submitted by the publisher which are incomplete or otherwise unsatisfactory for accurate and comprehensive appraisal by the Commission.

B. Specific types of materials, such as dictionaries, may be reviewed and have a limited range of evaluation categories.

C. When the Commission determines that a variety of materials, perhaps submitted separately, constitutes an integral instructional package, the total package or instructional system shall be reviewed and evaluated collectively.

R277-469-7. Criteria for Selection of Instructional Materials.

A. Consistent with Core Curriculum.

B. Provides an objective and balanced viewpoint on issues.

C. Includes enrichment and extension possibilities.

D. Appropriate to varying levels of learning.

E. Authoritative, realistic, factual and accurate.

F. Chronologically or systematically organized or both.

G. Reflective of the pluralistic character and culture of the American people.

H. Free from sexual, ethnic, age, gender or disability stereotyping.

I. Provides accurate representation of diverse ethnic groups.

J. Is of acceptable technical quality.

K. Upon request from the USOE Instructional Materials Specialist or a district, a publisher of instructional materials shall furnish computer diskettes of materials for literary subjects in the American Standard Code for Information Interchange (ASCII) from which Braille versions of all or part of the instructional materials can be produced.

L. USOE monitoring:

(1) The USOE may require a district to provide a report of instructional materials purchases.

(2) The USOE may initiate an informal audit of instructional materials purchases.

R277-469-8. Directives and Procedures for Publishing Companies.

A. The Commission shall not designate any individual, corporation or business as an official instructional materials depository.

B. Publishers desiring to sell adopted materials to Utah schools shall have adopted materials on deposit at an instructional materials distributor in the business of selling instructional materials to schools or districts in Utah.

C. Depository agreements may be made between publishers of materials and local vendors.

D. Revised adopted materials:

(1) If a revised edition of adopted materials retains the original title and authorship, the publisher may request its substitution for the edition currently adopted providing that:

(a) the original contracted price does not change;

(b) the revised edition is compatible with the earlier edition, permitting use of either or both in the same classroom;

(c) a sample copy of the revised edition is provided to the USOE Instructional Materials Specialist for examination purposes.

(2) If Subsection R277-469-8D(1) is not satisfied, a new edition shall be submitted for adoption as new materials.

(3) The Commission shall make the final determination about the substitution of a new edition for an adopted edition with assistance from the state subject area specialist.

E. Publishers Increase in Contract Prices

(1) Publishers may request one increase in contract prices

to be effective during either the third or fourth year of the contract for text materials adopted by the Commission.

(2) Price increases shall be limited to the consumer price index (CPI) for the last fiscal year unless cause is shown consistent with designated deadlines and forms provided by the Commission.

R277-469-9. Instructional Materials Appropriate for Review.

A. Text materials: printed volumes, consisting of a text and other components including:

(1) teacher materials;

(2) workbooks;

(3) computer software;

(4) videodiscs; and

(5) other multimedia which constitute organized learning systems.

B. Laserdiscs (or videodiscs): laserdisc-based instructional materials in which the major learning tool consists of a videodisc and includes teacher and student materials.

C. Multimedia: multiple forms of communications media, which may be controlled, coordinated, and integrated by the microcomputer.

D. Software: software-based programs in which the major learning tool consists of a software program which is supplemented by teacher and student materials.

E. Compact discs: a compact disc-based (CD ROM) program in which the major learning tool consists of a compact disc supplemented by teacher and student materials.

F. Materials which shall not be considered for adoption by the Commission:

(1) encyclopedias and other reference books and software;

(2) library or trade books;

(3) audiovisual or other instructional material(s) which are not components of an integrated system or are not a substantial program of study or cannot stand alone as the instructional materials for the classroom; and

(4) consumable workbooks which are not components of an integrated system or program.

G. The Commission's determination of how materials are categorized for review is final.

R277-469-10. Pilot Use of Instructional Materials.

A. Pilot approval for previously unreviewed instructional materials shall be given for no more than:

(1) ten percent of the districts in the state; and

(2) ten percent of the schools in a single district;

B. Publishers shall present a completed pilot application form when applying to the USOE Associate Superintendent for pilot approval.

C. Publishers shall present proof of pilot approval from the USOE Associate Superintendent for Instructional Services to the school or district prior to distribution of materials.

D. The Commission shall not review materials submitted by a publisher who has acted in violation of this rule, R277-469, for a two year period beginning January 1 of the year following the year in which the violation occurred.

E. Samples (defined as one copy or one set of instructional materials) may be given to a school or district upon request for preview purposes only by administrators or teachers.

F. Publishers, in cooperation with districts using the materials, may be required to provide an evaluation of pilot materials based on criteria and using a form provided by the USOE.

G. Pilot materials may only be used for one school year anywhere in the state under pilot approval prior to seeking final approval through the formal Commission process.

H. The USOE may require a report of pilot program materials used in district schools in the past year.

I. Districts or schools or both shall assume the costs of pilot materials not approved for further use by the Commission.

J. Districts shall be responsible to collect instructional materials used in a pilot program following the pilot period. Materials reviewed by the Commission and designated under Subsections R277-469-6A(6)(7)(8) and (9) shall be collected from the pilot schools by the district which sponsored the pilot program and disposed of. The USOE Instructional Materials Specialist shall be notified of this collection and disposal.

KEY: instructional materials
April 7, 1998 **Art X, Sec 3**
53A-14-101 through 53A-14-106
53A-1-401(3)

R277. Education, Administration.
R277-504. Early Childhood, Elementary, Secondary, Special Education (K-12), Communication Disorders, and Special Education (Birth-Age 5) Certification.
R277-504-1. Definitions.

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

B. "USOE" means Utah State Office of Education.

C. "Basic Certificate" means the initial certificate issued by the Board which permits the holder to be employed in the public school system as an educator.

D. "Standard Certificate" means a certificate issued by the Board after a holder has demonstrated competence under the Basic Certificate.

E. "Endorsement" means a specialty field or area listed on the teaching certificate which indicates the specific qualification of the holder.

F. "Early Childhood Certificate" means Early Childhood Education Certificate: the certificate required for teaching kindergarten and permitting assignment in kindergarten through grade three. It is recommended for those teaching in formal programs below kindergarten level.

G. "Elementary Certificate" means Elementary Teaching Certificate: the certificate required for teaching grades one through eight.

H. "Middle Education Certificate" means Middle Education Teaching Certificate: the certificate required for teaching grades five through nine (valid, but no longer required after April 1, 1989).

I. "Secondary Certificate" means Secondary Teaching Certificate: the certificate required for teaching grades six through twelve. Secondary Certificates carry endorsements for the areas in which the holder is qualified.

J. "Special Education (Birth-Age 5) Certificate" means a certificate required beginning June 30, 1990 for teaching preschool students with handicaps.

K. "Special Education Certificate (K-12)" means Special Education Teaching Certificate: the certificate required for teaching students with handicaps in kindergarten through grade twelve. Special Education Certificates carry endorsements in at least one of the following areas:

(1) Mild/Moderate Endorsement which permits the holder to teach students with mild/moderate learning and behavior problems;

(2) Severe Endorsement which permits the holder to teach students with severe learning and behavior problems;

(3) Hearing Impaired Endorsement which permits the holder to teach students who are deaf or other hearing impaired;

(4) Visually Impaired Endorsement which permits the holder to teach students who are blind or other visually impaired.

L. "Communication Disorders Certificate" means Communication Disorders Specialist Certificate: the certificate required for teaching students with communication disorders in kindergarten through grade twelve. Communication Disorders Certificates carry endorsements in at least one of the following areas:

(1) speech/language pathology;

(2) audiology.

M. "Early intervention credential" is the highest qualified personnel standard established by the Department of Health that persons must meet in able to provide services to infants and toddlers with disabilities age 0-3 in early intervention settings. Establishment of this standard was a collaborative initiative between the Department of Health and the State Office of Education. In order to provide services to infants and toddlers with disabilities age 0-3 in early intervention settings, a person must have an Early Intervention Credential or a Special Education (Birth-Age 5) Certificate.

N. "Highest requirements in the State applicable to a specific profession or discipline" means the highest entry-level academic degree needed for any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline.

R277-504-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests the general control and supervision of the public schools in the State Board of Education and by Section 53A-1-402(1)(a) which directs the Board to make rules regarding the certification of educators, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to:

(1) specify the requirements for Early Childhood, Elementary, Secondary, Special Education (K-12), Communication Disorders and Special Education (Birth-Age 5) Certification; and

(2) specify the standards which must be met for each of these areas by a teacher preparation institution in order to receive Board approval of its program for teachers.

R277-504-3. Basic Certificate.

A. The basic certificate is issued for four years.

B. During the basic certification period, the preparing institution and the employing school district shall supervise the candidate closely and make special assistance available.

C. An applicant for the Basic Early Childhood, Elementary, Secondary, Special Education (K-12), Communication Disorders, and Special Education (Birth-Age 5) Certificate shall have done all of the following:

(1) graduated with a bachelor's degree from an accredited institution;

(2) completed a Board-approved program for the preparation of early childhood, elementary, secondary, special education (K-12), communication disorder, and special education (birth-age 5) specialists;

(3) demonstrated competence in computer understanding and use; and

(4) been recommended by an institution whose program of preparation is Board-approved.

D. If a teacher who has been issued a Basic Certificate does not teach immediately or has an interruption in service after the first year and more than four years have elapsed, the candidate may request renewal of the Basic Certificate by presenting verification of pending employment and nine quarter hours (six semester hours) of credit taken during the preceding five-year period prior to the application for renewal.

E. If the successful experience from the first to the second year of teaching is greater than five years, the first year of experience will not apply.

F. If an individual does not teach successfully for at least two years while holding the Basic Certificate, the certificate will expire and the teacher will no longer be eligible to teach in Utah. An individual's whose Basic Certificate expires, is eligible to apply for the program anew and proceed through the requirements as outlined.

G. Under no circumstances shall a teacher be permitted to teach for more than four years on the Basic Certificate without qualifying for the Standard Certificate.

H. The Basic Secondary Certificate

(1) A Secondary Teaching Certificate with subject endorsement(s) is valid in grades six through twelve.

(2) The 6-12 certificate requires a major and minor or composite major, but the teacher cannot teach in a self-contained class.

(3) An applicant for the Basic Secondary Certificate shall have completed an approved teaching major and minor or a composite major, consistent with subjects taught in Utah secondary schools. The certificate is endorsed for all subjects in which the applicant has at least a minor or has completed equivalent training.

(a) A teaching major requires not fewer than 45 quarter hours (30 semester hours) of credit in one subject. At least one-half of the hours must be upper division work.

(b) A teaching minor requires not fewer than 24 quarter hours (16 semester hours) of credit in one subject.

(c) A composite major requires not fewer than 69 quarter hours (46 semester hours) of credit distributed in two or more subjects.

I. A Special Education (Birth-Age 5) Basic Certificate:

(1) Applicants for the Special Education (Birth-Age 5) Certificate shall have completed a Board-approved program for teaching infants, toddlers, and preschool-age children with disabilities. Applicants completing an approved Special Education (Birth-Age 5) certification program on or before June 1, 1994 shall also be recommended for the Early Intervention Credential by the Utah Department of Health.

(2) Hearing Impaired/Vision Impaired (HI/VI) Endorsements required under this rule shall be issued to meet "the highest requirements in the State applicable to a specific profession or discipline" required by the Individuals with Disabilities Education Act (IDEA), Pub. L. No. 105-17, hereby incorporated by reference.

(a) Special Education (Birth-Age 5) Certificate holders who teach children who are hearing impaired (birth-age 5) or vision impaired (birth-age 5) or both, in self-contained, categorical classrooms shall hold an endorsement for Hearing Impaired (Birth-Age 5) or Vision Impaired (Birth-Age 5) or both.

(b) All professional personnel teaching children with HI/VI in self-contained, categorical settings shall meet the standards in Subsections R277-504I(1) and (2) by June 30, 2003.

(c) Teachers who hold an equivalent certificate from a state other than Utah shall be required to meet the standards referred to in Subsection R277-504I(d) upon receipt of an initial Utah certificate.

(d) All professional personnel teaching preschool-aged children who are HI/VI in self-contained, categorical classrooms as of January 1998, shall be required to complete a Board-approved training program by June 30, 2003, making them eligible for the Birth-Age 5 HI/VI endorsements under this rule.

(e) This training shall be developed based on an analysis of presently-held certificates, endorsements, teaching experiences, and training activities as compared to the requirements of the new standards.

J. Applicants for Special Education (K-12) Certificates shall have completed a Board approved program for teaching students with mild/moderate, severe, hearing, or visual handicaps. The Special Education Certificate (K-12) is endorsed for any area in which the program has been completed. Educators who hold Special Education Certificates may also be issued endorsements in English as a Second Language, Bilingual, and Driver Education, but are restricted to providing those services to special education students only.

K. Applicants for Communication Disorders Certificates:

(1) shall have completed a Board approved program for teaching pupils with communication disorders which includes the master's degree or 55 quarter hours earned after meeting requirements for a bachelor's degree; or

(2) shall have completed a Board approved bachelor's degree program in communication disorders at an accredited institution, including a practicum experience in a school setting, and acquired the competencies necessary for assignment as a communication disorders specialist at job entry level with any limitations noted by the preparing institution.

(a) A certificate issued under Subsection 3(K)(2) is valid for up to five years if the applicant has been admitted to an accredited graduate program at the time the certificate is issued and files with the State Office of Education evidence of completion of at least nine quarter hours (six semester hours) of credit which is applicable to the acquisition of a master's degree or the equivalent in communication disorders each year that the certificate is to remain in effect.

(b) A candidate must have been recommended by an institution whose program of preparation is Board approved.

R277-504-4. Standard Certificate.

A Standard Certificate for Early Childhood, Elementary, Secondary, Special Education (K-12), Communication Disorders, and Special Education (Birth-Age 5) is issued after:

(1) a candidate completes two years of successful professional teaching; and

(2) the employing school district recommends the candidate to receive the Standard Certificate, based on information from peers and supervisors.

R277-504-5. Special Validations.

A. A Basic or Standard Early Childhood Certificate may be issued to an applicant who holds or is eligible to hold a Basic or Standard Elementary Certificate and who has completed two years teaching a full kindergarten or pre-kindergarten program. The two certificates are issued to run concurrently.

B. An individual holding a Standard Elementary Certificate and for whom the employing district has requested

a letter of authorization assigning the individual to a kindergarten position may qualify for an Early Childhood Certificate by completing an approved program of early childhood education at an accredited institution of higher education. The program must consist of not more than 10 semester or 15 quarter hours of credit and may be based on demonstrated competence. The program may also include district in-service. Practicum experiences should be in the regularly assigned kindergarten classroom of the applicant for the certificate.

C. An Elementary Certificate is valid in grades one through eight.

(1) The 1-8 certificate permits the teacher to teach in any academic area in self-contained classes in grades 1-6.

(2) A teacher must be endorsed in a subject by the USOE to teach assigned subjects at the 7-8 grade level.

(3) The Middle Level Certificates (5-9) currently in force will continue to be valid; however, a middle level certificate (5-9) will no longer be required of teachers assigned to the middle school, effective April 1, 1989.

R277-504-6. General Standards for Approval of Programs for the Preparation of Early Childhood, Elementary, Secondary, Special Education (K-12), Communication Disorders, and Special Education (Birth-Age 5) Teachers.

A. The teacher preparation program of an institution may be approved by the Board if it:

(1) meets the standards prescribed in the Standards for State Approval of Teacher Education, which are hereby incorporated by reference and available from the USOE Certification Section and education departments at Utah institutions of higher education; and

(2) requires the study of:

(a) state laws and policies which specify content, values, and other expectations of teachers and other professionals in the school system;

(b) techniques for evaluating student progress, including the use and interpretation of both standardized and teacher-made tests; and

(c) knowledge and skills designed to meet the needs of students with handicapping conditions in the regular classroom. These shall include the following domains:

(i) knowledge of handicapping conditions;

(ii) knowledge of the role of regular education teachers in the education of students with handicapping conditions;

(iii) skills in assessing the educational needs and progress of students with handicapping conditions in the regular education classroom;

(iv) skills in the implementation of an educational program for the student handicapped in the regular classroom; and

(v) skills in monitoring student progress.

B. The standard requiring the application of methods and techniques in a clinical setting is met by student teaching carried out under the direction of the institution. The following may be accepted as totally or partially fulfilling this requirement:

(1) two years of full-time contract teaching experience in a regular classroom situation in kindergarten through grade twelve in a public or accredited private or parochial school may totally fulfill the requirement;

(2) teaching in an alternative school or similar school may be accepted for up to one-half of the student teaching requirement;

(3) teaching in a community college, trade-technical college, or other post-secondary teaching experiences may be accepted for up to one-half of the student teaching requirement;

(4) teaching in a preschool or headstart program may be accepted for up to one-half of the student teaching requirement;

(5) teaching experience in business or industry may be accepted for up to one-half of the student teaching requirement; and

(6) other experience accepted by the Board and designated as totally or partially fulfilling the requirement.

R277-504-7. Standards for Approval of Programs for Early Childhood and Elementary Teachers.

The standards must be applied to the specific age group or grade level for which the program of preparation is designed. The teacher preparation program of an institution may be approved by the Board if it:

A. Meets the standards prescribed in the Standards for State Approval of Teacher Education for early childhood and elementary education; and

B. Requires study and experiences needed in disciplines which provide content knowledge needed to teach:

(1) language development and listening, speaking, writing, and reading, with emphasis on language development;

(2) mathematics;

(3) biological and physical science and health;

(4) social studies; and

(5) fine arts.

R277-504-8. Standards for Approval of Program for Preparing Teachers in Major and Minor Fields.

The teacher preparation program of an institution may be approved by the Board if it meets the general and specific standards prescribed in the Standards for State Approval of Teacher Education for teaching majors.

R277-504-9. Standards for Approval of Programs for Special Education (K-12) and Special Education (Birth-Age 5) Teachers.

The teacher preparation program of an institution may be approved by the Board if it meets the following standards:

A. Mild/Moderate Endorsement

(1) Assessment: eligibility determination; strength and weakness determination. The program shall require demonstrated competence in selection, design, administration, and interpretation of a representative sample of age-appropriate, norm referenced, criterion referenced, and ecological assessments to determine the discrepancies between academic, behavioral, and life skills demands or requirements and actual student performance.

(2) Planning: establishing goals and objectives for students based upon individual assessment, coordination of services, identification of resources, and implementation of activities. The program shall require demonstrated competence in:

(a) projecting long-term outcomes and establishing

appropriate annual goals and short term objectives utilizing assessment data;

(b) designing, planning, and coordinating age-appropriate academic and social integration and transition programs within regular school and community environments;

(c) designing a plan for accessing and coordinating resources available in the student's natural environment to implement long-term outcomes, annual goals, and short-term objectives and identify a representative sample of such resources, both human and technological;

(d) designing appropriate, systematic, data-based, daily individual student activities based on student performance and relevant long-term outcomes, annual goals, and short-term objectives which provide for new skill development, practice, and application across environments;

(e) coordinating all services--required related services and a representative sample of support services including peer tutors, parents, and volunteers--necessary to implement daily individual student activities which provide for new skill development, practice, and applications across environments;

(f) developing an Individual Education Plan which is an integrated management tool and which meets federal and state requirements.

(3) Implementation: actualization of planning and utilization of effective pedagogy across levels including developmental, remedial, functional and compensatory. The program shall require demonstrated competence in:

(a) implementing a variety of methods and techniques which encompass the following areas:

(i) developmental--natural sequence of acquired skills;

(ii) remedial--reteaching specific areas of weakness;

(iii) functional--skills necessary to ensure independence;

(iv) compensatory--alternative strategies for reaching goals.

(b) knowledge of scope and sequence across academic, behavior, and life skills;

(c) conducting concept and task analysis to identify performance demands for skill use and application;

(d) teaching discrete skills, including selecting and sequencing instructional examples to facilitate acquisition, strategies of trail distribution, systematic strategies of response prompting and fading, and systematic strategies for rewarding correct student responses and correcting student errors in individual, small groups, and large group instruction;

(e) teaching for generalization;

(f) designing, implementing, and evaluating applied behavior analysis including related ethical issues;

(g) implementing effective techniques of consultation, collaboration, and teaming;

(h) utilizing the transdisciplinary approach to instruction.

(4) evaluation: monitoring student progress; formative and summary program evaluation. The program shall require demonstrated competence in:

(a) designing and implementing data collection systems that measure the accuracy, rate, duration, fluency, and independence of student performance;

(b) designing and implementing data collection systems that measure performance across novel stimuli -- generalization -- and time -- maintenance --and in natural -- non-instructional -- settings;

(c) selecting data collection systems which match the target behavior and intended outcome of instruction;

(d) adjusting instructional procedures based on student performance data;

(e) measuring consumer--e.g., parent, cooperating agency--and team--e.g., therapist, regular educator, paraprofessional-satisfaction with student educational program and adjusting classroom procedures, methods of communication with significant others, or educational programming based on consumer or team feedback, or all.

B. Severe Endorsement

(1) Assessment: eligibility determination; strength and weakness determination. The program shall require demonstrated competence in selection, design, administration, and interpretation of a representative sample of age-appropriate, norm-referenced, criterion referenced, and ecological assessments to determine the discrepancies between functional academic, functional behavior, and functional life skill demands and requirements and actual student performance.

(2) Planning: establishing goals and objectives for students based upon individual assessment, coordination of services, identification of resources, and implementation of activities. The program shall require demonstrated competence in:

(a) designing, planning, and coordinating age-appropriate social integration and transition programs within regular school and community environments;

(b) the requirements specified in Subsections 9(A)(2)(a), (c), (d), (e), and (f).

(3) Implementation: actualization of planning and utilization of effective pedagogy across levels including development, remedial, functional, and compensatory. The program shall require demonstrated competence in:

(a) knowledge of scope and sequence across functional life skill, academic, behavior, and life skills;

(b) conducting general case analysis of performance demands;

(c) the requirements specified in Subsections 9(A)(3)(c), (d), (f), (g), and (h).

(4) Evaluation: monitoring student progress; formative and summary program evaluation. The program shall require demonstrated competence in the requirements specified in Subsection 9(A)(4).

C. Hearing Impaired Endorsement: The teacher preparation program of an institution may be approved by the Board if it meets the standards prescribed in the Standards for State Approval of Teacher Education for hearing impaired specialists.

D. Visually Impaired Endorsement: The teacher preparation program of an institution may be approved by the Board if it meets the standards prescribed in the Standards for State Approval of Teacher Education for visually impaired specialists.

R277-504-10. Standards for Approval of Programs for Communication Disorders Certificates.

A. Speech Pathology Endorsement: The preparation program for Speech-Language Pathologists of an institution may

be approved by the Board if it meets the standards prescribed in the Standards for State Approval of Teacher Education for speech-language pathologists.

B. Audiology Endorsement: The preparation program for audiologists of an institution may be approved by the Board if it meets the standards prescribed in the Standards for State Approval of Teacher Education for audiologists.

KEY: teacher certification, professional education, accreditation

April 7, 1998	**Art X Sec 3**
Notice of Continuation 1994	**53A-1-402(1)(a)**
	53A-1-401(3)

R277. Education, Administration.
R277-514. Board Procedures: Sanctions for Misconduct.
R277-514-1. Definitions.

A. "Allegation of misconduct" means a written or oral report alleging that an educator has engaged in unprofessional, criminal, or incompetent conduct; is unfit for duty; has lost certification in another state due to revocation or suspension, or through voluntary surrender or lapse of a certificate in the face of a claim of misconduct; or has committed some other violation of standards of ethical conduct, performance, or professional competence.

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

C. "Certificate" means a teaching or administrative credential, including endorsements, which is issued by a state to signify authorization for the person holding the certificate to provide professional services in the state's public schools.

D. "Certification Committee" means a committee of the Board which reviews issues relating to certification of educators.

E. "Commission" means the Utah Professional Practices Advisory Commission.

F. "Educator" means a person who currently holds a certificate, held a certificate at the time of an alleged offense, is an applicant for a certificate, or is a person in training to obtain a certificate.

G. "Party" means the complainant or the respondent.

H. "Recommended disposition" means a recommendation for resolution of a complaint.

I. "Serve" or "service," as used to refer to the provision of notice to a person, means delivery of a written document or its contents to the person or persons in question. Delivery may be made in person, by mail or by other means reasonably calculated, under all of the circumstances, to apprise the interested person or persons to the extent reasonably practical or practicable of the information contained in the document.

R277-514-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public schools in the Board, Section 53A-6-104 relating to withdrawal or denial of certification by the Board for cause, Section 53A-7-113 in which the Board retains the power to issue or revoke certification, hold hearings or take other disciplinary action as warranted, and Subsection 53A-1-401(3) relating to adoption by the Board of rules in accordance with its responsibilities.

B. The purpose of this rule is to specify the procedures under which the Board may take action against an educator's certificate.

R277-514-3. Certification Committee Procedures.

A. Except as provided under Subsection R277-514-4(E), if the Board receives an allegation of misconduct by an educator, the allegation shall be forwarded to the Executive Secretary of the Professional Practices Advisory Commission for action under R686-100.

B. A case referred to the Board by the Commission shall be assigned to the Certification Committee.

C. The Certification Committee shall review the case file and the recommendation of the Commission. If the Certification Committee finds that there have not been serious procedural errors on the part of the Commission, that the findings and conclusions of the Commission are reasonable and supported by a preponderance of the evidence, and that the recommended disposition presents a reasonable resolution of the case, then the Certification Committee shall approve the Commission's action and forward the case to the full Board for its consideration.

D. If the Certification Committee finds that there is insufficient information in the case file to complete its work, the Certification Committee may direct the parties to appear and present additional evidence or clarification.

E. If the Certification Committee finds that serious procedural errors have occurred which have violated the fundamental fairness of the process, then the Certification Committee shall refer the case back to the Commission to correct the errors.

F. If the Certification Committee determines that the findings or conclusions of the Commission are not supported by a preponderance of the evidence, or that the recommended disposition does not present a reasonable resolution of the case, then the Certification Committee may refer the case back to the Commission for further action or may, in the alternative, prepare its own findings, conclusions, or recommended disposition.

G. If the Certification Committee prepares its own findings, conclusions, or recommendation, then the Certification Committee shall forward its findings, conclusions, or recommendation to the Board together with the file as received from the Commission.

H. The Board shall be officially notified in a timely manner of all final actions taken by the Commission which relate to the certification of individuals.

R277-514-4. Board Procedures.

A. Upon receiving a case from the Certification Committee, the members of the Board shall review the case file, findings, conclusions, and recommended disposition. If the Board finds that there have not been serious procedural errors, that the findings and conclusions are reasonable and supported by a preponderance of the evidence, and that the recommended disposition presents a reasonable resolution of the case, then the Board shall approve the findings and recommended disposition.

B. If the Board finds that serious procedural errors have occurred which have violated the fundamental fairness of the process, then the Board shall refer the case back to the Commission to correct the errors.

C. If the Board determines that the findings or conclusions are not supported by a preponderance of the evidence, or that the recommended disposition does not present a reasonable resolution of the case, then the Board may refer the case back to the Commission for further action or may, in the alternative, prepare other findings, conclusions, or disposition.

D. If the Board finds that there is insufficient information in the case file to complete its work, the Board may direct the parties to appear and present additional evidence or clarification.

E. If the Board finds it advisable to do so, the Board may initiate investigations or hearings regarding the initial or continued certification of an individual and take disciplinary action upon its own volition without referring a given case to the Commission.

F. The Board shall issue a written order regarding its action which contains its findings and conclusions and its disposition of the case, and direct the State Superintendent to serve a copy of the written order upon the parties.

G. All documents used by the Board in reaching its decision, and a copy of the Board's final order, shall be made part of the permanent case file.

R277-514-5. Request for Reconsideration.

A. A party may request the Board to reconsider its action by submitting a written request for reconsideration, including the reasons for the request, to the Executive Secretary of the Board within 30 days after service of the Board's written order.

B. The Board shall review the request. If the Board finds that the request raises issues which cause the Board to question the correctness of its action, then the Board shall refer the case to the Commission or to the Certification Committee for further action.

C. If the Board decides to deny reconsideration, it shall prepare a written order and direct the State Superintendent to serve a copy of the written order upon the parties.

D. The decision of the Board is final.

R277-514-6. Notification Requirements and Procedures.

A. An educator who has reasonable cause to believe that a student may have been physically or sexually abused by a school employee shall immediately report that belief to the school principal, superintendent, or the Commission. A school administrator receiving such a report shall immediately submit the information to the Commission.

B. A local superintendent shall notify the Commission if an educator is found, pursuant to an administrative or judicial action, to be guilty of:

(1) unprofessional conduct or professional incompetence which results in suspension for more than one week or termination, or which otherwise warrants Commission review; or

(2) immoral behavior.

C. Failure to comply with Subsection A or B constitutes unprofessional conduct.

D. The State Office of Education shall notify the educator's employer of any final action taken by the Board; and shall notify all Utah school districts and the NASDTEC Educator Information Clearinghouse whenever a certificate is revoked or suspended, or if an educator has surrendered a certificate or allowed it to lapse in the face of allegations of misconduct rather than accept an opportunity to defend against the allegations.

KEY: disciplinary actions, professional competency, teacher certification

April 7, 1998	**Art X Sec 3**
Notice of Continuation September 12, 1997	**53A-6-104**
	53A-7-113
	53A-1-401(3)

R307. Environmental Quality, Air Quality.
R307-1. Utah Air Conservation Rules.
R307-1-1. Foreword and Definitions.

Chapter 19-2 and the rules adopted by the Air Quality Board constitute the basis for control of air pollution sources in the state. These rules apply and will be enforced throughout the state, and are recommended for adoption in local jurisdictions where environmental specialists are available to cooperate in implementing rule requirements.

National Ambient Air Quality Standards (NAAQS), National Standards of Performance for New Stationary Sources (NSPS), National Prevention of Significant Deterioration of Air Quality (PSD) standards, and the National Emission Standards for Hazardous Air Pollutants (NESHAPS) apply throughout the nation and are legally enforceable in Utah.

Definitions contained in R307-1-1 are applicable to all rules adopted by the Air Quality Board.

"Abrasive Blasting" means the operation of cleaning or preparing a surface by forcibly propelling a stream of abrasive material against the surface.

"Abrasive Blasting Equipment" means any equipment utilized in abrasive blasting operations.

"Abrasives" means any material used in abrasive blasting operations including but not limited to sand, slag, steel shot, garnet or walnut shells.

"Accumulator" means the reservoir of a condensing unit receiving the condensate from the condenser.

"Actual Area of Nonattainment" means an area which is shown by monitored data or modeling actually to exceed the National Ambient Air Quality Standards (Boundaries are established in the Utah State Implementation Plan).

"Actual Emissions" means the actual rate of emissions of a pollutant from a source determined as follows:

1. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the source actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operations. The Executive Secretary shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the source's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

2. The Executive Secretary may presume that source-specific allowable emissions for the source are equivalent to the actual emissions of the source.

3. For any source which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the source on that date.

"Acute Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents - Biological Exposure Indices, pages 15 - 40 (1997)."

"Adverse Impact on Visibility" means for purposes of subsection 3.11 of R307-1-3, visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitors visual experience of a mandatory Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with (1) times of visitor use of the mandatory Class I area, and (2) the frequency and timing of natural conditions that reduce visibility.

"Air Contaminant" means any particulate matter or any gas, vapor, suspended solid or any combination of them, excluding steam and water vapors (Section 19-2-102(1)).

"Air Contaminant Source" means any and all sources of emission of air contaminants whether privately or publicly owned or operated (Section 19-2-102(2)).

"Air Dried Coating" means coatings which are dried by the use of air or a forced warm air at temperatures up to 90 degrees C (194 degrees F).

"Air Pollution" means the presence in the ambient air of one or more air contaminants in such quantities and duration and under conditions and circumstances, as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or use of property as determined by the standards, rules and regulations adopted by the Air Quality Board (Section 19-2-104).

"Air Quality Related Values" means, as used in analyses under R307-1-3.1.3, Public Notice, those special attributes of a Class I area, assigned by a federal Land Manager, that are adversely affected by air quality.

"Allowable Emissions" means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the emission limitation established pursuant to R307-1-3.1.8.

"Ambient Air" means the surrounding or outside air (Section 19-2-102(4)).

"Application Area" means the area where the coating is applied by spraying, dipping, or flow coating techniques.

"Appropriate Authority" means the governing body of any city, town or county.

"Asphalt or Asphalt Cement" means the dark brown to black cementitious material (solid, semisolid, or liquid in consistency) of which the main constituents are bitumens which occur naturally or as a residue of petroleum refining.

"Asphalt Concrete" means a waterproof and durable paving material composed of dried aggregate which is evenly coated with hot asphalt cement.

"Atmosphere" means the air that envelops or surrounds the earth and includes all space outside of buildings, stacks or exterior ducts.

"Authorized Local Authority" means a city, county, city-county or district health department; a city, county or combination fire department; or other local agency duly designated by appropriate authority, with approval of the State Department of Health; and other lawfully adopted ordinances, codes or regulations not in conflict therewith.

"Average Monthly Storage Temperature" means the average daily storage temperature measured over a period of one month.

"Basecoat" means a primary flat wood coating or coloring of panels and normally should completely hide substrate

characteristics.

"Baseline Area" means any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section 107(d)(1)(D) or (E) of the federal Clean Air Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 ug/m^3 (annual average) of the pollutant for which the minor source baseline date is established.

1. Area redesignations under section 107(d)(1) (D) or (E) of the federal Clean Air Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

(a) Establishes a minor source baseline date; or

(b) Is subject to 40 CFR 52.21 or subsection R307-1-3.6, and would be constructed in the same state as the state proposing the redesignation.

"Baseline Concentration" means that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline date.

"Baseline Date":

1. Major source baseline date means:

(a) In the case of particulate matter and sulfur dioxide, January 6, 1975, and

(b) In the case of nitrogen dioxide, February 8, 1988.

2. Minor source baseline date means the earliest date after the trigger date on which the first complete application under 40 CFR 52.21 or subsection R307-1-3.6 is submitted by a major source or major modification subject to the requirements of 40 CFR 52.21 or subsection R307-1-3.6. The minor source baseline is the date after which emissions from all new or modified sources consume or expand increment, including emissions from major and minor sources as well as any or all general commercial, residential, industrial, and other growth. The trigger date is:

(a) In the case of particulate matter and sulfur dioxide, August 7, 1977, and

(b) In the case of nitrogen dioxide, February 8, 1988.

"Batch Open Top Vapor Degreasing" means the batch process of cleaning and removing grease and soils from metal surfaces by condensing hot solvent vapor on the colder metal parts.

"Best Available Control Technology (BACT)" means an emission limitation and/or other controls to include design, equipment, work practice, operation standard or combination thereof, based on the maximum degree or reduction of each pollutant subject to regulation under the Clean Air Act and/or the Utah Air Conservation Act emitted from or which results from any emitting installation, which the Air Quality Board, on a case-by-case basis taking into account energy, environmental and economic impacts and other costs, determines is achievable for such installation through application of production processes and available methods, systems and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall applications of BACT result in emissions of any pollutants which will exceed the emissions allowed by Section 111 or 112 of the Clean Air Act.

"Board" means Air Quality Board. See Section 19-2-102(6)(a).

"Bottom Filling" means the filling of a tank through an inlet at or near the bottom of the tank designed to have the opening covered by the liquid after the pipe normally used to withdraw liquid can no longer withdraw any liquid.

"Breakdown" means any malfunction or procedural error, to include but not limited to any malfunction or procedural error during start-up and shutdown, which will result in the inoperability or sudden loss of performance of the control equipment or process equipment causing emissions in excess of those allowed by approval order or the UACR.

"BTU" means British Thermal Unit, the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit.

"Calibration Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is the same known upscale value.

"Capture System" means the equipment (including hoods, ducts, fans, etc.) used to contain, capture, or transport a pollutant to a control device.

"Carbon Adsorption System" means a device containing adsorbent material (e.g., activated carbon, aluminum, silica gel), an inlet and outlet for exhaust gases, and a system for the proper disposal or reuse of all VOC adsorbed.

"Carcinogenic Hazardous Air Pollutant" means any hazardous air pollutant that is classified as a known human carcinogen (A1) or suspected human carcinogen (A2) by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents -Biological Exposure Indices, pages 15 - 40 (1997)."

"Chronic Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - time weighted average (TLV-TWA) having no threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents - Biological Exposure Indices, pages 15 - 40 (1997)."

"Class II Hard Board Paneling Finish" means finishes which meet the specifications of voluntary product standards PS-9-73 as approved by the American National Standards Institute.

"Clean Air Act" means Federal Clean Air Act as amended in 1990.

"Clear Coat" means a coating which lacks color and opacity.

"Clearing Index" means an indicator of the predicted rate of clearance of ground level pollutants from a given area. This number is calculated by the National Weather Service from daily measurements of temperature lapse rates and wind speeds from ground level to 10,000 feet. The State has been divided into three separate air quality areas for purposes of the clearing index system:

1. Area 1 includes those valleys below 6500 feet above sea level and west of the Wasatch Mountain Range and extending south through the Wasatch and Aquarius Plateaus to the Arizona border. Included are the Salt Lake, Utah, Skull and

Escalante Valleys and valleys of the Sevier River Drainage.

2. Area 2 includes those valleys below 6500 feet above sea level and east of the Wasatch Mountain Range. Included are Cache Valley, the Uintah Basin, Castle Valley and valleys of the Green, Colorado, and San Juan Rivers.

3. Area 3 includes all valleys and areas above 6500 feet above sea level.

"Coating" means a protective, functional, or decorative film applied in a thin layer to a surface. This term often applies to paints such as lacquers or enamels, but is also used to refer to films applied to paper, plastics, or foil.

"Coating Application System" means all operations and equipment which applies, conveys, and dries a surface coating, including, but not limited to, spray booths, flow coaters, flash off areas, air dryers and ovens.

"Cold Cleaning" means the batch process of cleaning and removing soils from metal surfaces by spraying, brushing, flushing or immersing while maintaining the solvent below its boiling point.

"Commence" as applied to construction of a major source or major modification means that the owner or operator has all necessary pre-construction approvals or permits and either has:

1. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

2. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Compliance Schedule" means a schedule of events, by date, which will result in compliance with these regulations.

"Condensor" means any device which removes condensable vapors by a reduction in the temperature of the captured gases.

"Confined Blasting" means any abrasive blasting conducted in an enclosure which significantly restricts air contaminants from being emitted to the ambient atmosphere, including but not limited to shrouds, tanks, drydocks, buildings and structures.

"Construction" means any physical change or change in the method of operation including fabrication, erection, installation, demolition, or modification of a source which would result in a change in actual emissions.

"Control Apparatus" means any device which prevents or controls the emission of any air contaminant directly or indirectly into the outdoor atmosphere.

"Control System" means any number of control devices, including condensors, which are designed and operated to reduce the quantity of VOC emitted to the atmosphere.

"Conveyorized Degreasing" means the continuous process of cleaning and removing greases and soils from metal surfaces by using either cold or vaporized solvents.

"Curtain Coating" means the application of a coating material to a wood substrate by means of a free-falling film of coating.

"Cutback Asphalt" means any asphalt which has been liquified by blending with petroleum solvents (diluents) or, in the case of some slow cure asphalts (road oils), which have been produced directly from the distillation of petroleum.

"Department" means Utah State Department of Environmental Quality. See Section 19-1-103(1).

"Dispersion Technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

1. Using that portion of a stack which exceeds good engineering practice stack height;

2. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

3. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. The techniques described in this definition do not include:

A. The reheating of a gas stream following the use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

B. The merging of exhaust gas streams where:

(1) The source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams;

(2) After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the pollutant affected by such change in operation; or

(3) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the Air Quality Board shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the Air Quality Board shall deny credit for the effects of such merging in calculating the allowable emissions for the source;

C. Smoke management in agricultural or silvicultural prescribed burning programs;

D. Episodic restrictions on residential wood-burning and open burning; or

E. Techniques under 1.49.3 which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

"Dry Cleaning Facility" means a facility engaged in the cleaning of fabrics in an essentially nonaqueous solvent by means of one or more washes in solvent, extraction of excess solvent by spinning, drying, and tumbling in an airstream. The facility includes but is not limited to any washer, dryer, filter and purification systems, waste disposal systems, holding tanks, pumps, and attendant piping and valves.

"Emission" means the act of discharge into the atmosphere

of an air contaminant or an effluent which contains or may contain an air contaminant; or the effluent so discharged into the atmosphere.

"Emissions Information" means, with reference to any source operation, equipment or control apparatus:

1. Information necessary to determine the identity, amount, frequency, concentration, or other characteristics related to air quality of any air contaminant which has been emitted by the source operation, equipment, or control apparatus;

2. Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air contaminant which, under an applicable standard or limitation, the source operation was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source operation), or any combination of the foregoing; and

3. A general description of the location and/or nature of the source operation to the extent necessary to identify the source operation and to distinguish it from other source operations (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source operation).

"Emission Limitation" means a requirement established by the Board or the Administrator, EPA, which limits the quantity, rate or concentration of emission of air pollutants on a continuous emission reduction including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction (Section 302(k), Clean Air Act).

"Emulsified Asphalt" means asphalt emulsions produced by combining asphalt with water that contains an emulsifying agent.

"Enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the State Implementation Plan (including all sections within R307-1), any permit requirements established pursuant to 40 CFR 52.21 or section 3.1 of R307-1-3.

"EPA" means Environmental Protection Agency.

"Excessive Concentration" is defined for the purpose of determining good engineering practice stack height under 1.71.3 and means:

1. for sources seeking credit for stack height exceeding that established under 1.71.2, a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the prevention of significant deterioration program (subsection 3.6 of R307-1-3), an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under subsection 3.8 of R307-1-3 shall be prescribed by the state approval order or the federal new source performance standard that is applicable to the source category, whichever is more stringent, unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the Executive Secretary, an alternative emission rate shall be established in consultation with the source owner or operator. The allowable emission rate to be used in making demonstrations under subsection 3.8 of R307-1-3 for sources for which no federal new source performance standard or state approval order has been issued shall be established by the Executive Secretary in consultation with the source owner or operator.

2. for sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under 1.71.2 either,

A. a maximum ground-level concentration due in whole or part to downwash, wakes or eddy affects as provided in 1.55.1, except that the emission rate specified by any applicable State implementation plan (or, in the absence of such a limit, the actual emission rate) shall be used, or

B. the actual presence of a local nuisance caused by the existing stack, as determined by the authority administering the State implementation plan.

3. for sources seeking credit after January 12, 1983, for a stack height determined under 1.71.2 where the Executive Secretary requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in 1.71.2, a maximum ground-level concentration due in whole or in part to downwash, wakes, or eddy effects that is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

"Executive Director" means the Executive Director of the Utah Department of Environmental Quality. See Section 19-1-103(2).

"Executive Secretary" means the Executive Secretary of the Board.

"Existing Installation" means an installation, construction of which began prior to the effective date of any regulation having application to it.

"Exterior Single Coat" means the same as topcoat but is applied directly to the metal substrate omitting the primer application.

"Extreme Performance Coatings" means coatings designed for harsh exposure or extreme environmental conditions.

"Fabric Coating" means the coating or saturation of a textile substrate with a knife, roll or rotogravure coater to impart characteristics that are not initially present, such as strength, stability, water or acid repellency, or appearance.

"Facility" means machinery, equipment, structures of any part or accessories thereof, installed or acquired for the primary purpose of controlling or disposing of air pollution. It does not include an air conditioner, fan or other similar device for the comfort of personnel.

"Filler" means a type of coating used to fill pores, voids, and cracks in wood to provide a smooth surface. It can also be used to accentuate the grain of natural hardwood veneers.

"Fireplace" means all devices both masonry or factory built units (free standing fireplaces) with a hearth, fire chamber or similarly prepared device connected to a chimney which provides the operator with little control of combustion air, leaving its fire chamber fully or at least partially open to the room. Fireplaces include those devices with circulating systems, heat exchangers, or draft reducing doors with a net thermal efficiency of no greater than twenty percent and are used for aesthetic purposes.

"Flat Wood Coating" means the surface coating of any flat wood products.

"Flexographic Printing" means the application of works, designs, and pictures to substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastomeric materials.

"Freeboard Ratio" means the freeboard height divided by the width of the degreaser.

"Fugitive Dust" means particulate, composed of soil and/or industrial particulates such as ash, coal, minerals, etc., which becomes airborne because of wind or mechanical disturbance of surfaces. Natural sources of dust and fugitive emissions are not fugitive dust within the meaning of this definition.

"Fugitive Emissions" means emissions from an installation or facility which are neither passed through an air cleaning device nor vented through a stack or could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Garbage" means all putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food, including wastes attendant thereto.

"Gasoline" means any petroleum distillate, used as a fuel for internal combustion engines, having a Reid vapor pressure of 4 pounds or greater.

"Good Engineering Practice (GEP) Stack Height" means the greater of:

1. Sixty-five (65) meters, measured from the ground-level elevation at the base of the stack;

2. Where H_g=good engineering practice stack height measured from the ground-level elevation at the base of the stack; H=height of nearby structure(s) measured from the ground-level elevation at the base of the stack; L=lesser dimension (height or projected width) of nearby structure(s), and provided that the Executive Secretary may require the use of a field study or fluid model to verify GEP stack height for the source:

A. for stacks in existence on January 12, 1979, and for which the owner or operator had obtained all required air quality permits or approvals, $H_g = 2.5L$ provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation;

B. for all other stacks, $H_g = H+1.5L$; or

3. The height demonstrated by a fluid model or a field study approved by the Executive secretary, which ensures that the emissions from the stack do not result in excessive concentrations of air contaminants as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

"Groove Coat" means a flat wood coating which covers grooves cut into the panel to assure that the grooves are compatible with the final surface color.

"Hardwood Plywood" means plywood whose surface layer is a veneer of hardwood.

"Hazardous Air Pollutant (HAP)" means any pollutant listed by the EPA as a hazardous air pollutant in conformance with Section 112(b) of the Clean Air Act. A list of these pollutants is available at the Division of Air Quality.

"Heavy Fuel Oil" means a petroleum product or similar material with a boiling range higher than that of diesel fuel.

"Hot Well" means the reservoir of a condensing unit receiving the warm condensate consisting primarily of water from the condenser.

"Household Waste" means any solid or liquid material normally generated by the family in a residence in the course of ordinary day-to-day living, including but not limited to garbage, paper products, rags, leaves and garden trash.

"Hydroblasting" means any abrasive blasting using high pressure liquid as the propelling force.

"Incinerator" means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid, or gaseous combustible wastes are ignited and burned efficiently and from which the solid and gaseous residues contain little or no combustible material.

"Indirect Source" means a building, structure or installation which attracts or may attract mobile source activity that results in emission of a pollutant for which there is a national standard.

"Ink" means a flat wood coating used to put a decorative design on printed panels. It can also produce special appearances on natural hardwood plywood.

"Installation" means a discrete process with identifiable emissions which may be part of a larger industrial plant. Pollution equipment shall not be considered a separate installation or installations.

"Interior Single Coat" means a single film of coating applied to internal parts of large appliances that are not normally visible to the user.

"Knife Coating" means the application of a coating material to a substrate by means of drawing the substrate beneath a blade that spreads the coating evenly over the width of the substrate.

"Large Appliances" means doors, cases, lids, panels, and interior support parts of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dishwashers, trash compactors, air conditioners, and other similar products.

"Lowest Achievable Emission Rate (LAER)", as defined in Section 173(2), Clean Air Act, means for any source, that rate of emissions which reflects:

1. The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

2. The most stringent emission limitation which is achieved in practice by such class or category of source,

whichever is more stringent.

In no event shall the application of this term permit a proposed new source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

"Low Organic Solvent Coating" means coatings which contain less organic solvents than the conventional coatings used by industry. Low organic solvent coatings include water-borne, higher-solids, electrodeposition, and powder coatings.

"LPG" means liquified petroleum gas such as propane or butane.

"Magnet Wire Coating" means the process of applying coating of electrical insulating varnish or enamel to aluminum or copper wire for use in electrical machinery.

"Major Modification" means any physical change in or change in the method of operation of a major source that would result in a significant net emissions increase of any pollutant. A net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone. Within Salt Lake and Davis Counties or any nonattainment area for ozone, a net emissions increase that is significant for nitrogen oxides shall be considered significant for ozone. Within areas of nonattainment for PM10, a significant net emission increase for any PM10 precursor is also a significant net emission increase for PM10. A physical change or change in the method of operation shall not include:

1. routine maintenance, repair and replacement;

2. use of an alternative fuel or raw material by reason of an order under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

3. use of an alternative fuel by reason of an order or rule under section 125 of the federal Clean Air Act;

4. use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

5. use of an alternative fuel or raw material by a source:

A. which the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any enforceable permit condition; or

B. which the source is otherwise approved to use;

6. an increase in the hours of operation or in the production rate unless such change would be prohibited under any enforceable permit condition;

7. any change in ownership at a source.

"Major Source" means, to the extent provided by the federal Clean Air Act as applicable to these rules:

1. any stationary source of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of any pollutant subject to regulation under the Clean Air Act; or

A. any source located in a nonattainment area for carbon monoxide which emits, or has the potential to emit, carbon monoxide in the amounts outlined in Section 187 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 187 of the federal Clean Air Act; or

B. any source located in Salt Lake or Davis Counties or in a nonattainment area for ozone which emits, or has the potential to emit, VOC or nitrogen oxides in the amounts outlined in Section 182 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 182 of the federal Clean Air Act; or

C. any source located in a nonattainment area for PM10 which emits, or has the potential to emit, PM10 or any PM10 precursor in the amounts outlined in Section 189 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 189 of the federal Clean Air Act.

2. any physical change that would occur at a source not qualifying under subpart 1 as a major source, if the change would constitute a major source by itself;

3. the fugitive emissions and fugitive dust of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(a) Coal cleaning plants (with thermal dryers);

(b) Kraft pulp mills;

(c) Portland cement plants;

(d) Primary zinc smelters;

(e) Iron and steel mills;

(f) Primary aluminum or reduction plants;

(g) Primary copper smelters;

(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(i) Hydrofluoric, sulfuric, or nitric acid plants;

(j) Petroleum refineries;

(k) Lime plants;

(l) Phosphate rock processing plants;

(m) Coke oven batteries;

(n) Sulfur recovery plants;

(o) Carbon black plants (furnace process);

(p) Primary lead smelters;

(q) Fuel conversion plants;

(r) Sintering plants;

(s) Secondary metal production plants;

(t) Chemical process plants;

(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British Thermal Units per hour heat input;

(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) Taconite ore processing plants;

(x) Glass fiber processing plants;

(y) Charcoal production plants;

(z) Fossil fuel-fired steam electric plants of more than 250 million British Thermal Units per hour heat input;

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the federal Clean Air Act.

"Major Source" means, for the purposes of Subsection R307-1-3.6:

1. any of the following sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Clean Air Act: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons

of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

2. any other source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant; or

3. a source which does not otherwise qualify as a major source as defined in this paragraph, but which is physically changed, which change itself would constitute a major source.

4. a source which is major for volatile organic compounds is major for ozone.

5. The fugitive emissions and fugitive dust of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(a) Coal cleaning plants (with thermal dryers);

(b) Kraft pulp mills;

(c) Portland cement plants;

(d) Primary zinc smelters;

(e) Iron and steel mills;

(f) Primary aluminum ore reduction plants;

(g) Primary copper smelters;

(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(i) Hydrofluoric, sulfuric, or nitric acid plants;

(j) Petroleum refineries;

(k) Lime plants;

(l) Phosphate rock processing plants;

(m) Coke oven batteries;

(n) Sulfur recovery plants;

(o) Carbon black plants (furnace process);

(p) Primary lead smelters;

(q) Fuel conversion plants;

(r) Sintering plants;

(s) Secondary metal production plants;

(t) Chemical process plants;

(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) Taconite ore processing plants;

(x) Glass fiber processing plants;

(y) Charcoal production plants;

(z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Federal Clean Air Act.

"Metal Furniture Coating" means the surface coating of any furniture made of metal or any metal part which will be assembled with other metal, wood fabric, plastic, or glass parts to form a furniture piece.

"Modification" means any planned change in a source which results in a potential increase of emission.

"Multiple Nozzles" means a group of two or more nozzles being used for abrasive cleaning of the same surface in such close proximity that their separate plumes are indistinguishable.

"National Ambient Air Quality Standards (NAAQS)" means the allowable concentrations of air pollutants in the ambient air specified by the Federal Government (Title 40, Code of Federal Regulations, Part 50).

"Natural Finish Hardwood Plywood Panels" means panels whose original grain pattern is enhanced by essentially transparent finishes frequently supplemented by fillers and toners.

"Nearby" as used in subpart 2 of the definition "Good Engineering Practice (GEP) Stack Height" is defined for a specific structure or terrain feature and

1. for the purpose of applying the formulae provided in subpart 1 of the definition "Good Engineering Practice (GEP) Stack Height", means that distance up to five times the lesser of the height or the width dimension of a structure, but not to be greater than 1/2 mile, and

2. for conducting demonstrations using subpart 3 of the definition "Good Engineering Practice (GEP) Stack Height", means not greater than 1/2 mile, except that the portion of terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height of the feature, not to exceed 2 miles if such a feature achieves a height 1/2 mile from the stack that is at least 40 percent of the GEP stack height determined by the formulae provided in subpart 2.B of the definition "Good Engineering Practice (GEP) Stack Height" of this part or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base from the stack.

"Net Emissions Increase" means the amount by which the sum of the following exceeds zero:

1. any increase in actual emissions from a particular physical change or change in method of operation at a source; and

2. any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable. For purposes of determining a "net emissions increase":

A. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five years before construction on the particular change commences; and the date that the increase from the particular change occurs.

B. An increase or decrease in actual emissions is creditable only if it has not been relied on in issuing a prior approval for the source which approval is in effect when the increase in actual emissions for the particular change occurs.

C. An increase or decrease in actual emission of sulfur dioxide, nitrogen oxides or particulate matter which occurs before an applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM10 emissions will be used

to evaluate this increase or decrease.

D. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

E. A decrease in actual emissions is creditable only to the extent that:

(1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(2) It is enforceable at and after the time that actual construction on the particular change begins; and

(3) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(4) It has not been relied on in issuing any permit under Section R307-1-3.1 nor has it been relied on in demonstrating attainment or reasonable further progress.

F. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

"New Installation" means an installation, construction of which began after the effective date of any regulation having application to it.

"Nonattainment Area" means for any pollutant, "an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator, EPA to be reliable) to exceed any National Ambient Air Quality Standard for such pollutant" (Section 171, Clean Air Act). Such term includes any area designated as nonattainment under Section 107, Clean Air Act.

"Offset" means an amount of emission reduction, by a source, greater than the emission limitation imposed on such source by these regulations and/or the State Implementation Plan.

"Opacity" means the capacity to obstruct the transmission of light, expressed as percent.

"Open Burning" means any burning of combustible materials resulting in emission of products of combustion into ambient air without passage through a chimney or stack.

"Open Top Vapor Degreaser" means the batch process of cleaning and removing soils from metal surfaces by condensing low solvent vapor on the colder metal parts.

"Owner or Operator" means any person who owns, leases, controls, operates or supervises a facility, an emission source, or air pollution control equipment.

"PSD" Area means an area designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the federal Clean Air Act.

"Packaging Rotogravure Printing" means rotogravure printing upon paper, paper board, metal foil, plastic film, and other substrates, which are, in subsequent operations, formed into packaging products and labels.

"Paper Coating" means uniform distribution of coatings put on paper and pressure sensitive tapes regardless of substrate. Related web coating processes on plastic film and decorative coatings on metal foil are included in this definition. Paper coating covers saturation operations as well as coating operations. (Saturation means dipping the web into a bath).

"Particle Board" means a manufactured board made of individual particles which have been coated with a binder and formed into flat sheets by pressure.

"PM10 Nonattainment Area" means Salt Lake County, Utah County, or Ogden City.

"PM10 Particulate Matter" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by an EPA reference or equivalent method.

"PM10 Precursor" means any chemical compound or substance which, after it has been emitted into the atmosphere, undergoes chemical or physical changes that convert it into particulate matter, specifically PM10. It includes sulfur dioxide and nitrogen oxides.

"Part 70 Source" means any source subject to the permitting requirements of R307-15.

"Patch Mix" means a mixture of an asphalt binder and aggregate in which cutback or emulsified asphalts are used either as sprayed liquid or as a binder.

"Peak Ozone Season" means June 1 through August 31, inclusive.

"Penetrating Prime Coat" means an application of low-viscosity liquid asphalt to an absorbent surface in order to prepare it for paving with asphaltic concrete.

"Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state. (Subsection 19-2-103(4)).

"Petroleum Refinery Complex" means any source or installation engaged in producing gasoline, aromatics, kerosene, distillate fuel oils, residual fuel oils, lubricants, asphalt, or other products through distillation of petroleum or through redistillation, cracking, rearrangement, or reforming of unfinished petroleum derivatives.

"Potential to Emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Pressure Head Coating" means the application of a coating material to a wood substrate by means of a pressure head coater where coating material is metered into a pressure head and forced through a calibrated slit between two knives.

"Prime Coat" means the first film of coating applied in a two-coat operation.

"Primer" means a flat wood coating used to protect the wood from moisture and to provide a good surface for further coating applications.

"Printed Interior Panels" means panels whose grain or natural surface is obscured by fillers or basecoats upon which a simulated grain or decorative pattern is printed.

"Process Drain" means any drain used in a refinery complex on equipment which processes, transfers a volatile

organic compound or mixture of volatile organic compounds.

"Process Level" means the operation of a source, specific to the kind or type of fuel, input material, or mode of operation.

"Process Rate" means the quantity per unit of time of any raw material or process intermediate consumed, or product generated, through the use of any equipment, source operation, or control apparatus. For a stationary internal combustion unit or any other fuel burning equipment, this term may be expressed as the quantity of fuel burned per unit of time.

"Process Unit Turnaround" means the procedure of shutting a refinery unit down after a run to do necessary maintenance and repair work and putting the unit back in operation.

"Production Equipment Exhaust System" means a device for collecting and directing out of the work area VOC fugitive emissions from reactor openings, centrifuge openings, and other vessel openings for the purpose of protecting employees from excessive VOC exposure.

"Publication of Rotogravure Printing" means rotogravure printing upon paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, and other types of printed materials.

"Reactor" means any vat or vessel, which may be jacketed to permit temperature control, designed to contain chemical reactions.

"Reasonable Further Progress" means annual incremental reductions in emission of an air pollutant which are sufficient to provide for attainment of the NAAQS by the date identified in the State Implementation Plan.

"Refuse" means solid wastes, such as garbage and trash.

"Residence" means a dwelling in which people live, including all ancillary buildings.

"Residential Solid Fuel Burning" device means any residential burning device except a fireplace connected to a chimney that burns solid fuel and is capable of, and intended for use as a space heater, domestic water heater, or indoor cooking appliance, and has an air-to-fuel ratio less than 35-to-1 as determined by the test procedures prescribed in 40 CFR 60.534. It must also have a useable firebox volume of less than 20 cubic feet, a minimum burn rate less than 5 kg/hr as determined by test procedures prescribed in 40 CFR 60.534, and weigh less than 800 kg. Appliances that are described as prefabricated fireplaces and are designed to accommodate doors or other accessories that would create the air starved operating conditions of a residential solid fuel burning device shall be considered as such. Fireplaces are not included in this definition for solid fuel burning devices.

"Roll Coating" means the application of a coating material to a substrate by means of hard rubber or steel rolls.

"Roll Printing" means the application of words, designs and pictures to a substrate usually by means of a series of hard rubber or steel rolls each with only partial coverage.

"Rotogravure Coating" means the application of a uniform layer of material across the entire width of the web to substrate by means of a roll coating technique in which the pattern to be applied is etched on the coating roll. The coating material is picked up in these recessed areas and is transferred to the substrate.

"Rotogravure Printing" means the application of words, designs, and pictures to a substrate by means of a roll printing technique which involves a recessed image area in the form of cells.

"Salvage Operation" means any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, including but not limited to metals, chemicals, shipping containers or drums.

"Sealer" means a type of coating used to seal off substances in the wood which may affect subsequent finishes as well as protect the wood from moisture.

"Secondary Emissions" means emissions which would occur as a result of the construction or operation of a major source or major modification, but do not come from the major source or major modification itself.

Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

Fugitive emissions and fugitive dust from the source or modification are not considered secondary emissions.

"Separation Operation" means any process that separates a mixture of compounds and solvents into two or more components. Specific mechanisms include extraction, centrifugation, filtration, and crystallization.

"Significant" means:

1. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Carbon monoxide: 100 ton per year (tpy)
Nitrogen oxides: 40 tpy
Sulfur dioxide: 40 tpy
PM10 Particulate matter: 15 tpy
Particulate matter: 25 tpy
Ozone: 40 tpy of volatile organic compounds
Lead: 0.6 tpy

2. For purposes of Section R307-1-3.6 it shall also additionally mean for:

a. A rate of emissions that would equal or exceed any of the following rates:

Asbestos: 0.007 tpy
Beryllium: 0.0004 tpy
Mercury: 0.1 tpy
Vinyl Chloride: 1 tpy
Fluorides: 3 tpy
Sulfuric acid mist: 7 tpy
Hydrogen Sulfide: 10 tpy
Total reduced sulfur (including H_2S): 10 tpy
Reduced sulfur compounds (including H_2S): 10 tpy

b. In reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the Clean Air Act not listed in 1 and 2 above, any emission rate.

c. Notwithstanding the rates listed in 1 and 2 above, any emissions rate or any net emissions increase associated with a

major source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 ug/cubic meter, (24-hour average).

"Single Coat" means a single film of coating applied directly to the metal substrate omitting the primer application.

"Sole Source of Heat " means the residential solid fuel burning device is the only available source of heat for the entire residence, except for small portable heaters.

"Solid Fuel" means wood, coal, and other similar organic material or combination of these materials.

"Solvent" means organic materials which are liquid at standard conditions (Standard Temperature and Pressure) and which are used as dissolvers, viscosity reducers, or cleaning agents.

"Solvent Metal Cleaning" means the process of cleaning soils from metal surfaces by cold cleaning, open top vapor degreasers, or conveyorized degreasing.

"Source" means any structure, building, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act and which is located on one or more continuous or adjacent properties and which is under the control of the same person or persons under common control. A building, structure, facility, or installation means all of the pollutant-emitting activities which belong to the same industrial grouping. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e. which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (US Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

"Specialty Printing Operations" means all gravure and flexographic operations which print a design or image, excluding publication gravure and packaging gravure printing. Specialty printing operations include, among other things, printing on paper cups and plates, patterned gift wrap, wallpaper, and floor coverings.

"Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

"Stack in Existence" means that the owner or operator had

1. begun, or caused to begin, a continuous program of physical on-site construction of the stack, or

2. entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time.

"Stain" means a nonprotective flat wood coating which colors the wood surface without obscuring the grain.

"Standards of Performance for New Stationary Sources" means the Federally established requirements for performance and record keeping (Title 40 Code of Federal Regulations, Part 60).

"State" means Utah State.

"Submerged Fill Pipe" means any fill pipe with a discharge opening which is entirely submerged when the liquid level is 6 inches above the bottom of the tank and the pipe normally used to withdraw liquid from the tank can no longer withdraw any liquid.

"Synthesized Pharmaceutical Manufacturing" means the manufacture of pharmaceutical products by chemical synthesis.

"Temporary" means not more than 180 calendar days.

"Threshold Limit Value - Ceiling (TLV-C)" means the airborne concentration of a substance which may not be exceeded, as adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents - Biological Exposure Indices (1997), pages 15 - 40."

"Threshold Limit Value - Time Weighted Average (TLV-TWA)" means the time-weighted airborne concentration of a substance adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents - Biological Exposure Indices (1997), pages 15 - 40."

"Tile Board" means paneling that has a colored waterproof surface coating.

"Total Suspended Particulate (TSP)" means minute separate particles of matter, collected by high volume sampler.

"Toxic Screening Level" means an ambient concentration of an air contaminant equal to a threshold limit value - ceiling (TLV- C) or threshold limit value -time weighted average (TLV-TWA) divided by a safety factor.

"Trash" means solids not considered to be highly flammable or explosive including, but not limited to clothing, rags, leather, plastic, rubber, floor coverings, excelsior, tree leaves, yard trimmings and other similar materials.

"Unconfined Blasting" means any abrasive blasting which is not confined blasting as defined above.

"Vacuum Producing System" means any reciprocating, rotary, or centrifugal blower or compressor, or any jet ejector or device that takes suction from a pressure below atmospheric and discharges against atmospheric pressure.

"Vertically Restricted Emissions Release" means the release of an air contaminant through a stack or opening whose flow is directed in a downward or horizontal direction due to the alignment of the opening or a physical obstruction placed beyond the opening, or at a height which is less than 1.3 times the height of an adjacent building or structure, as measured from ground level.

"Vertically Unrestricted Emissions Release" means the release of an air contaminant through a stack or opening whose flow is directed upward without any physical obstruction placed beyond the opening, and at a height which is at least 1.3 times the height of an adjacent building or structure, as measured from ground level.

"Vinyl Coating" means applying a decorative or protective top coat, or printing on vinyl coated fabric or vinyl sheets.

"Volatile Organic Compound (VOC)" as defined in 40 CFR Subsection 51.100(s)(1), in effect on September 24, 1997, and published at 62 Fed. Reg. 164 (August 25, 1997) is hereby adopted and incorporated by reference.

"Waste" means all solid, liquid or gaseous material, including, but not limited to, garbage, trash, household refuse, construction or demolition debris, or other refuse including that resulting from the prosecution of any business, trade or industry.

"Waxy, Heavy Pour Crude Oil" means a crude oil with a

pour point of 50 degrees F or higher as determined by the American Society for Testing and Materials Standard D97-66, "Test for pourpoint of petroleum oils."

"Wet Abrasive Blasting" means any abrasive blasting using compressed air as the propelling force and sufficient water to minimize the plume.

"Zero Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is zero.

R307-1-2. General Requirements.

2.1 Air Pollution Prohibited. Emission of air contaminants in sufficient quantities to cause air pollution as defined in subsection 1.11 of R307-1-1 is prohibited. The State statute provides for penalties up to $50,000/day for violation of State statutes, regulations, rules or standards (See Section 19-2-115 for further details).

2.2 Periodic Reports of Emissions and Availability of Information. The owner or operator of any stationary air-contaminant source in Utah shall furnish to the Board the periodic reports required under Section 19-2-104(1)(c) and any other information as the Board may deem necessary to determine whether the source is in compliance with Utah and Federal regulations and standards. The information thus obtained will be correlated with applicable emission standards or limitations and will be available to the public during normal business hours at the Division of Air Quality.

2.3 Variances Authorized

2.3.1 Variance from these regulations may be granted by the Board as provided by law (See Section 19-2-113) unless prohibited by the Clean Air Act:

A. to permit operation of an air pollution source for the time period involved in installing or constructing air pollution control equipment in accordance with a compliance schedule negotiated by the Executive Secretary and approved by the Board.

B. to permit operation of an air pollution source where there is no practicable means known or available for adequate prevention, abatement or control of the air pollutants involved. Such a variance shall be only until the necessary means for prevention, abatement or control becomes known and available, subject to the use of substitute or alternate measures the Board may prescribe.

C. to permit operation of an air pollution source where the control measures, because of their extent or cost, must be spread over a considerable period of time.

2.3.2 Variance requests, as set forth in Section 19-2-113, may be submitted by the owner or operator who is in control of any plant, building, structure, establishment, process or equipment.

2.4 General Burning.

As provided in Section 19-2-114, the provisions of R307-1-2.4.1 through R307-1-2.4.5 below are not applicable to:

(1) burning incident to horticultural or agricultural operations of:

(a) prunings from trees, bushes, and plants; or

(b) dead or diseased trees, bushes, and plants, including stubble;

(2) burning of weed growth along ditch banks incident to clearing these ditches for irrigation purposes;

(3) controlled heating of orchards or other crops to lessen the chances of their being frozen so long as the emissions from this heating do not violate minimum standards set by the board; and

(4) the controlled burning of not more than two structures per year by an organized and operating fire department for the purpose of training fire service personnel when the United States Weather Service clearing index is above 500.

See also Section 11-7-1(2)(a).

2.4.1 Community Waste Disposal. No open burning shall be done at sites used for disposal of community trash, garbage and other wastes except as authorized through a variance or as authorized for a specific period of time by the Board on the basis of justifiable circumstances reviewed and weighed in terms of pollution effects and other relevant considerations at an appropriate hearing following written application.

2.4.2 General Prohibitions. No person shall burn any trash, garbage or other wastes, or shall conduct any salvage operation by open burning except in conformity with the provisions of Subsections R307-1-2.4.3 and R307-1-2.4.4.

2.4.3 Permissible Burning - Without Permit. When not prohibited by other laws or by other officials having jurisdiction and provided that a nuisance as defined in Section 76-10-803 is not created, the following types of open burning are permissible without the necessity of securing a permit:

A. in devices for the primary purpose of preparing food such as outdoor grills and fireplaces;

B. campfires and fires used solely for recreational purposes where such fires are under control of a responsible person;

C. in indoor fireplaces and residential solid fuel burning devices except as provided in Subsection R307-17-3 of these regulations;

D. properly operated industrial flares for combustion of flammable gases; and

E. burning, on the premises, of combustible household wastes generated by occupants of dwellings of four family units or less in those areas only where no public or duly licensed disposal service is available.

2.4.4 Permissible Burning - With Permit. Open burning is authorized by the issuance of a permit as specified in R307-1-2.4.4.B when not prohibited by other laws or other officials having jurisdiction, and when a nuisance as defined in Section 76-10-803 is not created.

A. Individual permits for the types of burning listed in R307-1-2.4.4.B may be issued by an authorized local authority under the "clearing index" system approved and coordinated by the Department of Environmental Quality.

B. Types of burning for which a permit may be granted are:

(1) open burning of tree cuttings and slash in forest areas where the cuttings accrue from pulping, lumbering, and similar operations, but excluding waste from sawmill operations such as sawdust and scrap lumber;

(2) open burning of trees and brush within railroad rights-of-way provided that dirt is removed from stumps before burning, and that tires, oil more dense than #2 fuel oil or other

materials which can cause severe air pollution are not used to start fires or keep fires burning;

(3) open burning of solid or liquid fuels or structures for removal of hazards or eyesores;

(4) open burning, in remote areas, of highly explosive or other hazardous materials, for which there is no other known practical method of disposal;

(5) open burning of clippings, bushes, plants and prunings from trees incident to property clean-up activities provided that the following conditions have been met:

(a) in any area of the state, the local county fire marshall has established a 30 day period between March 30 and May 30 for such burning to occur and notified the executive secretary of the open burning period prior to the commencement of the 30 day period, or, in areas which are located outside of Salt Lake, Davis, Weber, and Utah Counties, the local county fire marshall has established, if allowed by the state forester under Section 65A-8-9, a 30 day period between September 15 and October 30 for such burning to occur and has notified the executive secretary of the opening burning period prior to the commencement of the 30 day period;

(b) such burning occurs during the period established by the local county fire marshall;

(c) materials to be burned are thoroughly dry;

(d) no trash, rubbish, tires, or oil are used to start fires or included in the material to be burned.

C. The Board may grant a permit for types of open burning not specified in R307-1-2.4.4.B on written application if the Board finds that the burning is not inconsistent with the State Implementation Plan.

2.4.5 Special Conditions. Open burning for special purposes, or under unusual or emergency circumstances, may be approved by the executive secretary.

2.5 Confidentiality of Information

Any person submitting information pursuant to these regulations may request that such information be treated as a trade secret or on a confidential basis, in which case the executive secretary and Board shall so treat such information. If no claim is made at the time of submission, the executive secretary may make the information available to the public without further notice. Information required to be disclosed to the public under State or Federal law may not be requested to be kept confidential. Justification supporting claims of confidentiality shall be provided at the time of submission on the information. Each page claimed "confidential" shall be marked "confidential business information" by the applicant and the confidential information on each page shall be clearly specified. Claims of confidentiality for the name and address of applicants for an approval order will be denied. Confidential information or any other information or report received by the executive secretary or Board shall be available to EPA upon request and the person who submitted the information shall be notified simultaneously of its release to EPA.

2.5.1 The following proceedings and actions are designated to be conducted either formally or informally as required by Section 63-46b-4:

A. Notices of Intent and Approval Orders shall be processed informally using the procedures identified in Section R307-1-3. Appeals of denials of or conditions in an approval order shall be conducted formally.

B. Issuance of Notices of Violations and Orders are exempt under Section 63-46b-1(2)(k). Appeals of Notices of Violation and Orders shall be processed as formal proceedings.

C. Requests for variances shall be processed informally using the procedures in Section 19-2-113 and Subsection R307-1-2.3.

D. Qualification for Tank Vapor Tightness Testing shall be conducted informally using the procedures identified in Section R307-3-4.

E. Certification of Asbestos Contractors shall be conducted informally using the procedures identified in Section R307-1-8.

F. Any other request or approvals for experiments, testing, control plans, etc., shall be conducted informally using the procedures identified in R307-1.

2.5.2 At any time before a final order is issued, the Board or appointed hearing officer may convert proceedings which are designated to be informal to formal, and proceedings which are designated as formal to informal if conversion is in the public interest and rights of all parties are not unfairly prejudiced.

2.5.3 Rules for conducting formal proceedings shall be as provided in Section 63-46b-3 and in Sections 63-46b-6 through 63-46b-13. In addition to the procedures referenced in Subsection R307-1-2.5.1 above, the procedures in Sections 63-46b-3 and 63-46b-5 apply to informal proceedings.

2.5.4 Declaratory Orders. In accordance with the provisions of Section 63-46b-21, any person may file a request for a declaratory order. The request shall be titled a petition for declaratory order and shall specifically identify the issues requested to be the subject of the order. Requests for declaratory order, if set for adjudicative hearing, will be processed informally using the procedures identified in Sections 63-46b-3 and 63-46b-5 unless converted to a formal proceeding under Subsection R307-1-2.5.2 above. No declaratory orders will be issued in the circumstances described in Subsection 63-46b-21(3)(a). Intervention rights and other procedures governing declaratory orders are outlined in Section 63-46b-21.

R307-1-3. Control of Installations.

3.1 Notice of Intent and Approval Order

3.1.1 Notice of Intent Required.

A. Except for the exemptions listed herein, any person intending to construct a new installation which will or might reasonably be expected to become a source or an indirect source of air pollution or to make modifications or relocate an existing installation which will or might reasonably be expected to increase the amount or change the effect of, or the character of, air contaminants discharged, so that such installation may be expected to become a source or indirect source of air pollution, or any person intending to install a control apparatus, or other equipment intended to control emission of air contaminants from a stationary source, shall submit to the executive secretary a notice of intent and receive an approval order prior to initiation of construction, modification or relocation. The notice of intent shall include the information described in R307-1-3.1.6 to determine whether the proposed construction, installation, modification, relocation or establishment will be in accord with applicable requirements of these rules. Within 30

days after receipt of a notice of intent, or any additional information necessary to the review, the executive secretary shall advise the applicant of any deficiency in the notice of intent or the information submitted. The executive secretary shall transmit to the Administrator, EPA, a copy of each notice of intent for each major source or major modification and provide notice to the Administrator, EPA, of every action related to the consideration of such permit.

B. Stationary sources that were in existence prior to November 29, 1969, that have not made any modifications or relocations since that date are not required to submit a notice of intent or to have an approval order; however, these sources are subject to all other applicable requirements of Title R307 and actions taken by the executive secretary and the Board pursuant to existing statutory authorities.

3.1.2 Within 90 days of receipt of a complete application including all the information described in R307-1-3.1.6, the executive secretary shall either issue an order prohibiting the proposed construction, installation, modification, relocation or establishment if it is deemed that any part of it is inadequate to meet the applicable requirements of Title R307, or issue an order permitting the proposed construction, installation, modification, relocation, or establishment pursuant to the requirements of R307-1-3.1.4 and R307-1-3.1.8. If more time is needed to review the proposal, it shall not exceed three 30-day extensions.

3.1.3 Public Notice.

A. Issuing the Notice. Prior to issuing an approval or disapproval order, the executive secretary shall advertise intent to approve or disapprove in a newspaper of general circulation in the locality of the proposed construction, installation, modification, relocation or establishment. A copy of the notice of intent to approve or disapprove shall be sent to the applicant, the Administrator, EPA, and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: any other state or local air pollution control agencies; the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency; and any state, Federal Land Manager, or Indian Governing body whose lands may be affected by emissions from the source or modification. Any expected consumption of the maximum allowable increases as stated in R307-1-3.6 and proposed emission limitations, emission amounts, and any operating limitations shall be included in the notice. The executive secretary shall consider any analysis performed by a Federal Land Manager and provided to the executive secretary within the public comment period. If the executive secretary concurs with a demonstration by the Federal Land Manager that the emissions from the proposed source or modification would have an adverse impact on the air quality related values (including visibility) in any Federal Class I area, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases, the executive secretary shall not issue an approval order for the source or modification.

B. Opportunity for Review and Comment.

(1) At least one location will be provided where the information submitted by the owner or operator, the executive secretary's analyses of the notice of intent proposal, and the proposed approval order conditions will be available for public inspection.

(2) Public Comment Period.

(a) A 10-day public comment period shall be required before an approval order is issued for a new source or for an existing source proposing to modify or relocate, if the source, modification, or relocation is not:

(i) subject to the requirements of R307-1-3.6, Prevention of Significant Deterioration of Air Quality (PSD);

(ii) subject to the requirements of R307-15, Operating Permit Requirements;

(iii) a synthetic minor source in accordance with R307-15-4(6);

(iv) located in a nonattainment area or a maintenance area for any pollutant; or

(v) subject to any standard or requirement of 42 U.S.C. 7411 or 7412.

(b) A request to extend the length of the comment period, up to 30 days, may be submitted anytime within 10 days of the date a notice is published in a newspaper.

(c) Those sources not subject to the 10-day public comment period are subject to the requirement in R307-1-3.1.3.B(2)(d) below.

(d) For any notice of intent proposal not subject to R307-1-3.1.3.B(2)(a), a 30-day public comment period is required before an approval order is issued or denied.

(e) A request for a hearing on the executive secretary's proposed approval or disapproval order may be submitted anytime within 10 days or 15 days of the date of a notice in a newspaper under provisions of the appropriate rule, R307-1-3.1.3.B(2)(a)or(d). The hearing shall be held in the area of the proposed construction, installation, modification, relocation or establishment. Any comments or statements received shall be considered before an order is issued or denied.

(f) The public comment and hearing procedure shall not be required when an order is issued for the purpose of extending the time required by the executive secretary to review plans and specifications.

3.1.4 Whenever the executive secretary determines that the information submitted under provisions of R307-1-3.1.6, with such revisions as may be required, are in accord with applicable requirements, the executive secretary shall issue an order permitting the proposed construction, installation, modification, relocation or establishment, with the further stipulation that all required facilities be adequately and properly maintained. Receipt of an approval order does not relieve any owner or operator of the responsibility to comply with the provisions of Title R307 or the State Implementation Plan. To accommodate staged construction of a large source, the executive secretary may issue an order authorizing construction of an initial stage prior to receipt of detailed plans for the entire proposal provided that, through a review of general plans, engineering reports and other information the proposal is determined feasible by the executive secretary under the intent of Title R307. Subsequent detailed plans will then be processed as prescribed in this paragraph. For staged construction projects the previous determination under R307-1- 3.1.8 shall be reviewed and modified as appropriate at the earliest reasonable time prior to

commencement of construction of each independent phase of the proposed source or modification.

3.1.5 Approval orders issued by the executive secretary in accordance with the provisions of R307-1- 3.1 shall be reviewed eighteen months after the date of issuance to determine the status of construction, installation, modification, relocation or establishment. If a continuous program of construction, installation, modification, relocation or establishment is not proceeding, the executive secretary may revoke the approval order.

3.1.6 The following information, where applicable, shall be submitted with the notice of intent:

A. A description of the nature of the processes involved; the nature, procedures for handling and quantities of raw materials; the type and quantity of fuels employed; and the nature and quantity of finished product.

B. Expected composition and physical characteristics of effluent stream both before and after treatment by any control apparatus, including emission rates, volume, temperature, air contaminant types, and concentration of air contaminants.

C. Size, type and performance characteristics of any control apparatus.

D. Location and elevation of the emission point and other factors relating to dispersion and diffusion of the air contaminant in relation to nearby structures and window openings, and other information necessary to appraise the possible effects of the effluent.

E. The location of planned sampling points and the tests of the completed installation to be made by the owner or operator when necessary to ascertain compliance.

F. The typical operating schedule.

G. A schedule for construction.

H. Any plans, specifications and related information which are in final form at the time of submission of notice of intent.

I. Any other information necessary to determine if the proposed source or modification will be in compliance with Title R307.

3.1.7 Exemptions and Special Provisions.

A. Small Source Exemption - De minimis Emissions.

(1) A new or existing stationary source is exempt from the notice of intent and approval order requirements of R307-1-3.1 if the following conditions are met:

(a) it is not regulated by any standard or requirement of 42 U.S.C. 7411 or 7412;

(b) its potential to emit does not make it a stationary major source or require emission offset provisions as required by R307-1-3.3.3 for a new or modified source;

(c) its actual emissions are less than 5 tons per year per air contaminant of any of the following air contaminants: sulfur dioxide (SO_2), carbon monoxide (CO), nitrogen oxides (NO_x), particulate matter (PM_{10}), ozone (O_3), or volatile organic compounds (VOCs);

(d) its actual emissions are less than 500 pounds per year of any hazardous air pollutant and less than 2000 pounds per year of any combination of hazardous air pollutants;

(e) its actual emissions are less than 500 pounds per year of any air contaminant not listed in R307-1-3.1.7.A(1)(c) or (d) and less than 2000 pounds per year of any combination of air contaminants not listed in R307-1-3.1.7.A(1)(c) or (d); and

(f) for purposes of determining applicability of R307-1-3.1.7.A, other air contaminants that are drawn from the environment through equipment in intake air and then are released back to the environment without chemical change, as well as carbon dioxide (CO_2), nitrogen (N_2), oxygen (O_2), argon (Ar), neon (Ne), helium (He), krypton (Kr), xenon (Xe) should not be included in emission calculations.

(2) Small Source Exemption - Registration Required in Nonattainment and Maintenance Areas. The owner or operator of a stationary source located in a nonattainment area or a maintenance area for the air contaminants, including ozone precursors, that is claiming an exemption under R307-1-3.1.7.A shall submit to the executive secretary a written registration notice. An existing source shall submit this registration notice no later than March 15, 1997. A new source shall submit the registration notice prior to commencing construction. The notice shall include the following minimum information:

(a) identifying information including company name and address, location of source, telephone number, and name of plant site manager or point of contact;

(b) a description of the nature of the processes involved, equipment, anticipated quantities of materials used, the type and quantity of fuel employed and nature and quantity of the finished product;

(c) identification of expected emissions;

(d) estimated annual emission rates;

(e) any control apparatus used; and

(f) typical operating schedule.

(3) The owner or operator of a temporary source that is claiming exemption under R307-1-3.1.7.A must still comply with the conditions of R307-1-3.1.9.

B. Flexibility Changes.

(1) A change to an existing stationary source is exempt from the notice of intent and approval order requirements of R307-1-3.1 if the source is covered by an approval order and the change satisfies the following conditions:

(a) the change is not regulated by any standard or requirement of 42 U.S.C. 7411 or 7412,

(b) the increases in allowable emissions from the change since the issuance of the current approval order for the source are less than:

(i) 5 tons per year per air contaminant of any of the following air contaminants: sulfur dioxide (SO2), carbon monoxide (CO), nitrogen oxides (NO_x), particulate matter (PM_{10}), ozone (O_3), or volatile organic compounds (VOCs);

(ii) 500 pounds per year of any hazardous air pollutant and 2000 pounds per year of any combination of hazardous air pollutants; and

(iii) 500 pounds per year of any air contaminant not listed in R307-1-3.1.7.B(1)(b)(i) or (ii) and 2000 pounds per year of any combination of air contaminants not listed in R307-1-3.1.7.B(1)(b)(i) or (ii);

(c) for purposes of determining applicability of R307-1-3.1.7.B, other air contaminants that are drawn from the environment through equipment in intake air and then are released back to the enviroment without chemical change, as well as carbon dioxide (CO_2), nitrogen (N_2), oxygen (O_2), argon (Ar), neon (Ne), helium (He), krypton (Kr), xenon (Xe) should not be included in emission calculations;

(d) the increase of allowable emissions from the change is accompanied by an equivalent or greater decrease of allowable emissions of the same air contaminants within the source at the time of the change, so long as the emissions decrease is enforceable in an approval order;

(e) the net emissions increase at the source, as defined in R307-1-1, as a result of the change shall not constitute a major modification, as defined in R307-1-1; and

(f) The owner or operator claiming an exemption pursuant to R307-1-3.1.7.B submits to the executive secretary a written notice prior to the change. The notice shall include the information specified in R307-1-3.1.7.A(2)(a) through (f) and a description of where the owner or operator will reduce allowable emissions at least equal to any increase in emissions from the change.

(2) The approval order shall reflect emission increases and decreases of emitting units at the source resulting from the change.

(3) A source must go through the full Notice of Intent and Approval Order requirements of R307-1-3.1 to change any limitation which a source is relying on, either to avoid being classified as a major source, or to avoid having a change in emissions be considered a major modification.

(4) No comment period under R307-1-3.1.3 is required for this approval order change and update.

C. Other Exemptions. Sources listed in R307-1-3.1.7.C(1) through (6) are exempt from the notice of intent and approval order requirements of R307-1-3.1.

(1) Fuel-burning equipment in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure with a rated capacity of less than five million BTU per hour using no other fuel than natural gas or LPG or other mixed gas that meets the standards of gas distributed by a utility in accordance with the rules of the Public Service Commission of the State of Utah is exempt, unless there are emissions other than combustion products.

(2) Comfort heating equipment such as boilers, water heaters, air heaters and steam generators with a rated capacity of less than one million BTU per hour if fueled only by fuel oil numbers 1 - 6 is exempt.

(3) Emergency heating equipment, using coal or wood for fuel, with a rated capacity less than 50,000 BTU per hour is exempt.

(4) Exhaust systems for controlling steam and heat that do not contain combustion products are exempt.

(5) New parking areas of less than 600 vehicles capacity or modified parking areas increasing capacity by less than 350 vehicles are exempt.

(6) Emissions of 1,1,1-trichloroethane, trichlorofluoromethane, dichlorodifluoromethane, chlorodifluoromethane, trifluoromethane, 1,1,2-trichloro-1,2,2-trifluoroethane, 1,2-dichloro-1,1,2,2-tetrafluoroethane, methane, ethane, and chloropentafluoroethane are exempt. However, the owner or operator of a source emitting 10 tons per year or more of any of these compounds must submit a notice of intent to the executive secretary prior to construction of the source and an annual report of emissions thereafter.

D. Exemptions from the Notice of Intent and Approval Order provisions of R307-1-3.1 for Replacement-in-Kind Equipment.

(1) Applicability. The owner or operator of a stationary source of air contaminants who modifies any process or replaces any control apparatus that is covered by an existing approval order, a previous approval order that has been superseded by an operating permit, or a requirement contained in a State Implementation Plan is exempt from the notice of intent and approval order requirements of R307-1-3.1, when the replacement-in-kind equipment meets all of the following conditions:

(a) potential to emit of the process equipment is the same or lower;

(b) the number of emission points or emitting units is the same or lower;

(c) no additional types of air contaminants are emitted as a result of the replacement;

(d) the control apparatus or process equipment is essentially the same as that being replaced and is not regulated by any standard or requirement of 42 U.S.C. 7411 or 7412;

(e) the replacement of the control apparatus or process equipment does not violate any other provision of Title R307.

(2) Replacement-in-Kind Procedures.

(a) In lieu of filing a notice of intent under R307-1-3.1, an owner or operator of a stationary source proposing to replace control apparatus or process equipment by in-kind equipment shall submit a written notification to the executive secretary for approval prior to initiation of replacement. The notification shall contain a description of the replacement-in-kind, to include the control capability of any control apparatus and a demonstration that the conditions of R307-1-3.1.7.D(1) are met.

(b) If the replacement-in-kind meets the conditions of R307-1-3.1.7.D(1), the executive secretary will update the appropriate approval order and notify the owner or operator. No public comment period under R307-1-3.1.3 is required.

E. Exemptions from Notice of Intent and Approval Order provisions of R307-1-3.1 for Reduction or Elimination of Air Contaminants.

(1) Applicability. The owner or operator of a stationary source of air contaminants covered by an existing approval order or a State Implementation Plan that reduces or eliminates air contaminants by changing, substituting, or eliminating process raw materials or process equipment, or uses a more efficient process design, is exempt from the notice of intent and approval order requirements of R307-1-3.1 when all the following are met:

(a) there is a permanent reduction of air contaminants per year that is enforceable by an approval order;

(b) there are no new air contaminants emitted as a result of the changes; and

(c) the changes do not violate any provision of Title R307 rules.

(2) Procedures for the Reduction or Elimination of Air Contaminants Exemption. In lieu of filing a notice of intent under R307-1-3.1, an owner or operator of a stationary source making changes as described in R307-1-3.1.7.E(1) shall submit a written description of the changes to the executive secretary no later than 60 days after the changes are made. The approval order will be updated by the executive secretary to reflect the reductions and other changes; no comment period under R307-

1-3.1.3 is required.

F. Any owner or operator of a source submitting an inventory as required in R307-1-3.5 shall include in that inventory an estimate of all emissions from the above exempted activities, using appropriate emission factors and estimating techniques.

G. Any control apparatus installed on a source that is exempted under R307-1-3.1.7 shall be adequately and properly maintained. The owner or operator of any new or existing emission unit that is exempted under R307-1-3.1.7 is required to comply with all other applicable rules in Title R307.

H. If the executive secretary has reason to believe, after completion of an appropriate analysis and evaluation in consultation with the source owner or operator, that the emissions from a source described in R307-1-3.1.7.A, B C, D, and E above are not meeting any specified approval order or State Implementation Plan limitation, or create an adverse impact to the environment, or would be injurious to human health or welfare, then the notice of intent and approval order provisions of R307-1-3.1 will apply.

3.1.8 The executive secretary shall issue an approval order if it is determined through plan review that the following conditions have been met:

A. The degree of pollution control for emissions, to include fugitive emissions and fugitive dust, is at least best available control technology except as otherwise provided in Title R307.

B. The proposed installation will be in accord with applicable requirements of: Utah Title R307; National Standards of Performance for New Stationary Sources; National Primary and Secondary Ambient Air Quality Standards; National Emission Standards for Hazardous Air Pollutants; new source review criteria; maximum allowable increase and maximum allowable concentration requirements for Prevention of Significant Deterioration; the State Implementation Plan for the area, if the area is classified as a nonattainment or maintenance area; and new source requirements for nonattainment areas under the Federal Clean Air Act.

C. The executive secretary shall issue an approval order under R307-1-3.6.5 for a major source or major modification which consumes more than 50% of the increments in R307-1-3.6.3 only after receiving the approval of the Board.

3.1.9 The owner or operator of a source previously approved under R307-1-3.1 or in a State Implementation Plan may temporarily relocate and operate the source at any site for up to 180 working days in any calendar year not to exceed 365 consecutive days, starting from the initial relocation date. The executive secretary shall evaluate the expected emissions impact at the site and compliance with applicable Title R307 rules as the bases for determining if approval for temporary relocation may be granted. Records of the working days at each site, consecutive days at each site, and actual production rate shall be sent to the executive secretary at the end of each 180 calendar days. These records shall also be kept on site by the owner or operator for the entire project, and be made available for review to the executive secretary as requested. To issue a written approval or disapproval, the executive secretary is not required to submit the temporary relocation proposal for public comment.

3.1.10 The owner or operator of a major new source or major modification to be located in a nonattainment or maintenance area or which would impact a nonattainment or maintenance area must, in addition to the requirements in R307-1-3.1, submit with the notice of intent an adequate analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. The executive secretary shall review the analysis. The analysis and the executive secretary's comments shall be subject to public comment as required by R307-1-3.1.3. The preceding shall also apply in Salt Lake and Davis Counties for new major sources or modifications which are considered major for precursors of ozone, including volatile organic compounds and nitrogen oxides.

3.1.11 At a time that a source or modification becomes a major source or major modification because of a relaxation of any enforceable limitation which was established after August 7, 1980, on the capacity of a source or modification otherwise to emit a pollutant, such as a restriction on the hours of operation, then the preconstruction requirements shall apply to the source as though construction had not yet commenced on the source or modification.

3.1.12 Low Oxides of Nitrogen Burner Technology.

A. All sources excluding non-commercial residential dwellings shall install oxides of nitrogen control/low oxides of nitrogen burners or controls resulting from application of an equivalent technology, as determined by the Executive Secretary, whenever existing fuel combustion burners are replaced, unless such replacement is not physically practical or cost effective. The request for an exemption shall be presented to the Executive Secretary for review and approval.

B. Contingency Requirement for Ozone Nonattainment Areas and Salt Lake and Davis Counties. If the Contingency Requirements for nitrogen oxides are triggered as outlined in Section IX.D.2.h(2) of the State Implementation Plan, all existing sources excluding non-commercial residential dwellings shall install either low oxides of nitrogen burner technology as described in R307-1-3.1.12(a), unless such requirement is not physically practical or cost effective, or controls resulting from application of an equivalent technology, both of which shall be determined by the executive secretary. All sources required to install new controls under R307-1-3.1.12.B shall submit, within two months after the trigger date, either a schedule for installing the equipment or a request for an exemption. The required equipment shall be operational as soon as practicable or within a reasonable time agreed upon by the source and the executive secretary.

3.2 Nonattainment Area Requirements And PM10 Nonattainment Area Requirements - Existing Sources.

3.2.1 Particulate Emission Limitations And Operating Parameters (TSP).

A. Existing sources located in or affecting areas of nonattainment shall use reasonably available control measures to the extent necessary to insure the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). The emission limitations specified in this paragraph constitute, in the judgment of the Board, reasonably available control measures

necessary to insure attainment and maintenance of the NAAQS as of the date of promulgation of these regulations. Specific limitations for installations within a source listed below which are not specified will be set by order of the Board. Specific limitations for installations within a source listed below may be adjusted by order of the Board provided the adjustment does not adversely affect achieving the applicable NAAQS.

B. The owner or operator of any source listed in this paragraph shall not allow exceedance of the emission limitation or violation of any other listed requirement (See schedule for compliance listed in paragraph 3.2.2). The requirements listed for the sources in Weber County apply unless modified by an approval order or compliance order issued after February 16, 1982.

TABLE 1

IDENTIFICATION OF SOURCE (SOURCES 25 TONS/YEAR OR GREATER ACTUAL EMISSIONS)	EMISSION LIMITATIONS
WEBER COUNTY (TSP)	
1. Farmers Grain Coop unloading/loading/ cleaning and grinding stacks/vents	20% opacity each stack/vent
2. Fife Rock Products Asphalt Plant (Hot mix dryer)	0.040 gr/dscf, 20% opacity (stack and fugitive emissions)
3. Interpace Corporation - 4/2/81 Grinding and screening	20% opacity (vents and fugitive emissions)
4. Parsons Asphalt Plant	0.040 gr/dscf, 20% opacity (stack and fugitive emissions)
5. Pillsbury Co. Loading, milling, unloading	20% opacity each vent
6. Teledyne Incinerator	0.080 gr/dscf, 20% opacity
7. Gibbons and Reed Asphalt Plant - 4/2/81	0.030 gr/dscf, 20% opacity

3.2.2 Compliance Schedule (TSP). The owner or operator of an existing installation which is a source of a pollutant in a nonattainment area for the pollutant, or which has significant impact (Based on the increment levels in subparagraph 3.3.2.A) upon a nonattainment area, is required to achieve the established emission limitation or other requirements established by these regulations as expeditiously as practicable but no later than December 31, 1982, or such later date as may be specified by Congress or EPA under the Clean Air Act. Within 180 days after the effective date of a regulation establishing a standard of pollutant control pursuant to an emission limitation under paragraph 3.2.1 or paragraph 4.1.1 of R307-1-4, the owner or operator of an existing installation not meeting these requirements must submit a notice of intent as outlined in subsection 3.1 together with a compliance schedule. The compliance schedule shall contain proposed interim measures to control and identify the degree of emission reduction to be achieved by each such interim measure of control.

3.2.3 Compliance Testing (TSP)

A. Testing Methodology. Except as otherwise provided in this paragraph 3.2.3, compliance testing for gravimetric emission limitations for particulate shall be pursuant to EPA reference Method 5 or EPA reference Method 17 where appropriate and approved by the Executive Secretary. Where EPA reference Method 5 is used for compliance testing, determination of compliance with gravimetric emission limitations shall be made through the use of front half catch. The Executive Secretary may require that Method 5 full train analysis be conducted and that back half data also be submitted but only for information purposes. Such information shall not be used to determine compliance with gravimetric emission limitations. EPA reference Method 1 shall be used to select the sampling site and number of traverse sampling points. Where necessary for determination of stack gas velocities, EPA reference Method 2 shall be used. Where necessary for determination of dry molecular weight, EPA reference Method 3 shall be used. Where necessary for determination of moisture content in stack gases EPA reference Method 4 shall be used. All EPA reference methods referred to in this paragraph 3.2.3 are those found in 40 CFR Part 60 Appendix A.

Except as provided below in these regulations any alternate test methods or sampling methods may be used with the approval of the Executive Secretary, provided, however, that if such reference tests or sampling methods are used to test compliance with federal law they may be used only if approved, in writing, by the Administrator of EPA or his representative.

B. Special Sampling and Compliance Testing Requirements for Fossil-Fuel Fired Power Plants. Method 5 or EPA reference Method 17 where appropriate (only when stack temperatures do not exceed 320 degrees F) and approved by the Executive Secretary shall be run for fossil-fuel fired power plants as modified by 40 CFR, Part 60, subpart D or Da whichever is applicable. Method 9 shall be run for opacity.

C. Exceptions for Special Sampling and Testing Conditions for Performance for Incinerators. Method 5 shall be run for incinerators as modified by 40 CFR, Part 60, Subpart E.

D. Special Conditions for Sampling for Portland Cement Plants. Method 5 or EPA Reference Method 17 where appropriate and approved by the Executive Secretary shall be run for Portland Cement Plants. If compliance is tested by use of Method 5, Method 5 shall be modified as provided in 40 CFR, Part 60, Subpart F.

3.2.4 Particulate Emission Limitations and Operating Parameters (PM10)

All sources with emissions of 25 tons per year or more (combinations of sulfur dioxide, oxides of nitrogen, and PM10) in areas located in or affecting PM10 Nonattainment Areas in Salt Lake and Utah Counties shall meet the emission limitations and operating parameters contained in Section IX, Part H, of the Utah State Implementation Plan (SIP). Existing sources located in or affecting PM10 Nonattainment Areas shall use reasonably available control measures to the extent necessary to insure the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). The emission limitations specified in the SIP constitute, in the judgment of the Board, reasonably available control measures necessary to insure attainment and maintenance of the NAAQS not later than December 31, 1994. Specific limitations for installations within a source listed in the SIP which are not specified will be set by order of the Board. Specific limitations for installations within a source may be adjusted by order of the Board provided the adjustment does not adversely affect achieving the applicable NAAQS.

3.2.5 Compliance Testing (PM10). Compliance testing for the PM10, sulfur dioxide, and oxides of nitrogen emission limitations shall be done in accordance with Section IX, Part H of the SIP. PM10 compliance shall be determined from the results of EPA test method 201 or 201a. A backhalf analysis shall be performed for each PM10 compliance test in accordance with a method approved by the Executive Secretary for inventory purposes. For sources not requiring changes to their process or air pollution control devices to achieve compliance with the emission limitations contained in these regulations, compliance testing shall be scheduled with the Executive Secretary within three months after promulgation of this Section 3.2.5. For Utah County sources listed in Section IX, Part H.1 of the SIP which need to make major changes to comply, a construction/installation schedule for demonstration of compliance with limitations contained in the SIP, shall be submitted by the owner/operator by February 15, 1991. Those sources located in Salt Lake and Davis County listed in Section IX, Part H.2 of the SIP which need to make major changes to comply shall submit to the Executive Secretary a construction/installation schedule for demonstration of compliance with limitations contained in the SIP within three months after the effective date of this Section 3.2.5. for approval. Those sources making major changes of process equipment or air pollution control equipment shall submit a notice in accordance with Section 3.1, UACR, for the purpose of meeting the emissions limitations contained in Section IX, Part H of the SIP and receive approval from the Executive Secretary. The schedule indicated above shall result in demonstration of compliance with the limitations by December 31, 1992, unless an alternate schedule has been approved by the Executive Secretary. The alternate schedule shall be approved by the Executive Secretary if the owner/operator demonstrates that the schedule or implementation of control measures is as expeditious as practicable, but extends beyond December 31, 1992. Any submittal requesting an alternate schedule shall be done in accordance with the requirements of the Federal Clean Air Act, and shall be consistent with the SIP demonstration of attainment by December 31, 1994.

3.2.6 Compliance Schedule (PM10). The owner or operator of an existing installation listed in the SIP is required to achieve the emission limitation or other requirements established by the SIP as expeditiously as practicable, but no later than December 31, 1992. For those sources granted an alternate schedule in accordance with Section 3.2.5, compliance with the limitations shall be demonstrated as provided in the approved schedule. Until the time a source is required to demonstrate compliance with the limitations in the SIP, the source shall comply with the applicable provisions of the existing TSP limitations and operating parameters listed in the Utah Air Conservation Regulations dated April 1, 1990, or existing approval orders.

3.2.7 Salting and Sanding.

A. Any person who applies salt, crushed slag, or sand to roads in Salt Lake, Davis or Utah Counties shall maintain records of the material applied. For salt, the records shall include the quantity applied, the percent by weight of insoluble solids in the salt, and the percentage of the material that is sodium chloride. For sand or crushed slag the records shall include the quantity applied and the percent by weight of fine material which passes the number 200 sieve in a standard gradation analysis. All records shall be maintained for a period of at least two years, and the records shall be made available to the Executive Secretary or his designated representative upon request.

B. After October 1, 1993, any salt applied to roads in Salt Lake, Davis, or Utah Counties must be at least 92% sodium chloride (NaCl).

C. After October 1, 1993, any person who applies crushed slag, sand, or salt that is less than 92% sodium chloride to roads in Salt Lake, Davis, or Utah Counties must either:

1. demonstrate to the Board that the material applied has no more PM10 emissions than salt which is at least 92% sodium chloride; or

2. vacuum sweep every arterial roadway (principle and minor) to which the material was applied within three days of the end of the storm for which the application was made. For the purpose of this rule, the term "arterial roadway" shall have the meaning outlined in U.S. DOT Federal Highway Administration Publication No. FHWA-ED-90-006, Revised March 1989, "Highway Functional Classification: Concepts, Criteria, and Procedures" as interpreted by Utah Department of Transportation and shown in the following maps: Salt Lake Urbanized Area, Provo-Orem Urbanized Area, and Ogden Urbanized Area (1992 or later).

3. In the interest of public safety, any person who applies crushed slag and/or sand to arterial roadways because salt alone would not ensure safe driving conditions due to steepness of grade, extreme weather, or other reasons, may petition the Board for a variance from the sweeping requirements in R307-1-3.2.7.C.2. Specifically excluded from these sweeping requirements are all canyon roads and the portion of Interstate 15 near Point of the Mountain.

3.3 Requirements for Nonattainment Areas and Salt Lake City and Ogden Maintenance Areas for Carbon Monoxide - New and Modified Sources.

3.3.1 Emission Limitations. Any source constructed in an actual area of nonattainment, or in the Salt Lake City and Ogden maintenance areas for carbon monoxide, or in an area which will impact on an actual area of nonattainment or on the Salt Lake City and Ogden maintenance areas for carbon monoxide must meet all applicable emission requirements of R307-1, Utah Air Conservation Regulations, and R307-2, Utah State Implementation Plan. A proposed source which is not a major source may be approved without further analysis provided such source meets all such applicable emission limitations and offset requirements listed in paragraph 3.3.3. The emission limitations shall be stated as a condition of the approval order.

3.3.2 Review of Major Sources of Air Quality Impact. Every major new source or major modification must be reviewed by the Executive Secretary to determine if a source will cause or contribute to a violation of the NAAQS. The determination of whether a source will cause or contribute to a violation of the NAAQS will be made by the Executive Secretary as of the new source's projected start-up date. He will make an analysis of the proposed new source's operation data using the best information and analytical techniques available.

A. If the owner or operator of a source proposes to locate

the source outside an area of nonattainment where the source will not cause an increase greater than the following increments in actual areas of nonattainment or in the Salt Lake City and Ogden maintenance areas for carbon monoxide and the source otherwise meets the requirements of these regulations, such source shall be approved.

TABLE 2

MAXIMUM ALLOWABLE MICROGRAM/CUBIC METER IMPACT BY AVERAGING TIME

Pollutant	Annual	24-Hr	8-Hr	3-Hr	1-Hr
SULFUR DIOXIDE	1.0	5		25	
PM10	1.0	3			
CO			500		2000

B. If the Executive Secretary finds that the emissions from a proposed source would cause a new violation of the NAAQS but would not contribute to an existing violation, the Executive Secretary shall approve the proposed source if and only if:

(1) the new source is required to meet a more stringent emission limitation, sufficient to avoid a new violation of the NAAQS and

(2) the new source has acquired sufficient offset to avoid a new violation of the NAAQS and

(3) the new emission limitations for the proposed source and for any affected existing sources are enforceable.

C. If the Executive Secretary finds that the emissions from a proposed source in a nonattainment area would contribute to an existing violation of a national ambient air quality standard at the time of the source's proposed start-up date, approval shall be granted if and only if:

(1) the new source meets an emission limitation which is the Lowest Achievable Emission Rate (LAER) for such source and

(2) the applicant has certified that all existing major sources in the State, owned or controlled by the owner or operator (or by any entity controlling, controlled by or under common control with such owner or operator) of the proposed source, are in compliance with all applicable Utah Air Conservation Regulations and Utah Implementation Plan requirements or are in compliance with an approved schedule and timetable for compliance under the Utah Implementation Plan, the Utah regulations, or an enforcement order, and that the source is complying with all requirements and limitations as expeditiously as practicable.

(3) emission offsets to the extent provided in paragraph 3.3.3 are sufficient such that there will be reasonable further progress toward attainment of the applicable NAAQS.

(4) the emission offsets provide a positive net air quality benefit in the affected area of nonattainment.

(5) there is an approved implementation plan in effect for the pollutant to be emitted by the proposed source.

D. A source which is locating outside a nonattainment area or the Salt Lake City and Ogden maintenance areas for carbon monoxide and which causes the significant increments in subparagraph 3.3.2.A to be exceeded in the nonattainment or maintenance area is subject to the requirements of subparagraph 3.3.2.C.

3.3.3 Offset Requirements.

A. General Requirements.

(1) Emission offsets must be obtained from the same source or other sources in the same nonattainment area except that the owner or operator of a source may obtain emission offsets in another nonattainment area if:

(a) the other area has an equal or higher nonattainment classification than the area in which the source is located; and

(b) emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located or which is impacted by the source.

(2) Any emission offsets shall be enforceable by the time a new or modified source commences construction, and, by the time a new or modified source commences operation, any emission offsets shall be in effect and enforceable and shall assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area.

(3) Emission reductions otherwise required by the federal Clean Air Act or the Utah Air Conservation Rules and State Implementation Plan shall not be creditable as emission reductions for purposes of any offset requirement. Incidental emission reductions which are not otherwise required by federal or state law shall be creditable as emission reductions if such emission reductions meet the requirements of paragraphs 3.3.3.A(1) and (2).

(4) Sources shall be allowed to offset, by alternative or innovative means, emission increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source that tests rocket engines or motors under the conditions outlined in Section 173(e)(1) through Section 173(e)(4) of the federal Clean Air Act as amended in 1990.

B. PM10 Nonattainment Areas.

New sources which have a potential to emit, or modified sources which would produce an emission increase equal to or exceeding the tonnage total of combined PM10, sulfur dioxide, and oxides of nitrogen listed below which are located in or impact a PM10 Nonattainment Area as defined in R307-1-3.3.3.B(1) below, shall obtain an enforceable offset as defined in R307-1-3.3.3.B(2) and R307-1-3.3.3.B(3).

(1) For the purpose of determining whether the owner or operator which proposes to locate a source outside a nonattainment area is required to obtain offsets, the maximum allowable impact on any nonattainment area is 1.0 microgram/cubic meter for a one-year averaging period and 3.0 micrograms/cubic meter for a 24-hour averaging period for any combination of PM10, sulfur dioxide and nitrogen dioxide.

(2) For a total of 50 tons/year or greater, an offset of 1.2:1 of the emission increase is required.

(3) For a total of 25 tons/year but less than 50 tons/year, an offset of 1:1 of the emission increase is required.

For the offset determinations, PM10, sulfur dioxide, and oxides of nitrogen shall be considered on an equal basis. In areas which are nonattainment for both PM10 and ozone, the most stringent emission offset ratio for oxides of nitrogen required by R307-1-3 shall apply.

C. Ozone Nonattainment Areas and Davis and Salt Lake

Counties. New sources and modifications to existing sources as defined and outlined in Section 182 of the Clean Air Act shall meet the offset requirements and conditions listed in that section for the applicable classified area and for the identified pollutants. As outlined in Section 182 of the federal Clean Air Act, for moderate areas, the emission offset ratio must be at least 1.15:1.

(1) Ozone Maintenance Plan; Salt Lake and Davis Counties. In the event that the contingency measures described in Section IX, Part D.2.h.(3) and of the State Implementation Plan are triggered, the offset requirement in R307-1-3.3.3.C(2) shall apply to emissions of both volatile organic compounds and oxides of nitrogen.

(2) The emission offset ratio must be at least 1.2:1, and offset must be obtained for the same pollutant for which the source or modification has been deemed "major". For the purposes of R307-1-3.3.3.C(2), the term "major" shall mean: any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 50 tons per year of either volatile organic compounds or oxides of nitrogen; or a modification to an existing source if the net emissions increase in either volatile organic compounds or oxides of nitrogen is at least 25 tons per year.

3.3.4 Construction in Stages. When a source is constructed or modified in stages which individually do not have the potential to emit more than 100 tons per year, the allowable emission from all such stages shall be added together in determining the applicability of subsection 3.3 of these regulations.

3.3.5 Baseline for Determining Credit for Emission and Air Quality Offsets. The baseline to be used for determination of credit for emission and air quality offsets will be the emission limitations and/or other requirements in the State Implementation Plan (SIP), revised in accordance with the Clean Air Act or subsequent revisions thereto in effect at the time the application to construct or modify a source is filed.

3.3.6 Banking of Emission Offset Credit. Banking of emission offset credit will be permitted to the fullest extent allowed by applicable Federal Law as identified in EPA's document "Emissions Trading Policy Statement" published in the Federal Register on December 4, 1986, and 40 CFR 51.165(a)(3)(ii)(c) as amended on June 28, 1989, and 40 CFR 51.165, Appendix S. To preserve banked emission reductions, the Executive Secretary must identify them in either the Utah SIP or an order issued pursuant to Subsection 3.1 of these rules and shall provide a registry to identify the person, private entity or governmental authority that has the right to use or allocate the banked emission reductions, and to record any transfers of, or liens on these rights.

3.4 Emission Testing

3.4.1 Emission testing will be required of all sources with established emission limitations at least once every five years. For sources located in nonattainment areas, emission testing will be required at least once every five years or more frequently as specified in Section IX, Part H of the Utah State Implementation Plan (SIP) adopted by the Air Quality Board, or by the Executive Secretary if he has reason to believe that the source is not meeting its emission limitation. Sources approved in accordance with subsection 3.1 will be tested within six months of start-up. Sources for which emission limitations are established pursuant to paragraph 3.2.1 which do not require modification will be tested within one year of the effective date of these regulations. In addition, if the Executive Secretary has reason to believe that an applicable emission limitation is being exceeded (i.e., through visible emission observations and monitoring data, etc.) he may require the owner or operator to perform such emission testing as is necessary to determine actual compliance status. The Board may grant exceptions to the mandatory testing requirements of this paragraph 3.4.1 which are not inconsistent with the purposes of these regulations.

3.4.2 At least 30 days prior to conducting any emission testing required under any part of these regulations, the owner or operator shall notify the Executive Secretary of the date, time and place of such testing and, if determined necessary by the Executive Secretary, the owner or operator shall attend a pretest conference.

3.4.3 All tests shall be conducted while the source is operating at the maximum production or combustion rate at which such source will be operated. During the tests, the source shall burn fuels or combustion of fuels, use raw materials, and maintain process conditions representative of normal operations, and shall operate under such other relevant conditions as the Executive Secretary shall specify.

3.4.4 The Executive Secretary may reject emissions test data if they are determined to be incomplete, inadequate, not representative of operating conditions specified for the test, or if the State was not provided an opportunity to have an observer present at the test.

3.5 Emission Inventories.

3.5.1 Criteria Pollutant Inventory.

A. General Reporting Requirements.

(1) Inventory Required Annually. The owner or operator of the following stationary sources of air pollution shall submit an annual emissions inventory report:

(a) any Part 70 source located in a nonattainment or maintenance area;

(b) any Part 70 source located in an attainment area, except a temporary source, with 25 tons per year or more of combined allowable emissions of PM10, sulfur dioxide, oxides of nitrogen, volatile organic compounds and carbon monoxide;

(c) any temporary Part 70 source located in an attainment area;

(d) stationary sources located in Davis, Salt Lake, Utah and Weber counties with emissions of PM10, sulfur oxides or nitrogen oxides of 25 tons per year or more;

(e) stationary sources in Salt Lake and Davis Counties with emissions of volatile organic compounds of 10 tons per year or more;

(f) stationary sources in Salt Lake, Davis and Utah Counties with carbon monoxide emissions of 100 tons per year or more.

(2) Inventory Required Every Fifth Year. The owner or operator of a Part 70 source with less than 25 tons per year of combined allowable emissions of PM10, sulfur dioxide, oxides of nitrogen, volatile organic compounds and carbon monoxide shall submit an emissions inventory every fifth year, or more

frequently on request from the executive secretary. The first inventory shall be due in 1997.

(3) Federal Requirement. The owner or operator of a stationary source of air pollution that meets the following criteria is required to submit on an annual basis the information necessary for the State to meet the reporting requirements 40 CFR 51.321 to 51.322:

(a) any source that actually emits 100 tons per year or more of PM_{10}, sulfur oxides, VOC, carbon monoxide or nitrogen oxides; or

(b) any source that actually emits 5 tons per year or more of lead.

(4) Due Date. Emission inventories shall be submitted on or before April 15 of each calendar year following any calendar year in which the source is subject to R307-1-3.5.

(5) Reports. Emission inventory reports shall include the rate and period of emission, excess or breakdown emissions, specific plant source of air pollution, composition of air contaminant, type and efficiency of air pollution control equipment and other information necessary to quantify operation and pollution emission, and to evaluate pollution control.

3.5.2 Hazardous Air Pollutant Inventory. The owner or operator of a stationary source, either "major source" or "area source" as defined in the Federal Clean Air Act (Title I, Part A, Section 112), which emits one or more hazardous air pollutant shall submit, at the request of the Executive Secretary, but not more than once per year, a Hazardous Air Pollutant Inventory. The inventory shall be submitted no later than July 1 each year, shall be limited to hazardous air pollutants and shall include a report of the rate and period of emission, excess or breakdown emissions, the specific plant source of the emissions, the composition of the emission, the type and efficiency of air pollution control equipment, and any other information determined necessary by the Executive Secretary for the issuance of permits, the verification of compliance, and the determination of the effectiveness of control technology relative to the source's maximum achievable control technology (MACT).

3.5.3. Emission Statement Inventory.

A. Applicability. The owner or operator of a stationary source of either VOC or NOx that is located in Salt Lake or Davis Counties or a nonattainment area for ozone and which emits or has the potential to emit at least 25 tons per year of either VOC or NOx is required to submit annually an emission statement for the emissions released directly or indirectly into the outdoor atmosphere during the previous calendar year. Such emission statement shall include information concerning both VOC and NOx even if the source's emissions or its potential to emit equalled or exceeded 25 tons per year for only VOC or NOx. Compliance with the emission statement requirements does not relieve any owner or operator of a source from the responsibility to comply with any other applicable reporting requirements set forth in any federal or state law or in the conditions of approval of any order or certificate in effect.

B. Procedure for submitting an emission statement. Emission statements shall be submitted in accordance with the following provisions:

(1) Emission statements shall be submitted on or before April 15 of each calendar year following any calendar year in which the source is subject to this rule.

(2) Emission statements shall be submitted to the Division of Air Quality on a form obtainable from the Division of Air Quality.

C. Required contents of an emission statement. Any person who submits an emission statement shall include, as an integral part of the report:

(1) Certification, signed by the highest ranking individual with direct knowledge and overall responsibility for the information contained in the certified documents, that the information provided is true, accurate and complete. Such certification should be submitted with the understanding that submittal of false, inaccurate or incomplete information is subject to civil and criminal penalties.

(2) The date of the signature of certification and the telephone number of the certifying individual shall be included.

(3) The following source identification information shall be included:

(a) full name of the source;

(b) parent company name, if applicable;

(c) physical location of the source (i.e., the street address);

(d) mailing address of the source;

(e) SIC code(s) of the source;

(f) UTM coordinates or latitude and longitude of the source; and

(g) the calendar year of the emissions.

(4) The following operating data for each source operation which has the potential to emit VOC or NOx shall be included:

(a) annual and peak ozone season throughput;

(b) average days of operation per week;

(c) average hours of operation per day; and

(d) total hours of operation for the year.

(5) The following information at the process level for NOx (expressed as molecular weight of NO_2) and VOC shall be included:

(a) Emissions information, including:

(i) the actual emissions of VOC and NOx in tons per year;

(ii) the average actual emissions of VOC and NOx in pounds per day of operation during the peak ozone season;

(iii) the code for the method used to quantify the actual emissions (from Table 1 included with the filing form in R307-1-3.5.3.B(2)); and

(iv) any emission factor used to determine actual emissions.

(b) Control apparatus information, including current primary and secondary control apparatus identification codes (from Table 2 included with the filing form in R307-1-3.5.3.B(2)); and the actual control efficiency achieved by the control apparatus. If the actual control efficiency is unavailable, the control apparatus design efficiency shall be used.

(c) Process rate data, including the annual process rate and the average process rate per day of operation during the peak ozone season.

(6) In place of the information required in R307-1-3.5.3.C(4) and R307-1-3.5.3.C(5), any source which has the potential to emit less than one ton per year of either VOC or nitrogen oxides but which is subject to this rule shall include:

(a) a description of each source operation and actual emissions of each air contaminant emitted from each source

operation shall be estimated at one ton per year, or

(b) a description of each source operation; estimated actual emission in tons per year; the code for the method used to quantify the actual emissions (from Table 1 included with the filing form in R307-1-3.5.3.B(2)); and any emission factor used to determine actual emissions.

(7) Emission statements shall include cumulative total fugitive emissions for the stationary source for all fugitive emissions that cannot be reported in the information pursuant to R307-1-3.5.3.C(4) through R307-1-3.5.3.C(6) above. Such fugitive emissions shall be expressed in tons per year and in average pounds per day of operation during the peak ozone season.

(8) The method used for quantifying actual emissions for a source operation for use in preparing emission information required in R307-1-3.5.3.C(5)(a) or R307-1-3.5.3.C(6)(b) above shall be the method which is reasonably available and which best estimates the actual emissions from the source operation, unless an operating permit pursuant to Title V of the federal Clean Air Act has been issued for the stationary source. In such case, the method used shall be the method specified in the operating permit.

D. Recordkeeping requirements.

(1) Each owner or operator of a stationary source subject to this rule shall maintain for a period of two years from the due date of each emission statement a copy of the emission statement submitted to the Division of Air Quality and records indicating how the information submitted in the emission statement was determined, including any calculations, data, measurements, and estimates used.

(2) Upon the request of the Executive Secretary, the owner or operator of the stationary source shall make these records available at the stationary source for inspection by any representative of the Division of Air Quality during normal business hours.

3.6 Prevention of Significant Deterioration of Air Quality (PSD).

3.6.1 Area Designations. All areas of the State shall be designated as Class I, II, or III.

A. Pursuant to section 162(a) of the federal Clean Air Act the following areas are designated as mandatory Class I:

(1) Arches National Park
(2) Bryce Canyon National Park
(3) Canyonlands National Park
(4) Capitol Reef National Park
(5) Zion National Park

B. Pursuant to section 162(b) of the federal Clean Air Act, all other areas of the State are designated as Class II unless redesignated as provided in R307-1-3.6.2 or are designated as nonattainment areas.

3.6.2 Area Redesignation.

A. Within the restrictions and requirements of this paragraph, the Board may submit to the Governor for decision a recommendation to redesignate areas from any class to any other class.

B. In accordance with Section 162(a) of the federal Clean Air Act, areas designated as Class I under R307-1-3.6.1.A may not be redesignated.

C. In accordance with Section 164(a) of the federal Clean Air Act, the following areas may be redesignated only as Class I or II.

(1) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreation area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(2) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

D. Except as provided in R307-1-3.6.2.B, C, and F, the Board may submit to the Governor for decision a recommendation to redesignate areas of the State as Class III if:

(1) There has been compliance with the requirements of R307-1-3.6.2.E;

(2) Such redesignation will not cause, or contribute to, concentrations of any air pollutant which exceed any maximum allowable increase permitted under the classification of any other area or any national ambient air quality standard; and

(3) Any permit application for any major source or major modification which could receive an approval order only if the area in question were redesignated as Class III, and any material submitted as part of that notice of intent were available, insofar as practicable, prior to any public hearing or redesignation.

In accordance with Section 164 of the federal Clean Air Act, redesignations to Class III may be approved by the Governor only after consultation with appropriate committees of the legislature and if units of local government representing a majority of the residents of the proposed area to be redesignated enact ordinances concurring in the redesignation.

E. Prior to submittal to the Governor of a recommendation to redesignate any area:

(1) Notice shall be published in each daily newspaper in the affected area and written notice shall be made to local government units, other states, Indian governing bodies, Federal Land Managers whose lands may be affected by the proposed redesignation and public hearings shall be conducted in the affected areas. Such notice shall be made at least 30 days prior to the public hearing and include a statement of the availability of the discussion outlined in R307-1-3.6.2.E(2). Prior to the issuance of a notice under this paragraph respecting the redesignation of any Federal lands, a written notice shall be given to the appropriate Federal Land Manager who shall be afforded opportunity (not to exceed 60 days) to confer with the Board respecting the redesignation and to submit written comments and recommendations. In recommending redesignation of any area with respect to which a Federal Land Manager has submitted comments the Board shall publish a list of any inconsistency between such redesignation and such comments and recommendations together with the reasons for recommending such redesignation against the recommendation of the Federal Land Manager; and

(2) A discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic and social and energy effects of the proposed redesignation, will be prepared and made available for public inspection at least 30 days prior to the hearing. Any person who petitions the Board for redesignation of an area may be required to prepare and submit to the Board the analysis required by R307-1-3.6.2.E(2).

F. Lands within the exterior boundaries of reservations of federally recognized Indian Tribes may be redesignated only by the appropriate Indian body as provided in Section 164 of the Clean Air Act.

3.6.3 Increments and Ceilings.

A. In Class I, II, or III areas, the maximum allowable increases in concentrations of sulfur dioxide, nitrogen dioxide and particulate matter over baseline concentrations of such pollutants are limited to the following:

TABLE 3

(1)Maximum Allowable Increase (ug/m^3)

Pollutant	Class I	Class II	Class III
PM10:			
Annual Arithmetic Mean	4	17	34
24-hr. Maximum	8	30	60
Sulfur Dioxide:			
Annual Arithmetic Mean	2	20	40
24-hr. Maximum	5	91	182
3-hr. Maximum	25	512	700
Nitrogen Dioxide:			
Annual Arithmetic Mean	2.5	25	50

(1) At any one location, the maximum allowable increase for other than the annual period may be exceeded once each year. For any period other than the annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

B. Variances to Class I areas will be allowed only after compliance with the requirements of and within the increments provided in Section 165 of the federal Clean Air Act, or in the case of PM10 increments, only after compliance with the Title 40 of the Code of Federal Regulations, Section 51.166(p)(4) (as amended-see the June 3, 1993 Federal Register notice, 58 FR 31637) which is hereby incorporated by reference.

C. In any area, no resultant concentration of any air pollutant shall exceed the concentration permitted under either the national secondary or primary ambient air quality standard whichever concentration is lowest for the pollutant for a period of exposure.

D. Exclusions from increment consumption. The following concentrations shall be excluded in determining compliance with a maximum allowable increase:

(1) Concentrations attributable to the increase in emissions from sources which have converted from:

(a) the use of petroleum products, natural gas, or both by reason of an order in effect under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974; or

(b) using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act, over the emissions from such sources before the effective date of such an order or plan.

No exclusion of such concentrations shall apply more than five years after the effective date of the order or the plan. If both an order and plan are applicable, no such exclusion shall apply more than five years after the later of such effective dates.

(2) Concentrations of PM10 attributable to the increase in emissions from construction or other temporary emission-related activities.

(3) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, nitrogen oxides or PM10 from sources which are affected by plan revisions approved by EPA as meeting the criteria specified in 40 CFR 51.166(f)(4).

3.6.4 Baseline Concentration and Date.

A. Baseline concentration. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(1) The actual emissions representative of sources in existence on the applicable minor source baseline date except as provided in R307-1-3.6.4.B;

(2) The allowable emissions of major sources which commence construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

B. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(1) actual emissions from any major source on which construction commenced after the major source baseline date, and

(2) actual emissions increases and decreases at any source occurring after the minor source baseline date.

C. Baseline date. The minor source baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(1) the area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(i)(D) or (E) of the federal Clean Air Act for the pollutant on the date of its complete application under 40 CFR 52.21, or R307-1-3.6; and

(2) in the case of a major source the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant. With respect to particulate matter, significant shall mean significant for PM10.

D(1) Any minor source baseline date established originally for increments of total suspended particulates shall remain in effect and shall apply for purposes of determining the amount of available PM10 increments, except that the executive secretary may rescind any such minor source baseline date where it can be shown to the executive secretary's satisfaction that the emissions increase from the major stationary source or the net emissions increase from the major modification responsible for triggering that date did not result in a significant amount of PM10 emissions.

(2) Any baseline area established originally for the increments of total suspended particulates shall remain in effect and shall apply for purposes of determining the amount of available PM10 increments, except that such baseline area shall not remain in effect if the executive secretary rescinds the corresponding minor source baseline date in accordance with R307-1-3.6.4.D(1).

3.6.5 PSD Areas - New Sources and Modifications.

A. Emission Limitations. Any source constructed or modified in a PSD area must meet all applicable emissions requirements of R307-1 and the Utah State Implementation Plan. A proposed source or modification which is not a major source or major modification may be approved without meeting the requirements in R307-1-3.6.5.B, provided such source meets all other applicable requirements of these regulations. The emission limitations shall be stated as conditions of the approval

order.

B. Major Source and Major Modification Review. Every new major source or major modification must be reviewed by the Executive Secretary to determine the air quality impact of the source to include a determination whether the source will cause or contribute to a violation of the maximum allowable increases or the NAAQS in any area. The determination of air quality impact will be made as of the source's projected start-up date. Such determination shall take into account all allowable emissions of approved sources or modifications whether constructed or not, and, to the extent practicable, the cumulative effect on air quality of all sources and growth in the affected area.

(1) In addition to meeting all other requirements of these regulations, any major source or major modification which would be constructed in a PSD area, shall:

(a) Provide the following additional information with the notice of intent required pursuant to R307-1-3.1:

(i) An analysis of the air quality impact of the source or modification and a demonstration that allowable emissions increases from the source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), will not cause or contribute to a violation of any maximum allowable increase over the baseline concentration in any area or any NAAQS in any area.

(ii) An analysis of ambient air quality in the affected area for each pollutant that a new source would have the potential to emit in a significant amount, and for each pollutant for which a modification would result in a significant net emissions increase. With respect to any such pollutant for which no NAAQS exists, the analysis shall contain such air quality monitoring data as the Executive Secretary determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect. With respect to any such pollutant (other than non-methane hydrocarbons) for which such a NAAQS does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase in any area that the emissions of that pollutant would affect. In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the notice of intent, except that, if the Executive Secretary determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period. Any data used in the analysis must be gathered using EPA reference methods or equivalent and quality assurance procedures equivalent to 40 CFR Part 58, Appendix B. A monitoring plan will be submitted to the Executive Secretary for approval prior to data collection. The Executive Secretary may grant exceptions or modifications to these monitoring requirements when not inconsistent with federal law.

(iii) Upon request of the Executive Secretary, the air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and the air quality impact of any or all general commercial residential, industrial, and other growth which has occurred since the minor source baseline date in the area the source or modification would affect.

(iv) An analysis of the air quality related impact of the source or modification including an analysis of the impairment to visibility, soils, and vegetation and the projected air quality impact from general commercial, residential, industrial, and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(b) After construction of the source or modification, conduct such ambient air quality monitoring as the Executive Secretary determines may be necessary to establish the effect which the emissions from the source or modification may have on the air quality in any area.

(2) If the Executive Secretary finds that the emissions from a proposed major source or major modification would cause a violation of any maximum allowable increase over the baseline concentration in any area, the Executive Secretary shall approve the proposed source if and only if:

(a) the new source or modification is required to meet a more stringent emission limitation sufficient to avoid a violation of the maximum allowable increase and/or

(b) the new source or modification has acquired sufficient offset to avoid a violation of the maximum allowable increase, and

(c) the new emission limitations for the proposed source and for any affected existing sources are enforceable.

(3) If the Executive Secretary finds that the emissions from a proposed major source or major modification would contribute to a known violation of any maximum allowable increase over the baseline concentration in any area, the Executive Secretary shall approve the proposed source if and only if:

(a) the new source or modification has acquired sufficient emission offset so as to provide a positive net air quality benefit in the affected area, and

(b) any new emission limitations for affected existing sources are enforceable.

C. The requirements of R307-1-3.6.5.B(1) shall not apply to a major source or major modification if:

(1) The source is a portable stationary source which has previously received a permit under this paragraph, and

(a) The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary; and

(b) The emissions from the source would not exceed its allowable emissions; and

(c) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated;

(2) The source or modification would be a non-profit health or non-profit educational institution and the Board approves a request that it be exempt from those requirements.

(3) The source or modification would be a major source or major modification only if fugitive emission and fugitive dust, to the extent quantifiable, are considered in calculating the potential to emit of the source or modification and the source

does not belong to any of the following categories:

(a) Coal cleaning plants (with thermal dryers);

(b) Kraft pulp mills;

(c) Portland cement plants;

(d) Primary zinc smelters;

(e) Iron and steel mills;

(f) Primary aluminum or reduction plants;

(g) Primary copper smelters;

(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(i) Hydrofluoric, sulfuric, or nitric acid plants;

(j) Petroleum refineries;

(k) Lime plants;

(l) Phosphate rock processing plants;

(m) Coke oven batteries;

(n) Sulfur recovery plants;

(o) Carbon black plants (furnace process);

(p) Primary lead smelters;

(q) Fuel conversion plants;

(r) Sintering plants;

(s) Secondary metal production plants;

(t) Chemical process plants;

(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) Taconite ore processing plants;

(x) Glass fiber processing plants;

(y) Charcoal production plants;

(z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units

per hour heat input;

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the federal Clean Air Act.

(4) With respect to a particular pollutant, the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

(a) would impact no Class I area and no area where an applicable increment is known to be violated, and

(b) would be temporary.

D. The requirements of R307-1-3.6.5.B(1) as they relate to any maximum allowable increase for a Class II area shall not apply to a major modification at a source that was in existence on March 1, 1978, if the net increase in allowable emissions for each pollutant from the modification after the application of best available control technology would be less than 50 tons per year.

E.(1) The requirements of R307-1-3.6.5.B(1)(a)(i) pertaining to the impact analysis shall not apply to a source or modification with respect to any maximum allowable increase for nitrogen oxides if the owner or operator of the source or modification submitted a notice of intent before October 15, 1990, and the Executive Secretary subsequently determined that the notice of intent as submitted before that date was complete.

(2) The requirements of R307-1-3.6.5.B(1)(a)(i) concerning an analysis of the maximum allowable increase over the baseline concentration shall not apply to a stationary source or modification with respect to any maximum allowable increase for PM10 if the owner or operator of the source or modification submitted an application for a permit before December 15, 1994, and the executive secretary subsequently determined that the application as submitted before that date was complete. Instead, the applicable requirements shall be with respect to the maximum allowable increases for total suspended particulates as in effect on the date the application was submitted. These increments were, for the annual geometric mean: 5, 19, and 37 micrograms/cubic meter for Class I, II and III areas respectively and, for the 24-hour maximum: 10, 37 and 75 micrograms/cubic meter for Class I, II and III areas respectively.

F. Exemption - Monitoring Requirement

(1) The Executive Secretary may grant exceptions or modifications to the monitoring requirements in R307-1-3.6.5.B(1)(a)(ii) which are not inconsistent with federal law.

(2) The Executive Secretary may exempt a stationary source or modification from the requirements of R307-1-3.6.5.B(1)(a)(ii) with respect to monitoring for a particular pollutant if:

(a) The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:

Carbon monoxide - 575 ug/m^3, 8-hour average;

Nitrogen dioxide - 14 ug/m^3, annual average;

PM10 - 10 micrograms/cubic meter, 24-hour average;

Sulfur dioxide - 13 ug/m^3, 24-hour average;

Lead - 0.1 ug/m^3, 24-hour average;

Mercury - 0.25 ug/m^3, 24-hour average;

Beryllium - 0.0005 ug/m^3, 24-hour average;

Ozone - No de minimis air quality level is provided for ozone. However, any proposed source or modification subject to PSD with net increase of 100 tons per year or more of volatile organic compounds subject to PSD would be required to perform an ambient impact analysis including the gathering of ambient air quality data;

Fluorides - 0.25 ug/m^3, 24-hour average;

Vinyl chlorides - 15 ug/m^3, 24-hour average;

Total reduced sulfur - 10 ug/m^3, 1-hour average;

Hydrogen sulfide - 0.04 ug/m^3, 1-hour average;

Reduced sulfur compounds - 10 ug/m^3, 1-hour average; or

(b) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in R307-1-3.6.5.F(2)(a), or the pollutant is not listed in R307-1-3.6.5.F(2)(a).

3.6.6 Increment Violations.

Where the Board determines that an increment under R307-1-3.6.3 is violated, the Board shall promulgate a plan and implement regulations to eliminate the violation.

3.6.7 Banking of Emission Offset Credit in PSD Areas. Banking of emission offset credits in PSD areas will be permitted. To preserve banked emission reductions the Executive Secretary must identify them in either the Utah SIP or an order and shall provide a registry to identify the person, private entity, or government authority that has the right to use or allocate the banked emission reduction and to record any transfer of or lien on these rights.

3.7 Air Quality Modeling.

3.7.1 Use of Dispersion models. All estimates of ambient

concentrations derived in meeting the requirements of these rules shall be based on appropriate air quality models, data bases, and other requirements specified in 40 CFR Part 51, Appendix W, (Guideline on Air Quality Models). Where an air quality model specified in the Guideline on Air Quality Models or other EPA approved guidance documents is inappropriate, the Executive Secretary may authorize the modification of the model or substitution of another model. In meeting the requirements of federal law, any modification or substitution will be made only with the written approval of the Administrator, EPA.

3.7.2 Modeling of Criteria Pollutant Impacts in Attainment Areas. Prior to receiving an approval order, a new source in an attainment area with a total controlled emission rate per pollutant greater than or equal to amounts specified in Table 4, or a modification to an existing source located in an attainment area which increases the total controlled emission rate per pollutant of the source in an amount greater than or equal to those specified in Table 4, shall conduct air quality modeling, as identified in R307-1-3.7.1, to estimate the impact of the new or modified source on air quality unless previously performed air quality modeling for the source indicates that the addition of the proposed emissions increase would not violate a National Ambient Air Quality Standard or a Prevention of Significant Deterioration increment, as determined by the Executive Secretary.

TABLE 4

POLLUTANT	EMISSIONS
sulfur dioxide	40 tons per year
oxides of nitrogen	40 tons per year
PM10 - fugitive emissions and fugitive dust	5 tons per year
PM10 - non-fugitive emissions or non-fugitive dust	15 tons per year
carbon monoxide	As required under R307-1-3.6.5.B
lead	0.6 tons per year

3.7.3 Documentation of Ambient Air Impacts for Hazardous Air Pollutants. Prior to receiving an approval order under R307-1-3.1, a source shall provide documentation of increases in emissions of hazardous air pollutants as required under R307-1-3.7.3.C. for all installations not exempt under R307-1-3.7.3.A.

A. Exempted Installations.

(1) The requirements of R303-1-3.7.3. do not apply to installations which are subject to or are scheduled to be subject to an emission standard promulgated under 42 U.S.C. 7412 at the time a notice of intent is submitted, except as defined in R307-1-3.7.3.A(2). This exemption does not affect requirements otherwise applicable to the source, including requirements under R307-1-3.1.

(2) The executive secretary may, upon making a written determination that the delay in the implementation of an emission standard under 40 CFR Part 63 might reasonably be expected to pose an unacceptable risk to public health, require, on a case-by-case basis, notice of intent documentation of emissions consistent with R307-1-3.7.3.C.

(a) The executive secretary shall notify the source in writing of the preliminary decision to require some or all of the documentation as listed in R307-1-3.7.3.C.

(b) The source may respond in writing within thirty days of receipt of the notice, or such longer period as the executive secretary approves.

(c) In making a final determination, the executive secretary shall document objective bases for the determination, which may include public information and studies, documented public comment, the applicant's written response, the physical and chemical properties of emissions, and ambient monitoring data.

B. Lead Compounds Exemption. The requirements of R307-1-3.7.3. do not apply to emissions of lead compounds. Lead compounds shall be evaluated pursuant to requirements of R307-1-3.7.2.

C. Submittal Requirements.

(1) Each applicant's notice of intent shall include:

(a) the estimated maximum pounds per hour emission rate increase from each affected installation,

(b) the type of release, whether the release flow is vertically restricted or unrestricted, the maximum release duration in minutes per hour, the release height measured from the ground, the height of any adjacent building or structure, the shortest distance between the release point and any area defined as "ambient air" under 40 CFR 50.1(e) for each installation for which the source proposes an emissions increase,

(c) the emission threshold value, calculated to be the applicable threshold limit value - time weighted average (TLV-TWA) or the threshold limit value - ceiling (TLV-C) multiplied by the appropriate emission threshold factor listed in Table 5, except in the case of arsenic, benzene, beryllium, and ethylene oxide which shall be calculated using chronic emission threshold factors, and formaldehyde, which shall be calculated using an acute emission threshold factor. For acute hazardous air pollutant releases having a duration period less than one hour, this maximum pounds per hour emission rate shall be consistent with an identical operating process having a continuous release for a one-hour period.

TABLE 5 EMISSION THRESHOLD FACTORS FOR HAZARDOUS AIR POLLUTANTS
(cubic meter pounds per milligram hour)

VERTICALLY-RESTRICTED AND FUGITIVE EMISSION RELEASE POINTS

DISTANCE TO PROPERTY BOUNDARY	ACUTE	CHRONIC	CARCINOGENIC
20 Meters or less	0.038	0.051	0.017
21 - 50 Meters	0.051	0.066	0.022
51 - 100 Meters	0.092	0.123	0.041
Beyond 100 Meters	0.180	0.269	0.090

VERTICALLY-UNRESTRICTED EMISSION RELEASE POINTS

DISTANCE TO PROPERTY BOUNDARY	ACUTE	CHRONIC	CARCINOGENIC
50 Meters or less	0.154	0.198	0.066
51 - 100 Meters	0.224	0.244	0.081
Beyond 100 Meters	0.310	0.368	0.123

(2) A source with a proposed maximum pounds per hour emissions increase equal to or greater than the emissions threshold value shall include documentation of a comparison of the estimated ambient concentration of the proposed emissions with the applicable toxic screening level specified in R307-1-3.7.3.D.

(3) A source with an estimated ambient concentration equal to or greater than the toxic screening level shall provide additional documentation regarding the impact of the proposed

emissions. The executive secretary may require such documentation to include, but not be limited to:

(a) a description of symptoms and adverse health effects that can be caused by the hazardous air pollutant,

(b) the exposure conditions or dose that is sufficient to cause the adverse health effects,

(c) a description of the human population or other biological species which could be exposed to the estimated concentration,

(d) an evaluation of land use for the impacted areas,

(e) the environmental fate and persistency.

D. Toxic Screening Levels and Averaging Periods.

(1) The toxic screening level for an acute hazardous air pollutant is 1/10th the value of the TLV-C, and the applicable averaging period shall be:

(a) one hour for emissions releases having a duration period of one hour or greater,

(b) one hour for emission releases having a duration period less than one hour if the emission rate used in the model is consistent with an identical operating process having a continuous release for a one-hour period or more, or

(c) the dispersion model's shortest averaging period when using an applicable model capable of estimating ambient concentrations for periods of less than one hour.

(2) The toxic screening level for a chronic hazardous air pollutant is 1/30th the value of the TLV-TWA, and the applicable averaging period shall be 24 hours.

(3) The toxic screening level for all carcinogenic hazardous air pollutants is 1/90 the value of the TLV-TWA, and the applicable averaging period shall be 24 hours, except in the case of formaldehyde which shall be evaluated consistent with R307-1-3.7.3.D(1) and arsenic, benzene, beryllium, and ethylene oxide which shall be evaluated consistent with R307-1-3.7.3.D(2).

3.8 Stack Heights and Dispersion Techniques. The degree of emission limitation required of any source for control of any air contaminant to include determinations made under 3.1, 3.3, and 3.6 must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique except as provided in paragraph 3.8.1 of these regulations. This paragraph does not restrict, in any manner, the actual stack height of any source.

1. The provisions in this subsection 3.8 shall not apply to:

A. stack heights in existence, or dispersion techniques implemented on or before December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources which were constructed or reconstructed, or for which major modifications were carried out after December 31, 1970; or

B. coal-fired steam electric generating units subject to the provisions of Section 118 of the Clean Air Act, which commenced operation before July 1, 1957, and whose stacks were constructed under a construction contract awarded before February 8, 1974.

2. The Executive Secretary may require the source owner or operator to provide a demonstration that the source stack height meets good engineering practice as required by this subsection 3.8.

3.9 Fees - Major Sources. The owner and operator of each new major source or major modification is required to pay a fee to the Department sufficient to cover the reasonable costs of reviewing and acting upon the notice of intent required pursuant to subsection 3.1 for each new major source or major modification and implementing and enforcing requirements placed on such source by any approval order issued pursuant to such notice (not including any court costs associated with any enforcement action).

A. The Executive Secretary will provide the owner or operator of each new major source or major modification with an itemized bill for services upon issuance of an approval order. Such a bill for services shall represent the actual costs to the Department for reviewing and acting upon the notice of intent and shall be due and payable upon receipt.

B. The Executive Secretary shall provide the owner or operator of each new major source or major modification with an itemized bill for services upon completion of an initial compliance inspection and/or source testing and/or any enforcement action brought about by the issuance of an approval order. Such bill shall represent the actual costs to the Department for the inspection, testing and/or enforcement action and shall be due and payable upon receipt.

C. A request for review or reconsideration of the bill provided by the Executive Secretary to the owner or operator of a source affected by this subsection 3.9 may be filed by the owner or operator of said source with the Executive Secretary within 20 days of receipt. The Board shall consider the request for review and determine the appropriateness of the bill.

3.10 Visibility

1. The Executive Secretary shall review any new major source or major modification proposed in either an attainment area or area of nonattainment area for the impact of its emissions on visibility in any mandatory Class I area. As a condition of any approval order issued to a source under subsection 3.1 of these regulations, the Executive Secretary shall require the use of air pollution control equipment, technologies, methods or work practices deemed necessary to mitigate visibility impacts in Class I areas that would occur as a result of emissions from such source. The Executive Secretary shall take into consideration as a part of the review and control requirements:

A. the costs of compliance;

B. the time necessary for compliance;

C. the energy usage and conservation;

D. the non air quality environmental impacts of compliance;

E. the useful life of the source; and

F. the degree of visibility improvement which will be provided as a result of control.

In determining visibility impact by a major new source or major modification, the Executive Secretary shall use, the procedures identified in the EPA publication "Workbook For Estimating Visibility Impacts" (EPA 450-4-80-031) November 1980, or equivalent.

The Executive Secretary shall insure that source emissions will be consistent with making reasonable progress toward the national visibility goal referred to in 40 CFR, 51.300(a).

2. The Executive Secretary shall notify the Federal Land Manager having jurisdiction over any mandatory Class I area of

any proposed new major source or major modification that may reasonably be expected to affect visibility in that mandatory Class I area. Such notification shall be in writing and shall include a copy of all information relevant to the Notice of Intent and visibility impact analysis submitted by the source. The notification shall be made within thirty (30) days of receipt of the completed Notice of Intent and at least sixty (60) days prior to any public hearing or the commencement of any public comment period, held in accordance with R307-1-3.1 of these regulations, on the proposal. The Executive Secretary shall consider, as a part of the new or modified source review required by R307-1-3.10, any analysis performed by the Federal Land Manager that such proposed new major source or major modification may have an adverse impact on visibility in any mandatory Class I area, provided such analysis is submitted to the Executive Secretary within sixty (60) days of the notification to the Federal Land Manager as required by this paragraph. If the Executive Secretary determines that the major source or major modification will have an adverse impact on visibility in any mandatory Class I area, the Executive Secretary shall not issue the approval order. Where the Executive Secretary determines that such analysis does not demonstrate that adverse impact on visibility will result in a mandatory Class I area, the Executive Secretary will, in the notice of any public hearing held on the new major source or major modification proposal, explain the decision or give notice where the explanation can be obtained.

Where the Executive Secretary receives advance notification or early consultation with a major new source or major modification which may affect visibility prior to the submission of a Notice of Intent to Construct for the major new source or major modification, the Executive Secretary will notify the affected Federal Land Manager within thirty (30) days of such advance notification.

3. If the analysis required by R307-1-3.10.1 predicts that an adverse impact on visibility may reasonably be expected to occur in a mandatory Class I area, the Executive Secretary may require a proposed new major source or major modification to perform pre-construction and/or post-construction visibility monitoring in any mandatory Class I area as deemed necessary and appropriate to assess the impact of the proposed source or modification on visibility. Such monitoring shall be conducted in accordance with a monitoring plan prepared by the owner or operator of the source or his representative and approved by the Executive Secretary.

4. The Executive Secretary will consider in review and permitting of a new major source or major modification to an existing source, any visibility monitoring data provided by the Federal Land Manager which may reasonably be expected to be impacted by the proposed new major source or major modification.

5. The Executive Secretary may perform oversight audits of any network collecting visibility data which may be used as a part of the permitting process as determined necessary.

R307-1-4. Emissions Standards.

Section R307-1-3 may require more stringent controls than listed herein, in which case the requirements of R307-1-3 must be met.

4.1 Visible Emissions. Opacity limitations in R307-1-4.1 shall not apply to any sources for which emission limitations are assigned pursuant to R307-1-3.2. The provisions of R307-1-4.1.7 through R307-1-4.1.9 shall apply to such sources except as otherwise provided in R307-1-3.2.

4.1.1 In PM10 Nonattainment Areas, visible emissions from existing installations except gasoline powered internal combustion engines, shall be of a shade or density no darker than 20% opacity. Installations in other areas of the State which were constructed before April 25, 1971, except internal combustion engines, shall be of a shade or density no darker than 40% opacity except as provided in these regulations.

4.1.2 Visible emissions from installations constructed after April 25, 1971, except internal combustion engines, or any incinerator shall be of a shade or density no darker than 20% opacity, except as otherwise provided in these regulations.

4.1.3 No owner or operator of a gasoline powered engine or vehicle shall allow, cause or permit the emissions of visible contaminants except for starting motion no farther than 100 yards, or for stationary operation not exceeding 3 minutes in any hour.

4.1.4 Emissions from diesel engines manufactured after January 1, 1973, shall be of a shade or density no darker than 20% opacity, except for starting motion no farther than 100 yards or for stationary operation not exceeding 3 minutes in any hour.

4.1.5 Emissions from diesel engines manufactured before January 1, 1973, shall be of a shade or density no darker than 40% opacity, except for starting motion no farther than 100 yards or for stationary operation not exceeding 3 minutes in any hour.

4.1.6 Upon application, exceptions to paragraphs 4.1.4 and 4.1.5 may be granted by the Board on a case by case basis for diesel locomotives operating above 6000 feet MSL.

4.1.7 Visible emissions exceeding the opacity standards for short time periods as the result of initial warm-up, soot blowing, cleaning of grates, building of boiler fires, cooling, etc., caused by start-up or shutdown of a facility, installation or operation, or unavoidable combustion irregularities which do not exceed three minutes in length (unavoidable combustion irregularities which exceed three minutes in length must be handled in accordance with R307-1-4.7), shall not be deemed in violation provided that the executive secretary finds that adequate control technology has been applied. The owner or operator shall minimize visible and non-visible emissions during start-up or shutdown of a facility, installation, or operation through the use of adequate control technology and proper procedures.

4.1.8 Compliance Method. Emissions shall be brought into compliance with these requirements by reduction of the total weight of contaminants discharged per unit of time rather than by dilution of emissions with clean air.

4.1.9 Opacity Observation. Opacity observations of emissions from stationary sources shall be conducted in accordance with EPA Method 9, "Visual Determination of Opacity of Emissions from Stationary Sources", 40 CFR Part 60, Appendix A. Opacity observers of mobile sources and intermittent sources shall use procedures similar to Method 9, but the requirement for observations to be made at 15 second

intervals over a 6-minute period shall not apply.

4.2 Sulfur Content of Fuels.

4.2.1 Any coal, oil, or mixture thereof, burned in any fuel burning or process installation not covered by New Source Performance Standards for sulfur emissions shall contain no more than 1.0 pound sulfur per million gross BTU heat input for any mixture of coal nor .85 pounds sulfur per million gross BTU heat input for any oil.

A. In the case of fuel oil, it shall be sufficient to record the following specifications for each purchase of fuel oil from the vendor: 1) Weight Percent Sulfur 2) Gross Heating Value (btu per unit volume) and 3) Density. These parameters shall be ascertained in accordance with the methods of the American Society for Testing and Materials.

B. In the case of coal, it shall be necessary to obtain a representative grab sample for every 24 hours of operation and the sample shall be tested in accordance with the methods of the American Society for Testing and Materials.

C. All sources located in the SO_2 nonattainment area covered by Section IX, Part H of the Utah State Implementation Plan which are required to comply with specific fuel (oil or coal) sulfur content limitations must demonstrate compliance with their limitations in accordance with paragraphs A and B above.

D. Records of fuel sulfur content shall be kept for all periods when the plant is in operation and shall be made available to the executive secretary upon request, and shall include a period of two years ending with the date of the request.

E. If the owner/operator of the source can demonstrate to the executive secretary that the inherent variability of the coal they are receiving from the vendor is low enough such that the testing requirements outlined above may be deemed excessive, then an alternative testing plan may be approved for use with the same source of coal.

F. Any person may apply to the executive secretary for approval of an alternative test method, an alternative method of control, an alternative compliance period, an alternative emission limit, or an alternative monitoring schedule. The application must include a demonstration that the proposed alternative produces an equal or greater air quality benefit than that required by R307-1-4.2, or that the alternative test method is equivalent to that required by these rules. The executive secretary shall obtain concurrence from EPA when approving an alternative test method, an alternative method of control, an alternative compliance period, an alternative emission limit, or an alternative monitoring schedule.

4.2.2 Any person engaged in operating fuel burning equipment using coal or fuel oil, which is not covered by New Source Performance Standards for sulfur emissions, may apply for an exemption from the sulfur content restrictions of R307-1-4.2.1. The applicant shall furnish evidence, that the fuel burning equipment is operating in such a manner as to prevent the emission of sulfur dioxide in amounts greater than would be produced under the limitations of R307-1-4.2.1. Control apparatus to continuously prevent the emission of sulfur greater than provided by R307-1-4.2.1 must be specified in the application for an exemption.

4.2.3 In case an exemption is granted, the operator shall install continuous emission monitoring devices approved by the executive secretary. The operator shall provide the executive secretary with a monthly summary of the data from such monitors. This summary shall be such as to show the degree of compliance with R307-1-4.2.1. It shall be submitted no later than the calendar month succeeding its recording. When exemptions from R307-1-4.2.1 are granted, the source's application for such exemption must specify the test method for determining sulfur emissions. The test method must agree with the NSPS test method for the same industrial category.

4.2.4 Methods for determining sulfur content of coal and fuel oil shall be those methods of the American Society for Testing and Materials.

A. For determining sulfur content in coal, ASTM Methods D3177-75 or D4239-85 are to be used.

B. For determining sulfur content in oil, ASTM Methods D2880-71 or D4294-89 are to be used.

C. For determining the gross calorific (or BTU) content of coal, ASTM Methods D2015-77 or D3286-85 are to be used.

4.4 Automobile Emission Control Devices. Any person owning or operating any motor vehicle or motor vehicle engine registered in the State of Utah on which is installed or incorporated a system or device for the control of crankcase emissions or exhaust emissions in compliance with the Federal motor vehicle rules, shall maintain the system or device in operable condition and shall use it at all times that the motor vehicle or motor vehicle engine is operated. No person shall remove or make inoperable within the State of Utah the system or device or any part thereof, except for the purpose of installing another system or device, or part thereof, which is equally or more effective in reducing emissions from the vehicle to the atmosphere.

4.5 Provisions for fugitive emissions and fugitive dust have been renumbered to R307-12.

4.6 Provisions for continuous emission monitoring systems have been renumbered to R307-13.

4.7 Unavoidable Breakdown. This applies to all regulated pollutants including those for which there are National Ambient Air Quality Standards. Except as otherwise provided in R307-1-4.7, emissions resulting from an unavoidable breakdown will not be deemed a violation of these regulations. If excess emissions are predictable, they must be authorized under the variance procedure in R307-1-2.3. Breakdowns that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered unavoidable breakdown.

4.7.1 Reporting. A breakdown for any period longer than 2 hours must be reported to the executive secretary within 3 hours of the beginning of the breakdown if reasonable, but in no case longer than 18 hours after the beginning of the breakdown. During times other than normal office hours, breakdowns for any period longer than 2 hours shall be initially reported to the Environmental Health Emergency Response Coordinator, Telephone (801) 536-4123. Within 7 calendar days of the beginning of any breakdown of longer than 2 hours, a written report shall be submitted to the executive secretary which shall include the cause and nature of the event, estimated quantity of pollutant (total and excess), time of emissions and steps taken to control the emissions and to prevent recurrence. The submittal of such information shall be used by the executive

secretary in determining whether a violation has occurred and/or the need of further enforcement action.

4.7.2 Penalties. Failure to comply with the reporting procedures of R307-1-4.7.1. will constitute a violation of these regulations.

4.7.3 The owner or operator of an installation suffering an unavoidable breakdown shall assure that emission limitations and visible emission limitations are exceeded for only as short a period of time as reasonable. The owner or operator shall take all reasonable measures which may include but are not limited to the immediate curtailment of production, operations, or activities at all installations of the source if necessary to limit the total aggregate emissions from the source to no greater than the aggregate allowable emissions averaged over the periods provided in the source's approval orders or the UACR. In the event that production, operations or activities cannot be curtailed so as to so limit the total aggregate emissions without jeopardizing equipment or safety or measures taken would result in even greater excess emissions, the owner or operator of the source shall use the most rapid, reasonable procedure to reduce emissions. The owner or operator of any installation subject to a SIP emission limitation pursuant to these rules shall be deemed to have complied with the provisions of R307-1-4.7 if the emission limitation has not been exceeded.

4.7.4 Failure to comply with curtailment actions required by R307-1-4.7.3 will constitute a violation of these rules.

4.8 In accordance with paragraph 110(a)(6), Clean Air Act as amended August 1977, owners or operators may not temporarily reduce the pay of any employee by reason of the use of a supplemental or intermittent or other dispersion dependent control system for the purposes of meeting any air pollution requirement adopted pursuant to the Clean Air Act as amended August 1977.

4.9 Requirements for ozone nonattainment areas and Davis and Salt Lake Counties have been renumbered to R307-14.

4.10 Abrasive Blasting.

4.10.1 Visible Emission Standards.

A. No person shall, if he complies with performance standards outlined in R307-1-4.10.3 or if he is not located in an area of nonattainment for particulates, discharge into the atmosphere from any abrasive blasting any air contaminant for a period or periods aggregating more than three minutes in any one hour which is a shade or density darker than 40% opacity.

B. No person shall, if he is not complying with an applicable performance standard in R307-1-4.10.3 and is in an area of nonattainment, discharge into the atmosphere from any abrasive blasting any air contaminant for a period or periods aggregating more than three minutes in any one hour which is of a shade or density no darker than 20% opacity.

4.10.2 Visible Emission Evaluation Techniques. Visible emission evaluation of abrasive blasting operations shall be conducted in accordance with the following provisions:

A. Emissions from unconfined blasting shall be read at the densest point of the emission after a major portion of the spent abrasive has fallen out, at a point not less than five feet nor more than twenty-five feet from the impact surface from any single abrasive blasting nozzle.

B. Emissions from unconfined blasting employing multiple nozzles shall be judged as a single source unless it can be demonstrated by the owner or operator that each nozzle, evaluated separately, meets the emission and performance standards provided for in R307-1-4.10.

C. Emissions from confined blasting shall be read at the densest point after the air contaminant leaves the enclosure.

4.10.3 Performance Standards.

A. To satisfy the requirements of R307-1-4.10.1, any abrasive blasting operation may use at least one of the following performance standards:

(1) Confined blasting;

(2) Wet abrasive blasting;

(3) Hydroblasting; or

(4) Unconfined blasting using abrasives as defined in R307-1-4.10.3.B.

B. Abrasives. Abrasives used for dry unconfined blasting referenced in R307-1-4.10.3.A shall comply with the following performance standards:

(1) Before blasting the abrasive shall not contain more than 1% by weight material passing a #70 U.S. Standard sieve.

(2) After blasting the abrasive shall not contain more than 1.8% by weight material 5 micron or smaller.

Abrasives reused for dry unconfined blasting are exempt from R307-1-4.10.3.B(2), but must conform with R307-1-4.10.3.B(1).

C. Abrasive Certification. Sources using the performance standard of R307-1-4.10.3.A(4) to meet the requirements of R307-1-4.10.1 must demonstrate they have obtained abrasives from persons which have certified (submitted test results) to the executive secretary at least annually that such abrasives meet the requirements of R307-1-4.10.3.B.

4.12 Emission standards for residential solid fuel burning devices and fireplaces have been renumbered to R307-17.

R307-1-5. Emergency Controls.

5.1 Air Pollution Emergency Episodes.

5.1.1 Determination of an episode and its extent or stage shall be made by the Executive Secretary taking into consideration the levels of pollutant concentrations contained at 40 CFR Section 51.151 and 40 CFR Section 51, Appendix L, and summarized in the table below:

TABLE

AIR POLLUTION EPISODE CRITERIA
(values in micrograms/cubic meter unless stated otherwise)

POLLUTANT	ALERT	WARNING	EMERGENCY	NEVER TO BE EXCEEDED
SULFUR DIOXIDE 24-hour average	800 (0.3 ppm)	1,600 (0.6 ppm)	2,100 (0.8 ppm)	2,620 (1.0 ppm)
PM10 24-hour average	350	420	500	600
CARBON MONOXIDE 8-hour average	17,000 (15 ppm)	34,000 (30 ppm)	46,000 (40 ppm)	57,500 (50 ppm)
4-hour average				86,300 (75 ppm)
1-hour average				144,000 (125 ppm)
OZONE 1-hour average	400 (0.2 ppm)	800 (0.4 ppm)	1,000 (0.5 ppm)	

2-hour average				1,200 (0.6 ppm)
NITROGEN DIOXIDE 1-hour average	1130 (0.6 ppm)	2,260 (1.2 ppm)	3,000 (1.6 ppm)	3,750 (2.0 ppm)
NITROGEN DIOXIDE 24-hour average	282 (0.15 ppm)	565 (0.3 ppm)	750 (0.4 ppm)	938 (0.5 ppm)

An air pollution alert, air pollution warning, or air pollution emergency will be declared when any one of the above pollutants reaches the specified levels at any monitoring site.

In addition to the levels listed for the above pollutants, meteorological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve (12) or more hours or increase, or in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken.

ALERT The Alert level is that concentration at which first stage control action is to begin.

WARNING The warning level indicates that air quality is continuing to degrade and that additional control actions are necessary.

EMERGENCY The emergency level indicates that air quality is continuing to degrade toward a level of significant harm to the health of persons and that the most stringent control actions are necessary.

5.1.2 The Executive Secretary shall also take into consideration, to determine an episode and its extent, rate of change of concentration, meteorological forecasts, and the geographical area of the episode, including a consideration of point and area sources of emission, where applicable.

5.1.3 If an episode is determined to exist, the Executive Director, with concurrence of the Governor shall:

A. Make public announcements pertaining to the existence, extent and area of the episode.

B. Require corrective measures as necessary to prevent a further deterioration of air quality.

5.1.4 Episode termination shall be announced by the Executive Director, with concurrence of the Governor, once monitored pollutant concentration data and meteorological forecasts determine the crisis is over.

R307-1-6. Eligibility of Pollution Control Expenditures for Sales Tax Exemption and Income Tax Credit.

6.1 Eligibility of Pollution Control Expenditures for Sales Tax Exemption.

6.1.1 Application for certification shall be made on forms provided by the State Department of Environmental Quality, and shall include all information requested thereon and such additional reasonably necessary information as is requested by the executive secretary of the Air Quality Board or the executive secretary of the Water Quality Board.

6.1.2 Certification shall be made only for taxpayers who are owners, operators (under a lease) or contract purchasers of a trade or business that utilizes Utah property with a pollution control facility to prevent or minimize pollution.

6.1.3 Date of filing shall be date of receipt of the final item of information requested and this filing date shall initiate the 120-day review period.

6.1.4 All materials, equipment and structures (or part thereof) purchased, leased or otherwise procured and services utilized for construction or installation in a water or air pollution control facility shall be eligible for certification, provided:

A. such materials, equipment, structures (or part thereof), and services installed, constructed, or acquired result in a demonstrated reduction of pollutant discharges or emission pollutant levels, and

B. the primary purpose of such materials, equipment, structures (or part thereof), and services is preventing, controlling, reducing, or disposing of water or air pollution.

The above includes expenditures which reduce the amount of pollutants produced as well as expenditures which result in removal of pollutants from waste streams. The materials, equipment, structures (or part thereof), and services that are necessary for the proper functioning of air or water pollution control facilities meeting the requirements of Subsections R307-1-6.1.4.A and R307-1-6.1.4.B, including equipment required for compliance monitoring, shall be eligible for certification.

6.1.5 Applications for certification shall be certified by the executive secretary of the Air Quality Board or the executive secretary of the Water Quality Board after consultation with the State Tax Commission and only if:

A. Air Quality

(1) the air pollution control facility in question has been reviewed and approved by the executive secretary of the Air Quality Board for those air pollution sources needing review in accordance with Section R307-1-3.1 of these rules, or

(2) the air pollution control facilities installed, constructed, or acquired are the result of the requirements of these rules (permits by rule) or the State Implementation Plan.

B. Water Quality

(1) plans for the water pollution control facility in question require review and approval by the Water Quality Board and have been so approved, or

(2) the water pollution control facility is specifically required by the Water Quality Board, including facilities constructed for pretreatment of wastes prior to discharge to a public sewerage system in accordance with Subsection R317-8-8.1, but excluding facilities which are permitted by rule under Subsection R317-6-6.2 (Ground Water Discharge Permit by Rule) unless required to obtain an individual permit by the Water Quality Board, or

(3) the water pollution control facility is required and permitted by another statutory board within the Department of Environmental Quality, or

(4) the water pollution control facility eliminates or reduces the discharge of pollutants which would be regulated by the Water Quality Board, if such pollutants were discharged.

6.1.6 The following items are specifically not eligible for certification:

A. materials and supplies used in the normal operation or maintenance of the water or air pollution control facilities;

B. materials, equipment, and services used to monitor ambient air or water, unless required for a permit or approval from a statutory board within the Department of Environmental Quality;

C. materials, equipment, and services for collection, treatment, and disposal of human wastes, unless the primary

purpose of such materials, equipment and services is the treatment of industrial wastes;

D. materials, equipment and services used in removal, treatment, or disposal of pollutants from contaminated ground water, if the applicant caused the ground water contamination by failing to comply with applicable permits, approvals, rules, or standards existing at the time the contamination occurred; and

E. air conditioners.

6.1.7 Upon determination that facilities described in any application under Subsection R307-1-6.1.1 satisfy the requirements of these rules and Sections 19-2-123 through 19-2-127 the executive secretary of the Air Quality Board or the executive secretary of the Water Quality Board shall issue a certification of pollution control facility to the applicant.

6.1.8 If the application is rejected, the applicant may appeal to the appropriate Board within 20 days for an informal hearing. The Board's decision will be final and conclusive on all parties unless appealed.

6.1.9 Revocation of prior certification shall be made for any of the circumstances prescribed in Section 19-2-126, after consultation with the State Tax Commission.

6.2 Eligibility of Expenditures for Purchase of Vehicles that Use Cleaner Burning Fuels or Conversion of Vehicles and Special Fuel Mobile Equipment to Use Cleaner Burning Fuels for Corporate and Individual Income Tax Credits.

6.2.1 Definitions. The following definitions apply only to R307-1-6.2.

A. "Clean Fuel" means:

(1) propane, natural gas, or electricity;

(2) other fuel the Air Quality Board determines annually on or before July 1, to be at least as effective as fuels under R307-1-6.2.1.A(1) in reducing air pollution; or

(3) fuel that meets the clean fuel vehicle standards specified in Part C of Title II of the federal Clean Air Act.

B. "Certified by the Board" is defined in Utah Code 59-7-605(1)(b) and 59-10-127(1)(b).

C. "Special Fuel Mobile Equipment" is defined in Utah Code 59-7-605(1)(d) and 59-10-127(1)(d).

D. "Conversion System" means a package which may include fuel, ignition, emissions control, and engine components that are modified, removed, or added during the process of modifying a motor vehicle or a special fuel mobile equipment to operate on a clean fuel.

6.2.2 As specified in Sections 59-7-, and 59-10-127 for tax years beginning January 1, 1997, and ending December 31, 2001, there is a credit against tax otherwise due in an amount equal to:

A. 20%, up to a maximum of $500 per vehicle, of the cost of new motor vehicles being registered in Utah and for the first time that are fueled by a clean fuel;

B. 20%, up to a maximum of $400, of the cost of equipment for conversion, if certified by the Board, of a motor vehicle registered in Utah to be fueled by a clean fuel; and

C. 20%, up to a maximum of $500, of the cost of equipment for conversion, if certified by the Board, of a special fuel mobile equipment engine to be fueled by a clean fuel or a fuel substantially more effective in reducing air pollution than the fuel for which the engine was originally designed.

6.2.3 No person may convert a motor vehicle to use a clean fuel in a manner that violates Section 203(a) of the Act or the "Interim Tampering Enforcement Policy" of the Environmental Protection Agency, June 15, 1974.

6.2.4 Proof of purchase of an item for which a credit specified in R307-1-6.2.2.A is allowed shall be made by submitting to the executive secretary:

A. a copy of the Manufacturer's Statement of Origin;

B. an original or copy of the purchase order, customer invoice, or receipt including the vehicle identification number (VIN); and

C.(1) a copy of the Manufacturer's Suggested Retail Price document that includes a clean fuel option on the equipment list for that vehicle or

(2) in the case of vehicles certified as meeting the Clean Fleet Vehicle standards specified in Part C of the federal Clean Air Act, the owner must make the vehicle available for verification by a representative of the executive secretary of an under-hood decal on the vehicle for which the credit is requested stating "This vehicle (or engine, as applicable) conforms to California regulations applicable to (model-year) new (TLVE, LEV, ULEV, or ZEV) (specify motorcycles, passenger cars, light-duty trucks, medium-duty diesel engines, as applicable)."

6.2.5.A. Proof of purchase of an item for which a credit specified in R307-1-6.2.2.B or C is allowed shall be made by submitting to the executive secretary a copy of the purchase order, customer invoice, or receipt.

B. The proof of purchase specified in Subsection R307-1-6.2.5.A must be completed and signed by the person that converted the vehicle or the special fuel mobile equipment, and must include the following information:

(1) owner's name;

(2) owner's social security number or taxpayer identification number;

(3) vehicle VIN or identification number of the special fuel mobile equipment;

(4) fuel type before conversion;

(5) fuel type after conversion;

(6) conversion system manufacturer;

(7) conversion system model number;

(8) date of the conversion;

(9) name, address, and phone number of the person that converted the vehicle or the special fuel mobile equipment;

(10) documentation of compliance with all existing applicable technician certification requirements, as specified in 53-7-301 through 316, R710-6, and R714-400-7.P, for the person that performed the installation of the conversion system, by providing the technician's current valid certification number;

(11) documentation that the conversion system installed has been certified by the Board, by providing the current valid certification number issued by the executive secretary in accordance with R307-6.2.6; and

(12) for vehicle conversions, copies of the vehicle inspection reports (VIR) before and after the conversion, indicating that the vehicle passed the current applicable inspection and maintenance (I/M) emission test in the county where the vehicle is registered. The owner is exempt from the VIR submission requirements, only if a vehicle is registered and is converted in a county that does not implement any inspection

and maintenance program. If the vehicle is registered in a non-I/M county and is converted in an I/M county, VIR submission is required.

6.2.6 Procedures for Obtaining Certification by the Board for Fuel Conversion Systems.

A. For vehicles.

(1) The executive secretary will issue a certificate, stating that the fuel conversion system for a specific fuel, vehicle class, and engine type has been certified by the Board, if the system manufacturer submits the following information to the executive secretary and if the executive secretary decides the conversion system has met all applicable requirements:

(a) description of each conversion system, fuel used, vehicle certification class (including vehicle type and vehicle weight class), and engine type;

(b) Federal Test Procedure (FTP) mass emissions test data which:

(i) is collected in high altitude conditions as defined by the Environmental Protection Agency (EPA) using EPA approved equipment, test procedures and practices, and meeting EPA emissions certification standards, as defined in 40 CFR Part 86;

(ii) shows that tests conducted before and after installation of the conversion system demonstrate a reduction in total emissions and that there is no increase in emissions for each regulated pollutant compared to emission levels when operated on the original fuel prior to the conversion;

(iii) is tested on two vehicles for each vehicle certification class which have accumulated at least 4,000 miles each;

(c) system engineering specifications.

(2) The executive secretary will issue a certificate if the federal Environmental Protection Agency has certified the conversion system, or if the fuel conversion system has been certified by a state whose certification standards are recognized by the Board.

(3) Special provisions.

(a) After conversion, dual-fuel or flexible-fuel vehicles shall be required to undergo at least one Federal Test Procedure on conventional fuel and must demonstrate that the EPA emissions certification standards in 40 CFR Part 86 for that vehicle type and model year on the conventional fuel are being met.

(b) The executive secretary may waive the requirement for testing to be conducted at high altitude, specified in R307-1-6.2.6.A(1)(b)(i), if the manufacturer demonstrates that the conversion system provides an equivalent emission reduction.

(c) Acceptability of Canadian data will be determined on a case-by-case basis after demonstrating to the satisfaction of the executive secretary that the test is equivalent to the Federal Test Procedure.

(d) Vehicle conversions must comply with EPA Mobile Source Enforcement Memorandum No. 1A., dated June 25, 1974.

B. For special fuel mobile equipment.

(1) The executive secretary will issue a certificate, stating that the fuel conversion system for a specific fuel and mobile equipment engine type has been certified by the Board, if the system manufacturer submits the following information to the executive secretary and if the executive secretary decides the conversion system has met all applicable requirements:

(a) description of each conversion system, fuel used, and mobile equipment engine type;

(b) emissions test data showing that the conversion system results in an emission reduction of total emissions and that there is no increase in emissions for each regulated pollutant in comparison with emission levels when operated on the original fuel prior to the conversion; and

(c) system engineering specifications.

(2) The executive secretary will issue a certificate if the federal Environmental Protection Agency has certified the conversion system or if the fuel conversion system has been certified by a state whose certification standards are recognized by the Board.

(3) The executive secretary shall evaluate the certification of conversion system for special fuel mobile equipment on a case-by-case basis as new technologies are improved.

C. Certification by other states may be accepted by the executive secretary if it meets the requirements specified in R307-1-6.2.6.A and B.

D. The executive secretary will revoke the certification of a conversion system if an investigation finds that a certified conversion system exceeds the level of emissions for which it was certified, taking into account deterioration because of age or other reasonable concern.

6.2.7 The executive secretary will acknowledge receipt of proofs specified in R307-1-6.2 by signing the relevant written statement provided on forms prescribed by the State Tax Commission.

6.3 Eligibility of Expenditures for Purchase and Installation Costs of Fireplaces and Wood Stoves that Use Cleaner Burning Fuels.

6.3.1 Definitions. The following definitions apply only to Subsection R307-1-6.3.

A. Fireplaces and wood stoves using clean burning fuels are:

(1) continual-feed wood pellet stoves

(2) high-mass wood stoves

(3) natural gas or propane free-standing fireplaces or inserts, but not including fireplace log systems, or

(4) any wood burning stove, fireplace, or fireplace insert that is certified by the Environmental Protection Agency in accordance with test procedures prescribed in 40 CFR Section 60.534.

6.3.2 As specified in Subsection 59-7-110.8, and Section 59-10-128 for tax years beginning January 1, 1992, and ending December 31, 1997, there is a credit against tax otherwise due under this chapter in an amount equal to 10%, up to a maximum of $50, of the total of:

A. the purchase price or

B. both the purchase price and installation cost of each approved fireplace or wood stove.

6.3.3 Proof of purchase of an item for which a credit specified in Subsection R307-1-6.3.2 is allowed shall be made by submitting to the executive secretary, or representative appointed by the executive secretary:

A. a copy of the sales receipt clearly stating the make, model, and price paid for the equipment and installation, and

B. a completed copy of the "Clean Fuel Alternative Tax Credit Stoves/Fireplaces" form identifying the:

(1) owner's name and address;

(2) owner's social security number or taxpayer identification number;

(3) dealer's name and address;

(4) fireplace make and model;

(5) fireplace serial number;

(6) purchase price;

(7) installer's name and company name; and

(8) installation cost.

6.3.4 An authorized representative of the executive secretary will acknowledge receipt of proofs specified in Subsection R307-1-6.3.3 by signing the relevant written statement provided on the State Tax Commission "Clean Fuel Alternative Tax Credit Stoves/Fireplaces" form.

R307-1-8. Asbestos Certification, Asbestos Work Practices, and Implementation of Toxic Substances Control Act, Title II.

8.1 Definitions: The definitions in this subsection apply only to R307-1-8.

"Adequately wet" means to sufficiently mix or penetrate with liquid to prevent the release of particulate. If visible emissions are observed coming from asbestos containing material, then that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet.

"AHERA" means the federal Asbestos Hazard Emergency Response Act of 1986 and the Environmental Protection Agency implementing regulations, 40 CFR Part 763, Subpart E - Asbestos-Containing Materials in Schools.

"Airlock" means a system for allowing access to an area with minimum air movement through the system. The airlock typically consists of two curtained doorways separated by a distance of at least 3 feet such that personnel pass through one doorway into the airlock, allowing the doorway sheeting to overlap and close off the opening before proceeding through the second doorway, thereby preventing flow-through of contaminated air.

"Amended water" means a mixture of water and a chemical surfactant or a wetting agent that provides equivalent control of asbestos fiber release.

"Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, and actinolite-tremolite.

"Asbestos-containing material" means any material containing more than one percent (1%) asbestos as determined using the method specified in Appendix A, Subpart F, 40 CFR Part 763 Section 1, Polarized Light Microscopy. If the asbestos content is less than 10% as determined by a method other than point counting using polarized light microscopy (PLM), verify the asbestos content by point counting using PLM.

"Asbestos contractor" means any person who contracts for hire to perform an asbestos project or an asbestos inspection.

"Asbestos Inspection" means an activity undertaken to determine the presence or location, or to assess the condition of, asbestos-containing material or suspected asbestos-containing material, whether by visual or physical examination, or by taking samples of the material. This term includes reinspections of the type described in AHERA, 40 CFR 763.85(b), of known or assumed asbestos-containing material which has been previously identified. The term does not include the following:

1. periodic surveillance of the type described in AHERA, 40 CFR 763.92(b), solely for the purpose of recording or reporting a change in the condition of known or assumed asbestos-containing material;

2. inspections performed by employees or agents of federal, state, or local government solely for the purpose of determining compliance with applicable statutes or regulations; or

3. visual inspections of the type described in AHERA, 40 CFR 763.90(i), solely for the purpose of determining completion of response actions.

"Asbestos project" means any activity, involving the removal, encapsulation, enclosure, renovation, repair, demolition, salvage, disposal, or other disturbance of friable asbestos-containing material.

"Asbestos project operator" means any asbestos contractor, any person responsible for the persons performing an asbestos project in an area to which the general public has unrestrained access, or any LEA responsible for the persons performing an asbestos project in a school building subject to AHERA.

"Asbestos removal" means the stripping of asbestos-containing materials from surfaces or components of a structure and to take out structural components that contain or are covered with friable asbestos-containing material from a structure.

"Asbestos waste" means mill tailings or any waste that contains commercial asbestos and is generated by a source subject to R307-1-8. This term includes filters from control devices, friable asbestos-containing waste material, and bags or other similar packaging contaminated with commercial asbestos. As applied to demolition and renovations, this term includes materials contaminated with asbestos including disposable equipment and clothing.

"Asbestos worker" means a person who,in a nonsupervisory capacity, performs an asbestos project.

"CFR" means Code of Federal Regulations.

"Certification" means an authorization issued by the executive secretary to persons who engage in asbestos projects or who act as asbestos workers, supervisors, inspectors, project designers, or management planners.

"Clean room" means an uncontaminated area or room which is part of the worker decontamination system and which has provisions for storage of workers' street clothes and clean protective equipment.

"Consultant" means a person who acts as an inspector, management planner, project designer, or any combination thereof.

"Delegated local agency" means a public agency having a memorandum of agreement with the Utah Department of Environmental Quality, Utah Air Quality Board, that assigns designated responsibilities for the administration of NESHAP Subpart M and/or R307-1-8 to the public agency.

"Demolition" means the wrecking or removal of any load-supporting structural member of a structure together with any related handling operations or the intentional burning of any structure.

"Emergency renovation operation" means any asbestos

project which was not planned but results from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden. This term includes operations necessitated by nonroutine failure of equipment.

"Encapsulation" means the application of an encapsulating agent to asbestos-containing materials to control the release of asbestos fibers into the air.

"Encapsulating agent" means a coating applied to the surface of friable asbestos-containing materials for the purpose of preventing the release of asbestos fibers. The encapsulating agent creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant).

"Enclosure" means an airtight, impermeable, permanent barrier around asbestos containing material to prevent the release of asbestos fibers into the air.

"Equipment room" means a contaminated area or room which is part of the asbestos worker decontamination system with provisions for storage of contaminated clothing and equipment.

"Friable asbestos-containing material" means any asbestos-containing material that hand pressure can crumble, pulverize, or reduce to powder when dry.

"HEPA filtration" means the high efficiency particulate air filtration found in respirators and vacuum systems capable of filtering particles greater than 0.3 micron in diameter with 99.97% efficiency, for use in asbestos-contaminated environments.

"Inspector" means a person who performs an asbestos inspection.

"LEA" means a local education agency as defined in AHERA.

"Management planner" means a person who prepares a management plan for a school building subject to AHERA.

"Minor fiber release episode" means any uncontrolled or unintentional disturbance of asbestos-containing material resulting in a visible emission which involves the falling or dislodging of three square or linear feet or less of friable asbestos-containing material.

"Model Accreditation Plan" means 40 CFR Part 763, Subpart E, Appendix C, Asbestos Model Accreditation Plan.

"NESHAP" means the National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, Subpart M, the National Emission Standard for Asbestos.

"NESHAP size asbestos project" means any asbestos project that involves at least:

(a) 260 linear feet (80 meters) of pipe covered with friable asbestos-containing material;

(b) 160 square feet (15 square meters) of friable asbestos-containing material used to cover or coat any duct, boiler, tank, reactor, turbine, equipment, structure, structural member, or structural component; or

(c) 35 cubic feet (one cubic meter) of friable asbestos-containing material removed from structural members or components where the length and area could not be measured previously.

"OSHA" means Occupational Safety and Health Administration.

"Planned asbestos project" means asbestos projects in which the amount of asbestos-containing material to be removed, stripped, or otherwise disturbed within a calendar year, January 1 through December 31, is the NESHAP size. This term includes nonscheduled renovation operations necessitated by the routine failure of equipment, which is expected to occur within a given period based on past operating experience.

"Project designer" means a person who designs an asbestos project other than:

1. a small-scale, short duration asbestos project; or
2. an asbestos project necessitated by a minor fiber release episode.

"Public and commercial building" means the interior space of any building which is not a school building, except that the term does not include any residential apartment building of fewer than 10 units or detached single-family homes.

"Public agency" means any federal or state department, bureau, institution or agency thereof, any municipal corporation, county, city, or other political or taxing subdivision of the state.

"Renovation" means altering in any way one or more structural components. Operations in which load-supporting structural members are wrecked or taken out are excluded.

"Response Action" means a method, including removal, encapsulation, enclosure, repair, and operation and maintenance, that protects human health and the environment from friable asbestos-containing material.

"Shower room" means a room between the clean room and equipment room in the worker decontamination system with hot and cold or warm running water controllable at the tap and suitably arranged for complete showering during worker decontamination.

"Single family residential dwelling" means any structure or portion of a structure whose primary use is for housing of one family. Residential portions of multi-unit dwellings such as apartment buildings, condominiums, duplexes and triplexes are also considered to be, for the purposes of R307-1-8, single family residential dwellings; common areas such as hallways, entryways, and boiler rooms are not single family residential dwellings.

"Site supervisor" means a person who meets the definition of a "competent person" as cited in 29 CFR 1926.1101 (OSHA) and has the authority to act as the agent of the asbestos project operator at the asbestos project work site.

"Small-scale, short-duration asbestos project" means an asbestos project such as, but not limited to:

(1) removal of asbestos-containing insulation on pipes;

(2) removal of small quantities of asbestos-containing insulation on beams or above ceilings;

(3) replacement of an asbestos-containing gasket on a valve;

(4) installation or removal of a small section of drywall;

(5) installation of electrical conduits through or proximate to asbestos-containing materials. Small-scale, short-duration asbestos projects can further be defined by the following considerations:

(6) removal and/or repair of small quantities of asbestos-containing materials only if required in the performance of another maintenance activity not intended as asbestos

abatement;

(7) removal of asbestos-containing thermal system insulation not to exceed amounts greater than those which can be contained in a single glove bag;

(8) minor repairs to damaged thermal system insulation which do not require removal;

(9) repairs to a piece of asbestos-containing wallboard;

(10) repairs, involving removal, encapsulation or enclosure, to small amounts of friable asbestos-containing material only if required in the performance of emergency or routine renovation activity not intended solely as asbestos abatement. Such work may not exceed amounts greater than those which can be contained in a single prefabricated mini-enclosure. Such an enclosure shall conform spatially and geometrically to the localized work area, in order to perform its intended containment function.

"Strip" means to take off asbestos containing material from any part of a structure or structural component.

"Structural component" means any pipe, duct, boiler, tank, reactor, turbine, or furnace at or in a structure or any structural member of the structure.

"Structural member" means any load-supporting member of a structure, such as beams and load-supporting walls or any non-load-supporting member, such as ceilings and non-load-supporting walls.

"Structure" means, for the purposes of R307-1-8: any institutional, commercial, residential, or industrial building, equipment, building component, installation, or other construction.

"Supervisor" means a person who carries out or oversees an asbestos project.

"TSCA accreditation" means successful completion of training as an inspector, management planner, project designer, contractor/supervisor, or worker, as specified in the Toxic Substances Control Act, Title II.

"TSCA Title II" means 15 U.S.C. 2641 through 2656, Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response, and 40 CFR Part 763, Subpart E - Asbestos-Containing Materials in Schools, including appendices.

"Waste generator" means any owner or operator of a source covered by R307-1-8 whose act or process produces asbestos waste.

"Waste shipment record" means the shipping document, that the waste generator originates and signs, and is used to track and substantiate the disposition of asbestos waste.

"Worker decontamination system" means an enclosed area, isolated from areas which are not contaminated with asbestos, consisting of a clean room, shower room, and equipment room, each separated from the other by airlocks and accessible through doorways protected with two overlapping polyethylene sheets.

"Working day" means Monday through Friday and includes holidays that fall on any of the days Monday through Friday.

8.2 Applicability.

8.2.1 Certification and Accreditation Requirements.

A. Asbestos project in a structure.

(1) The following persons shall be certified, as specified under Subsection R307-1-8.3, prior to conducting an asbestos project in a structure:

(a) asbestos contractors; and

(b) inspectors.

(2) The asbestos project operator shall ensure the following persons are trained or accredited, as specified in Subsection R307-1-8.4, prior to conducting an asbestos project:

(a) supervisors;

(b) asbestos workers; and

(c) persons who disturb any amount of friable asbestos-containing material in areas to which the general public has unrestrained access.

B. Asbestos activity subject to TSCA Title II. The following persons shall be certified, as specified in Subsection R307-1-8.3, prior to conducting an asbestos activity subject to TSCA Title II:

(1) asbestos contractors;

(2) supervisors;

(3) asbestos workers;

(4) inspectors;

(5) management planners; and

(6) project designers.

8.2.2 Work Practice Requirements.

The work practice requirements of Section R307-1-8 apply to any asbestos project operator who performs an asbestos project; persons who disturb any amount of friable asbestos-containing material in an area where the general public has unrestrained access; and to asbestos workers, supervisors, and consultants who perform work on an asbestos project.

8.2.3 The requirements of R307-10-1 (NESHAP 40 CFR Part 61 Subpart M, the National Emission Standard for Asbestos) apply to asbestos projects subject to R307-1-8.

8.3 Certification and Accreditation Requirements

8.3.1 Asbestos Contractor, Supervisor, and Consultant Certification Requirements.

A. Certificate required.

(1) The following persons shall obtain a certificate:

(a) Asbestos contractors, prior to engaging in an asbestos project in a structure;

(b) inspectors, prior to contracting for hire to perform an asbestos inspection, performing an asbestos inspection in an area to which the general public has unrestrained access, or performing an asbestos inspection in a building subject to TSCA Title II (public and commercial building);

(c) supervisors, asbestos workers, and project designers, prior to engaging in an asbestos project subject to the accreditation requirements of TSCA Title II; and

(d) management planners, prior to preparing a management plan for a school building subject to AHERA.

(2) The requirements of R307-1-8.3.1.A shall not apply to a person who performs an asbestos project on a single family residential dwelling that is his primary residence.

B. Application for certification. Asbestos contractors, supervisors, asbestos workers, and consultants required to be certified under Subsection R307-1-8.3.1.A(1) shall:

(1) submit a completed application to the executive secretary on forms provided by the executive secretary;

(2) pay the authorized certification fee to the Division of Air Quality; and

(3) provide evidence that they have complied with the requirements of the applicable Subsections R307-1-8.3.2, R307-

1-8.3.3, R307-1-8.3.4, or R307-1-8.3.5, respectively, and any additional information requested by the executive secretary.

8.3.2 Asbestos Contractor.

(A) In order to be certified as required under Subsection R307-1-8.3.1.A(1), an asbestos contractor shall submit:

(1) a master plan that describes in detail how the contractor will comply with Section R307-1-8 during asbestos projects or asbestos inspections, including the setup procedures, work practices, decontamination and cleanup practices, and equipment that will be typically used during asbestos projects;

(2) copies of medical surveillance records of employees and the contractor's respiratory protection program as required by 29 CFR 1926.1101 (OSHA);

(3) a list of the other states where the asbestos contractor is licensed or certified for asbestos project work, if applicable; and a list of all previous names used by the asbestos contractor;

(4) a description of past compliance history relating to asbestos activities, if applicable;

(5) evidence that all asbestos workers and supervisors who conduct work on an asbestos project:

(a) subject to TSCA Title II are certified as specified in the applicable Subsections of R307-1-8.3; and

(b) in a structure are TSCA accredited or passed a training course approved in accordance with Subsection R307-1-8.4.5; and

(6) evidence that all asbestos inspectors are certified as specified in Subsection R307-1-8.3.

B. Certificate transfer prohibited. The transfer of an asbestos contractor certificate is prohibited. Whenever there is a change in the controlling interest of the legal entity certified, a new certificate is required.

8.3.3 Supervisor.

In order to be certified as a supervisor as required under Subsection R307-1-8.3.1.A, supervisors shall submit certificates of initial and current contractor/supervisor TSCA accreditation in a state that has a Contractor Accreditation Program that meets the Model Accreditation Plan or from a training course approved in accordance with Subsection R307-1-8.4.5.

8.3.4 Asbestos Worker.

In order to be certified as an asbestos worker as required under Subsection R307-1-8.3.1.A, asbestos workers shall submit certificates of initial and current asbestos worker TSCA accreditation in a state that has a Contractor Accreditation Program that meets the Model Accreditation Plan or from a training course approved in accordance with Subsection R307-1-8.4.5.

8.3.5 Consultant and Consultant-in-training.

A consultant may be certified to perform asbestos-related activities in one or more of the following disciplines: inspector; management planner; or project designer. A consultant-in-training may be certified in one or more of the following disciplines: inspector in training; management planner in training; or project designer in training.

A. Certified Consultant.

(1) In order to be certified as a consultant, an applicant shall submit:

(a) evidence from employers of the appropriate hours of experience as specified in R307-1-8.3.5.A(2), (3) (4) and (5) in performing the duties outlined for the specific discipline in Subsection R307-1-8.3.5.B.; and

(b) certificates of initial and current TSCA accreditation for the specific discipline in a state that has a Contractor Accreditation Program that meets the Model Accreditation Plan or from a training course approved in accordance with Subsection R307-1-8.4.5.

(2) The experience requirements specified under Subsection R307-1-8.3.5.A(1)(a) may be gained working as a TSCA accredited consultant, by being responsible for persons accredited as consultants,by being under the direct supervision of a TSCA accredited consultant, or by working as a consultant-in-training under the direct supervision of a certified consultant, for the specific discipline.

(3) An applicant with a bachelor's degree in engineering, architecture, industrial hygiene, science or a related field must have at least 1,000 hours experience as specified under Subsection R307-1-8.3.5.A(1)(a).

(4) An applicant with a two year associate degree in a field related to engineering, architecture, industrial hygiene, science, or a similar field must have at least 2,000 hours experience as specified under Subsection R307-1-8.3.5.A(1)(a).

(5) An applicant with a high school degree must have at least 4,000 hours experience as specified under Subsection R307-1-8.3.5.A(1)(a).

B. Applicable experience.

(1) Inspector: experience performing the field work portion of asbestos inspections, including collecting bulk samples, categorizing asbestos containing material, assessing asbestos containing material, and preparing inspection reports;

(2) Management Planner.

(1) In order to be a consultant certified as a management planner, an applicant shall submit:

(a) evidence from employers of experience evaluating inspection reports, selecting response actions, analyzing the cost of response actions, ranking response actions, preparing operations and maintenance plans, and preparing management plans. The inspector experience requirements as specified under Subsection R307-1-8.3.5.B(1) may be substituted for Subsection R307-1-8.3.5.B(2) to meet the management planner experience requirements.

(3) Project Designer: experience designing, preparing, and evaluating specifications for asbestos abatement projects; preparing bidding documents, architectural drawings and schematic drawings of asbestos project work sites; determining the methods of asbestos abatement; and assessing the health hazards associated with asbestos containing material in structures. Registration as a professional engineer, licensed architect, or certified industrial hygienist may be substituted for experience as a project designer to meet the project designer experience requirements.

C. Consultant-in-training Certification. In order to be certified as a consultant-in-training, an applicant shall submit:

(1) certificates of initial and current TSCA accreditation for the specific discipline in a state that has a Contractor Accreditation Program that meets the Model Accreditation Plan or from a training course approved in accordance with Subsection 8.4.5; and

(2) the name and certification number of the certified consultant(s) who will directly supervise and review the

performance of all duties listed in Subsection R307-1-8.3.5.B for the specific discipline.

8.3.6 Exemption of Supervisors from Certification as an Asbestos Worker. A certified supervisor may perform the duties of an asbestos worker without being certified or accredited as an asbestos worker.

8.3.7 Action on an Application.

A. Response to Application. Within 30 calendar days after receiving a completed application, including all additional information requested, the executive secretary will issue certification or deny the application.

B. Denial of Application.

(1) The executive secretary may deny an application if the executive secretary determines that the applicant has not demonstrated compliance and/or the ability to comply with the applicable requirements, procedures, and standards established by Sections R307-1-8 and R307-10-1 (NESHAP Subpart M, the National Emission Standard for Asbestos).

(2) Upon being denied certification, the applicant may request a hearing before the Utah Air Quality Board as provided by law.

8.3.8 Suspension and Revocation.

The executive secretary may revoke or suspend any certification based upon violations of any requirement stated herein or in Section R307-10-1 (NESHAP). Justifications for suspension or revocation may include, but are not limited to: falsification or knowing omission of any written submittals required as part of Section R307-1-8, omission or improper use of work practices, improper disposal of friable asbestos-containing materials, spread of asbestos beyond the containment area, use of untrained or unaccredited workers for asbestos projects, or use of improper respirators. Certification may be revoked or suspended if the certified person fails to have his certification at the work site, permits the duplication or use of his own certification or TSCA accreditation by another, performs work for which certification or TSCA accreditation has not been received, or obtains TSCA accreditation from a training provider that does not have approval for the specific discipline in accordance with the Model Accreditation Plan.

8.3.9 Duration and Renewal of Certification.

A. Duration. Unless revoked or suspended, a certification shall remain in effect:

(1) for a period of one year from the date of issuance of certification as an asbestos contractor, or

(2) until the expiration date of the current certificate of TSCA accreditation submitted with an asbestos worker's, supervisor's, or consultant's application for certification or recertification.

B. Renewal. The executive secretary shall renew a certification annually if:

(1) the asbestos contractor:

(a) submits a completed application for renewal on forms provided by the executive secretary not sooner than 90 days nor later than 30 days from the date of expiration;

(b) has complied with all applicable requirements and rules.

(2) the consultant:

(a) submits a completed application for renewal on a form provided by the executive secretary no later than one year from the date of expiration of previous certification, and

(b) submits a certificate of TSCA accreditation for initial or refresher training in the specific discipline.

8.3.10 Procedure for Obtaining a Duplicate Certificate.

The executive secretary may issue a duplicate certificate to replace a lost, stolen, or mutilated certificate. The certificate holder shall submit a completed application for a duplicate certificate on a form provided by the executive secretary. A duplicate certificate shall have "duplicate" stamped on the face and shall bear the same number and expiration date as the original certificate.

8.4 Training.

8.4.1 Asbestos Worker Training.

Each asbestos project operator shall ensure that each asbestos worker assigned to perform work on an asbestos project for the operator has had initial and annual review training at a course approved by the executive secretary. Asbestos workers on projects subject to TSCA Title II must have the appropriate TSCA accreditation. Training courses for TSCA accreditation shall meet the specifications for a worker course in the Model Accreditation Plan, including course length, instructor qualifications, hands-on training, and written examination. Training courses other than TSCA accreditation courses shall cover the following topics:

A. Initial Training. The initial training course for asbestos workers shall provide a minimum of 16 hours of training covering the topics specified below:

(1) physical characteristics of asbestos (fiber size, aerodynamics);

(2) methods of recognizing and identifying asbestos;

(3) health effects of asbestos exposure and methods used to recognize asbestos-related diseases;

(4) relationship between smoking and asbestos exposure in producing lung cancer;

(5) use of personal hygiene and protective equipment, storage and laundering of launderable clothing;

(6) purpose, proper use, fitting instructions, and limitations of respirators in accordance with OSHA 29 CFR 1926.1101;

(7) state-of-the-art work practices for performing asbestos abatement activities, including the purpose, proper construction, and maintenance of barriers and decontamination enclosure systems; posting of warning signs; electrical and ventilation system lockout; proper working techniques for minimizing fiber release; use of wet methods and surfactants; use of negative pressure ventilation equipment; use of glove bags; use of HEPA vacuums; and proper cleanup and disposal procedures;

(8) OSHA medical surveillance program requirements;

(9) OSHA air monitoring procedures and requirements;

(10) review of R307-1-8, NESHAP, and OSHA requirements, including information disclosure requirements, and how to contact the agencies responsible for enforcing them;

(11) individual instruction consisting of an individual qualitative respirator fit test and an opportunity to use respirators; and

(12) additional safety hazards encountered during abatement activities and how to deal with them, including electrical hazards, heat stress, air contaminants other than asbestos, fire and explosion hazards, slips, trips, and falls, and

confined spaces.

B. Annual Training. Asbestos workers shall attend refresher training annually. The annual refresher course must be approved by a state that has a Contractor Accreditation Program that meets the Model Accreditation Plan or be approved in accordance with Subsection R307-1-8.4.5. The training course shall meet the specifications for a worker refresher course in the Model Accreditation Plan.

8.4.2 Supervisor Training:

A. Initial Training. Supervisors shall complete a contractor/supervisor TSCA accreditation course in a state that has a Contractor Accreditation Program that meets the Model Accreditation Plan or from a training course approved in accordance with Subsection R307-1-8.4.5. The training course shall meet the specifications for a contractor/supervisor course in the Model Accreditation Plan, including course length, instructor qualifications, hands-on training, and written examination.

B. Annual Training. Supervisors shall attend a 1-day refresher training course annually. The annual refresher course must be approved by a state that has a Contractor Accreditation Program that meets the Model Accreditation Plan or be approved in accordance with Subsection R307-1-8.4.5. The training course shall meet the specifications for a contractor/supervisor refresher course in the Model Accreditation Plan.

8.4.3 TSCA Accreditation.

Each person seeking TSCA accreditation shall complete the initial and refresher training outlined in the Model Accreditation Plan.

8.4.4 Examination Required.

A. The asbestos project operator shall ensure that each person who has completed the initial training specified in Subsection R307-1-8.4 has taken and passed a written closed book examination that adequately covers the topics included in the training course. A passing score for the examination is 70 percent or above. The person conducting the training course shall administer the examination.

B. Each person seeking TSCA accreditation shall pass a written closed book examination as specified in the Model Accreditation Plan. The accreditation examination required for any course approved under this subsection shall be administered by the person conducting the training course.

8.4.5 Approval of Training Courses.

A. Initial Training Courses: Persons desiring approval of courses conducted for the purpose of providing the initial training required under Section R307-1-8 shall submit the following to the executive secretary for review:

(1) name, address, phone number, and institutional affiliation of person sponsoring the course;

(2) a list of States that currently approve the training course;

(3) the course curriculum;

(4) a letter that clearly indicates how the course meets the applicable Model Accreditation Plan and Subsection R307-1-8 requirements for:

(a) length of training in hours or days, as applicable;

(b) amount and type of hands-on training, if applicable;

(c) examinations (length, format, example of examination or questions, and passing scores);

(d) topics covered in the course;

(5) a copy of all course materials (student manuals, instructor notebooks, handouts, etc.);

(6) a detailed statement about the development of the examination used in the course;

(7) names and qualifications of all course instructors, who must have academic credentials and/or field experience in asbestos abatement; and

(8) description and an example of numbered certificates issued to students who attend the course and pass the examination. The numbered certificate shall include a unique certificate number, the name of the student and the course completed, the dates of the course and the examination, an expiration date 1 year from the date the student completed the course and examination, the name, address, and telephone number of the training provider that issued the certificate, and a statement that the person receiving the certificate has completed the requisite training for TSCA accreditation.

B. Refresher training. Persons desiring approval of refresher training courses shall send the following information to the executive secretary:

(1) length of training;

(2) topics covered in the course;

(3) a copy of all course materials;

(4) names and qualifications of all course instructors;

(5) description and an example of numbered certificates issued to students who attend the course. The numbered certificate shall include a unique number, the name of the student, the course completed, the date of the course, and an expiration date 1 year from the date the student completed the course, the name, address, and telephone number of the training provider that issued the certificate, and a statement that the person receiving the certificate has completed the requisite training for TSCA accreditation.

C. The executive secretary shall issue approval of a training course if the person conducting the course:

(1) submits the written notification required in Subsections R307-1-8.4.5.A or R307-1-8.4.5.B above;

(2) demonstrates to the satisfaction of the executive secretary that the course provides the minimum training specified in the applicable subsections of R307-1-8.4.1, R307-1-8.4.2, and R307-1-8.4.3;

(3) agrees to:

(a) provide the executive secretary with the names, social security numbers, and certificate numbers of all persons successfully completing the course;

(b) provide the executive secretary with an up-to-date course schedule stating all times and locations at which the course will be presented;

(c) provide the executive secretary with the name and qualifications of any new course instructor prior to the new instructor presenting a training course;

(d) keep the records specified for training providers in the Model Accreditation Plan; and

(e) permit the executive secretary or his authorized representative to attend, evaluate and monitor any training course without receiving advance notice from the executive secretary and without charge to the executive secretary.

D. The executive secretary may revoke or suspend approval of a training course if the course does not provide training that meets the requirements of Section R307-1-8 or the Model Accreditation Plan.

E. Training courses shall be reviewed annually by the executive secretary to determine their acceptability for continued approval.

F. Training obtained from a course which has not been approved by the executive secretary may be accepted if the executive secretary determines that the course provided training equivalent to that required in R307-1-8. TSCA accreditation courses already approved in a state that has a Contractor Accreditation Program that meets the TSCA Title II Appendix C Model Plan, or approved by EPA under TSCA Title II are considered to be equivalent to the TSCA accreditation training required in Section R307-1-8.

8.4.6 Approval of New Training Course Instructors.

A. Each course provider approved under Subsection R307-1-8.4.5 shall obtain approval for any course instructor not included in the initial course approval. To obtain approval of an instructor, the course provider shall submit:

(1) the name and qualifications of the course instructor, who must have academic credentials and/or field experience in the discipline for which they are an instructor; and

(2) a list of the courses and specific topics which will be taught by the instructor.

B. Each course instructor must be approved by the executive secretary before teaching any course for TSCA accreditation purposes.

8.5 Notification.

8.5.1 NESHAP Size Asbestos Projects.

After November 20, 1990, an asbestos project operator shall submit a written notification, in accordance with this subsection, for each NESHAP size asbestos project he performs.

A. If the NESHAP size asbestos project will be performed at a location:

(1) that is within the jurisdiction of a delegated local agency, submit the written notification and pay the appropriate notification fee to the delegated local agency; or

(2) that is not within the jurisdiction of a delegated local agency, submit the written notification to the executive secretary and pay the authorized notification fee to the Division of Air Quality.

B. Send original and revised written notices by U.S. Postal Service, commercial delivery service, or hand delivery.

C. Postmark or deliver the written notice within the following time periods:

(1) If the operation is a NESHAP size asbestos project, notify the appropriate agency at least ten working days before disturbing asbestos containing material.

(2) If the operation is a planned asbestos project, notify the appropriate agency at least ten working days before the beginning of the calendar year, January 1, during which the project(s) will occur.

(3) If the operation is an emergency asbestos project, notify the appropriate agency as early as possible, but not later than, the following working day.

D. Update the written notice, as necessary, including when the amount of asbestos affected changes by at least 20 percent.

E. Written notifications must include the following information:

(1) the type of notification: original or revised;

(2) the name, address, and telephone number of the owner of the structure, removal contractor, and any other contractor working on the project, and the removal contractor identification number;

(3) the type of operation: demolition or renovation;

(4) a description of the structure that includes:

(a) the size (in square feet or square meters);

(b) the number of floors;

(c) the age; and

(d) the present and prior uses;

(5) the procedures, including analytical methods, used to inspect for the presence of asbestos containing material when the asbestos project is performed in a structure subject to NESHAP;

(6) an estimate of the approximate amount of asbestos containing material to be stripped using the appropriate units;

(7) an estimate of the amount of nonfriable asbestos containing material in the affected part of the structure that will not be removed before demolition;

(8) the location and address, including building number or name and floor or room number, if appropriate, street address, city, county, state, and zip code of the structure being demolished or renovated;

(9) the scheduled starting and completion dates of asbestos removal work in a renovation or demolition, with the exception of government ordered demolitions;

(10) the beginning and ending dates of the report period for planned renovation operations;

(11) a description of procedures for handling the finding of unexpected asbestos containing material or nonfriable asbestos containing material that has become friable;

(12) a description of planned demolition or renovation work including the demolition and renovation techniques to be used and a description of the affected structural components;

(13) a description of work practices and engineering controls to be used to prevent emissions of asbestos at the demolition or renovation work site;

(14) the name and location of the waste disposal site where the asbestos waste will be deposited, including the name and telephone number of waste disposal site contact; and

(15) the name, address, person to contact, and telephone number of the waste transporter;

(16) If the structure will be demolished under an order of a state or local government agency, include in the written notification the name, title, and authority of the government representative ordering the demolition, the date the order was issued, the date the demolition was ordered to commence. Attach a copy of the order to the notification.

(17) If an emergency asbestos project will be performed, include in the written notification the date and hour the emergency occurred, a description of the event and an explanation of how the event has caused unsafe conditions or would cause equipment damage, or unreasonable financial burden.

8.5.2 Other Asbestos Projects:

A. If an asbestos project operator performs demolition

activities in a structure involving asbestos containing material in a quantity less than the NESHAP size, even if no asbestos is present, submit a written notification in accordance with Subsections R307-1-8.5.1.A, R307-1-8.5.1.B, R307-1-8.5.1.D, R307-1-8.5.1.E(1) through (8), R307-1-8.5.1.E(10), and R307-1-8.5.1.E(11) at least ten days before commencement of the demolition.

B. If demolition of a structure is ordered by a state or local government agency because the structure is unsound and in danger of imminent collapse, submit written notification in accordance with Subsections R307-1-8.5.1.A, R307-1-8.5.1.B, and R307-1-8.5.1.E as early as possible, but not later than, the following working day.

8.5.3 Change in Notification Date.

A. If a NESHAP size asbestos project, except for a planned asbestos project, will commence on a date other than the date submitted in the original written notification, notify the appropriate agency of the new starting date according to the following schedule:

(1) If the new starting date is later than the original starting date, provide notice by telephone as soon as possible before the original starting date and submit a revised notice in accordance with Section R307-1-8.5.1.B as soon as possible before, but no later than, the original starting date.

(2) If the new starting date is earlier than the original starting date,submit a written notice in accordance with Subsection R307-1-8.5.1.B at least ten working days before the NESHAP size asbestos project commences.

B. If a demolition operation as specified in Subsection R307-1-8.5.2.A commences on a date other than the date submitted in the original written notification, notify the appropriate agency at least ten working days before commencing of the demolition of the structure.

C. In no event shall an asbestos project covered by this subsection commence on a date other than the new starting date submitted in the revised written notice.

8.6 Work Practice Requirements.

8.6.1 NESHAP Size Asbestos Projects.

After September 1, 1987 each asbestos project operator conducting a NESHAP size asbestos project shall comply with the following work practice requirements:

A. General (including removal, demolition, renovation, encapsulation and enclosure)

(1) Remove friable asbestos-containing materials before commencing any activity which would break up the materials or prevent access to them for subsequent removal.

(2) Ensure that a site supervisor trained in accordance with Subsection R307-1-8.4 is responsible for the construction of the containment, supervision, and inspection of each asbestos project conducted by an asbestos project operator.

(3) Maintain a sufficient inventory of equipment and supplies at the project work site to ensure ability to continuously comply with Section R307-1-8.

(4) Provide barriers to isolate contaminated areas from uncontaminated areas. Barriers shall be constructed of polyethylene sheeting, or equivalent, attached securely in place, and sealed with waterproof tape or equivalent.

(a) Provide a worker decontamination system. Enter and leave asbestos contaminated work areas only through the worker decontamination system.

(b) Repair tears in the isolation barriers immediately.

(5) Provide protective outerwear to all asbestos workers and others entering asbestos contaminated areas.

(a) Remove protective outerwear and leave in a contaminated part of the work area, such as the equipment room, before leaving the contaminated area.

(b) Place nondisposable protective outerwear in a labeled, sealed impermeable plastic bag, or equivalent container, before removing it from the work area.

(c) Treat disposable protective outerwear as asbestos waste.

(6) Provide respiratory protection to all asbestos workers and others entering asbestos contaminated areas. Respiratory protection shall consist of a half-mask air-purifying respirator equipped with HEPA filters, or other appropriate respirator specified in OSHA 29 CFR 1926.1101(h).

(7) Display caution signs in accordance with OSHA 29 CFR 1926.1101 at all approaches to any location where airborne asbestos fiber levels can be expected to exceed background levels.

(8) Adequately wet all asbestos waste before sealing into containers for disposal.

(9) Place asbestos waste in sealed, leak-tight impermeable containers for disposal, using one of the following containment methods:

(a) If asbestos waste contains sharp edged components, use metal or fiber drums with locking-ring tops.

(b) Double polyethylene bags, each of at least 6-mil thickness and which can be securely sealed, may be used for asbestos waste, provided it does not contain sharp edged components.

(c) Large components or structural members covered or coated with friable asbestos-containing materials may be removed intact and wrapped in two layers of 6-mil polyethylene sheeting secured with tape for disposal.

(d) Alternative containment methods may be used if written approval is obtained in advance from the executive secretary.

(10) All drums, bags, and wrapped components specified in Subsection R307-1-8.6.1.A(9) shall be labeled as follows:

DANGER
CONTAINS ASBESTOS FIBERS
AVOID CREATING DUST
CANCER AND LUNG DISEASE HAZARD.

(a) The warning labels as specified above shall be printed in letters of sufficient size and contrast so as to be readily visible and legible; and

(b) for asbestos waste transported off the structure site, label all drums, bags, and wrapped components with the name of the waste generator and the location where the waste was generated.

(11) Clean asbestos contamination from the outside of disposal containers before removing them from the work area. Clean asbestos from other objects to be removed from the work area, or contain the objects to prevent release of asbestos fibers when removed from the area.

(12) Attach permanent asbestos hazard warning labels to salvaged structural components or members which are covered or coated with friable asbestos-containing materials.

(13) Filter all asbestos containing waste water to five micrometers prior to discharging to a sewer system.

(14) Apply a coating of encapsulating agent to friable asbestos-containing materials exposed but not removed during renovation, and to porous surfaces that have been stripped of asbestos-containing materials.

(15) Following asbestos abatement and before dismantling isolation barriers, drop cloths and/or at least one layer of floor and wall sheeting, perform cleanup procedures using HEPA vacuuming and wet cleaning techniques. Perform wet cleaning, using an amended water solution, followed by HEPA vacuuming after the surfaces have been allowed to dry. Repeat the sequence of wet cleaning and HEPA vacuuming until no visible asbestos residue is observed in the work area.

B. Asbestos Removal.

(1) Adequately wet all friable asbestos-containing material prior to removal.

(2) Whenever practicable, remove structural components which are coated or covered with friable asbestos-containing material intact or in large sections and carefully lower them to the floor or ground.

(3) Remove asbestos-containing material in small sections and containerize while wet. Do not allow asbestos-containing material to accumulate and become dry before containerizing.

(4) Wet structural components thoroughly with amended water prior to wrapping in polyethylene sheeting for disposal in accordance with Subsection R307-1-8.6.1.A(9)(c).

(5) Do not drop or throw asbestos-containing materials to the floor or ground level. Asbestos-containing material may be dropped to a raised scaffold or containerized at elevated levels for disposal. Drop asbestos materials removed at greater than 15 feet above the floor onto inclined chutes or scaffolding or containerize at elevated levels for eventual disposal. If friable asbestos-containing materials are removed or stripped more than 50 feet above floor or ground level, transport to the floor or ground level via dust-tight chutes or containers.

C. Renovation. Unless specifically excluded, the provisions of this section apply to encapsulation (Subsection R307-1-8.6.1.D) and enclosure (Subsection R307-1-8.6.1.E) projects as well as other renovation projects.

(1) Remove all movable objects from the work area. Perform cleaning of items and surfaces contaminated with asbestos. Cover all nonmovable objects in the work area with 4-mil polyethylene sheeting secured into place. Seal all openings between the work area and uncontaminated areas, as required in Subsection R307-1-8.6.1.A(4).

(2) Shut down and lock out all HVAC equipment servicing the work area. Seal all intake and exhaust openings and any seams in system components with 6-mil polyethylene sheeting or equivalent, and/or tape. Replace all system filters at the completion of the asbestos project and dispose of old filters as asbestos waste. Clean asbestos-contaminated ventilation system ductwork interiors.

(3) Cover floors with at least 2 layers of 6-mil polyethylene sheeting or equivalent, securely attached with waterproof duct tape or equivalent. Floor sheeting shall extend up walls at least 12 inches and be sized to minimize seams. No seams shall be located at wall/floor joints.

(4) Cover walls and other surfaces with at least 2 layers of 4-mil polyethylene sheeting or equivalent, securely attached and sealed with waterproof duct tape or equivalent. Wall sheeting shall be installed to minimize joints and shall overlap the floor sheeting at least 12 inches. No seams shall be located at wall/wall joints.

(5) Operate negative pressure ventilation units with HEPA filtration in sufficient numbers to provide one workplace air change every 15 minutes continuously from the time barrier construction is completed through the time final cleanup is completed in accordance with Subsection R307-1-8.6.1.A(15) and the barriers can be dismantled. These units shall exhaust filtered air to the outside of the building wherever practicable. Procedures for operation as detailed in EPA document No. EPA 560/5-85-024 "Guidance for Controlling Asbestos-Containing Materials in Buildings" (the purple book) Appendix J, shall be utilized.

D. Encapsulation.

(1) Prior to application of an encapsulating agent, remove loose and hanging friable asbestos-containing material in accordance with Subsection R307-1-8.6.1.B.

(2) Filler material applied to gaps in existing material shall contain no asbestos, adhere well to the substrate, and provide an adequate base for the encapsulating agent.

(3) Apply sprayed-on encapsulating agents using airless spray equipment with nozzle pressure adjusted to minimize disturbance of friable asbestos-containing materials.

(4) After encapsulation, use signs, labels, color coding, or some other mechanism to indicate the presence of encapsulated friable asbestos-containing materials.

(5) Encapsulating agents shall not be applied to friable asbestos-containing materials which are water damaged or structurally deteriorating, show poor adhesion to the surface to which they are applied, or which are in locations subject to frequent physical damage.

E. Enclosures. Enclosures constructed for the purpose of permanently containing and protecting friable asbestos-containing materials shall be specially designated by signs, labels, color coding, or some other mechanism to warn individuals who may be required to enter or disturb the enclosure of the presence of asbestos.

F. Demolition.

(1) Remove all friable asbestos-containing materials according to the requirements of Subsections R307-1-8.6.1.A (General) and R307-1-8.6.1.B (Removal) before demolition of any structure or portion of a structure which contains structural members or components composed of or covered by friable asbestos-containing material. Friable asbestos-containing materials must be removed before commencing any activity which would break up the materials or preclude access for subsequent removal.

(2) Before beginning asbestos removal seal off all doors, windows, floor drains, vents, and other openings to the outside of the building, and to areas within the building that do not contain asbestos materials, with 6-mil polyethylene sheeting and waterproof tape or equivalent that is acceptable to the executive secretary.

(3) If a structure is to be partially demolished, HVAC equipment in the demolition area or passing through it but servicing areas of the building which will remain, shall be shut down and locked out and thoroughly sealed with 6-mil polyethylene sheeting and waterproof tape.

(4) Use a disposable drop cloth to catch asbestos waste if the physical condition of the ground or other collection surface is such that it cannot be cleaned of visible asbestos residue. Dispose of the drop cloth as asbestos waste.

(5) Removal of friable asbestos-containing material prior to demolition is not required if:

(a) The asbestos is encased in concrete or similar material, or

(b) A structure is being demolished under an order of a state or local governmental agency issued because the structure is unsound and in danger of imminent collapse.

(6) If friable asbestos-containing material is not removed before demolition, adequately wet the portion of the structure containing the asbestos before demolition, and keep adequately wet during subsequent demolition, handling, and disposal.

G. Outdoor Work.

(1) The provisions of Subsections R307-1-8.6.1.A and R307-1-8.6.1.B apply to asbestos projects conducted outdoors, with the following exceptions:

(a) Construction of barriers to isolate asbestos projects performed outdoors is not required if friable asbestos-containing materials are adequately wetted during removal, handling, and disposal.

(b) In lieu of constructing a worker decontamination system, workers' outerwear may be removed, wet cleaned or HEPA vacuumed before the workers leave the work area. Outerwear removed for cleaning or disposal shall be transported from the work area in a sealed, impermeable plastic bag or equivalent container labeled in accordance with Subparagraph 8.6.1.A(10).

(2) Access to the work area shall be restricted by use of a physical obstruction to limit traffic through the area.

(3) A disposable drop cloth shall be used to catch asbestos waste if the physical condition of the ground or other collection surface is such that it cannot be cleaned of visible asbestos residue. Dispose of the drop cloth as asbestos waste.

H. Disposal.

(1) Transport and dispose of asbestos waste in a manner that will not permit the release of asbestos fibers into the air.

(2) Dispose of asbestos waste at a location approved for handling asbestos waste by the appropriate authority having jurisdiction over the chosen landfill.

(3) Ensure that friable asbestos waste not containerized in accordance with Subsection R307-1-8.6.1.A(9) is buried immediately upon deposit at the disposal site.

(4) If asbestos waste is transported by vehicle to a disposal site, mark the transport vehicle with clearly visible signs during the loading and unloading of the asbestos waste. The signs shall be securely attached and displayed in such a manner and location that a person can easily read the legend. The signs shall conform to the requirements specified in 29 CFR 1910.145(d)(4).

(5) For off structure site disposal, provide a copy of the waste shipment record as specified under Subsection R307-1-8.7.1.A(5), to the disposal site owner or operator at the same time as the asbestos waste is delivered to the disposal site.

I. Planned Asbestos Projects: Planned asbestos projects for which a NESHAP notification is required, but which consist of individual, nonscheduled abatements each of which is smaller than a NESHAP sized asbestos project, occurring during an extended period of time, may be conducted according to the provisions of Subsection R307-1-8.6.2 below if approved by the executive secretary.

8.6.2 Work Practices for Other Asbestos Projects.

After September 1, 1987 each asbestos project operator shall comply with the following work practices:

A. Any asbestos project operator conducting a less than NESHAP size asbestos project shall take precautions to prevent the release of asbestos fibers to the environment. Precautions shall include but not be limited to the following measures:

(1) Construct barriers to contain asbestos fibers released within the work area.

(2) Adequately wet friable asbestos-containing materials with amended water prior to and during removal. Keep the asbestos-containing materials adequately wet until containerized.

(3) Use a disposable drop cloth to collect asbestos waste if the physical condition of the floor or collection surface is such that the work area cannot be cleaned of visible asbestos residue. Dispose of the drop cloth as asbestos waste.

(4) Glove bags may be used instead of the barriers and drop cloths specified in Subsections R307-1-8.6.2.A(1) and R307-1-8.6.2.A(3).

(5) Use HEPA vacuum equipment and wet cleaning techniques to clean up the work area until no visible asbestos residue remains. Perform cleanup before dismantling asbestos fiber containment barriers.

(6) Promptly place asbestos waste in appropriately labeled sealed impermeable containers (polyethylene sheeting, bags and/or fiber or metal drums).

(7) Clean visible asbestos residue from the outside of containers before removing them from the work area. Clean asbestos off other objects to be removed from the work area, or contain them to prevent release of asbestos fibers when removed from the area.

(8) Prevent the discharge of visible amounts of asbestos to any sewer.

(9) Apply an encapsulating agent to friable asbestos-containing materials exposed but not removed during renovation, and to porous surfaces from which friable asbestos-containing materials have been stripped.

(10) Remove, wet clean, or HEPA vacuum workers' outerwear before workers leave the work area. Seal outerwear removed in the work area into impermeable plastic bags, labeled in accordance with Subsection R307-1-8.6.1.A(10), before taking away from the work area. Treat disposable outerwear as asbestos waste.

(11) Transport and dispose of asbestos waste as specified under Subsection R307-1-8.6.1(H).

(12) If removal of friable asbestos-containing materials is not practicable before demolition, adequately wet the asbestos materials or the structure containing the asbestos materials before demolition and keep it adequately wet during subsequent

handling and disposal.

(13) Permanently attach asbestos hazard warning labels to salvaged structural components which are covered or coated with friable asbestos-containing materials.

B. Construction of barriers to contain asbestos fibers is not required for asbestos projects conducted outdoors if the friable asbestos-containing material is adequately wetted and access to the work area is limited to asbestos workers only.

C. Asbestos Inspection.

Persons taking samples for the purpose of identification of asbestos-containing materials shall comply with the following requirements:

(1) Minimize contamination of the surrounding area by use of a sampling method which will minimize disturbance of friable materials, such as sampling at places where the material is exposed or damaged, wetting the material to be sampled, or using a drop cloth or other provision for catching gross contamination.

(2) Promptly clean the sampling area using wet methods or HEPA vacuuming so that no visible friable materials remain.

(3) Apply an encapsulating agent or otherwise seal friable materials exposed during sampling.

(4) Place samples in containers and tightly seal them. Wet wipe the exterior surfaces of the containers. Place sample containers in plastic bags.

(5) After sample collection, place protective clothing, wet wipes, rags, cartridge filters, drop cloths, and other disposable equipment in a 6-mil polyethylene bag that is labeled as specified under Subsection R307-1-8.6.1.A(10).

(6) If laboratory analysis reports one or more samples as asbestos containing material, dispose of all material described in Subsection R307-18.6.2.C(5) as asbestos waste at a state approved landfill.

(7) Ensure that samples are analyzed by a method approved by the executive secretary.

(8) Any person required to be certified as an inspector in training under Subsection R307-1-8.3 shall work under the direct supervision of an inspector certified in accordance with Subsection R307-1-8.3.5.A.

8.6.3 Asbestos Projects Performed in a Single Family Residential Dwelling:

Persons who perform an asbestos project in a single family residential dwelling which is his primary residence, shall comply with Subsections R307-1-8.6.1.A(9), R307-1-8.6.1.A(10), R307-1-8.6.1.H(1), and R307-1-8.6.1.H(2).

8.6.4 Alternative Procedures.

The executive secretary may approve in writing an alternative procedure for control of emissions from an asbestos project provided that:

A. the asbestos project operator submits the alternative procedure to the executive secretary in writing;

B. the operator demonstrates to the satisfaction of the executive secretary that compliance with the prescribed procedures is not practical or not feasible or that the proposed alternative procedures provide equivalent control of asbestos; and

C. the executive secretary determines that the procedure will minimize the emission of asbestos fibers.

8.6.5 Asbestos Projects Subject to TSCA Title II.

Asbestos project operators or other persons who perform an asbestos project subject to TSCA Title II must ensure that at least one certified site supervisor is present at the work site at all times while the asbestos project is in progress. Asbestos workers must have access to certified supervisors throughout the duration of the asbestos project.

8.6.6 Activities Subject to Certification Requirements.

A. Each person required under Subsection R307-1-8.3 to have TSCA accreditation and to obtain certification shall be in physical possession of their certification card whenever performing work for which the certification is required.

B. Any person who does not have current, unexpired certification shall not perform work for which TSCA accreditation and certification under Subsection R307-1-8.3 is required.

8.7 Records.

8.7.1 Records Required.

A. Certified asbestos project contractors shall maintain records of all asbestos projects that he performs and shall make these records available to the executive secretary upon request. The records shall be retained for at least two years. Information recorded shall include the following:

(1) names and social security numbers of the asbestos workers and supervisors who performed the project;

(2) location and description of the project and amount of friable asbestos-containing material removed or area encapsulated or enclosed;

(3) starting and completion dates of the asbestos project;

(4) summary of the procedures used to comply with applicable requirements including copies of all notifications; and

(5) waste shipment records maintained in accordance with 40 CFR Part 61, Subpart M, NESHAP.

B. Each person conducting a training course approved in accordance with Subsection R307-1-8.4.5 shall maintain records of:

(1) training course materials: copies of all course materials;

(2) instructor qualifications: instructor resumes, documents from the executive secretary approving each instructor, and the instructors who taught each particular course and the dates the instructor taught;

(3) examinations: document that each person who receives initial accreditation has achieved a passing score on the examination, the date of the examination, the training course and discipline for which the examination was given, the name of the person who proctored the exam, a copy of the exam, and the name and test score of each person taking the exam;

(4) accreditation certificates: document all persons who have been awarded certificates, their certificate numbers, their accredited disciplines, training and expiration dates, and the training location. The records must be maintained in a manner that allows verification by telephone.

(5) records access: records required in Subsection R307-1-8.7.1 shall be made available to the executive secretary upon request. The records shall be retained for at least three years. If a course provider ceases to provide training, the course provider shall contact the executive secretary and give the executive secretary the opportunity to take possession of all

asbestos training records.

8.8 Implementation of TSCA Title II.

8.8.1 Adoption of TSCA Title II.

A. The provisions of TSCA Title II are adopted and incorporated herewith by reference. The accreditation provisions of the Model Accreditation Plan are also adopted and incorporated herewith by reference as mandatory requirements.

B. Implementation of the provisions 40 CFR Part 763, Subpart E, except for the Model Accreditation Plan, shall be limited to those provisions for which the EPA has waived its requirements in accordance with 40 CFR Subpart 763.98, Waiver; delegation to State, as published at 52 FR 41826, (October 30, 1987).

8.8.2 Review and Disapproval of Management Plans.

A. Unless a deferral request under Subsection R307-1-8.8.2.B has been approved by the executive secretary, each LEA shall submit the asbestos management plans required by AHERA to the executive secretary on or before October 12, 1988. A "Required Elements for LEA Asbestos Management Plan" shall be completely filled out and submitted by the LEA with each management plan.

B. The executive secretary may approve a request by an LEA for deferral of submittal of a management plan until May 9, 1989 if the LEA submits a complete request for deferral as required by AHERA. The executive secretary shall approve or disapprove a deferral request, and explain why any request was disapproved, within 30 days of receipt of a deferral request.

C. The executive secretary shall review each management plan and return comments to the LEA within 90 days of receipt of the plan. The executive secretary may disapprove a management plan if the plan does not meet the requirements of AHERA or if the "Required Elements for LEA Asbestos Management Plans" form is not completely filled out and submitted with the plan.

D. The LEA shall revise any management plan disapproved by the executive secretary and resubmit the plan within 30 days after receipt of a notice of disapproval. The LEA may request that the Executive Secretary extend the 30-day plan revision period to 90 days, provided the plan is revised and submitted before July 9, 1989.

KEY: air pollution, motor vehicles, major sources*

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R307. Environmental Quality, Air Quality.
R307-8. Oxygenated Gasoline Program.
R307-8-1. Definitions.

The following definitions apply only to Rule R307-8.

"Averaging period" is the control period and means the period of time over which all gasoline sold or dispensed for use in a control area by any control area responsible party or blender control area responsible party must comply with the average oxygen content standard.

"Blender control area responsible party (blender CAR)" means a person who owns oxygenated gasoline which is sold or dispensed from a control area oxygenate blending installation.

"Blending Allowance" means the amount of oxygen a gasoline blend is allowed above its upper oxygen content limit. Any gasoline blended under the provisions of 42 U.S.C. 7545(f)(1) addressing substantially similar fuels are permitted a blending allowance of 0.2% oxygen by weight. Blending allowances are not given to gasoline blends granted a waiver by the Administrator under 42 U.S.C. 7545(f)(4).

"Carrier" means any person who transports, stores or causes the transportation or storage of gasoline at any point in the gasoline distribution network, without taking title to or otherwise having ownership of the gasoline, and without altering the quality or quantity of the gasoline.

"Control area" means a geographic area in which only gasoline under the oxygenated gasoline program may be sold or dispensed during the control period.

"Control area oxygenate blending installation" means any installation or truck at which oxygenate is added to gasoline or gasoline blendstock which is intended for use in any control area, and at which the quality or quantity of the gasoline or gasoline blendstock is not otherwise altered, except through the addition of deposit-control additives.

"Control area responsible party (CAR)" means a person who owns oxygenated gasoline which is sold or dispensed from a control area terminal.

"Control area terminal" means either a terminal which is capable of receiving gasoline in bulk, i.e., by pipeline, marine vessel or barge, or a terminal at which gasoline is altered either in quantity or quality, excluding the addition of deposit control additives, or both. Gasoline which is intended for use in any control area is sold or dispensed into trucks at these control area terminals.

"Control period" means November 1 through the last day of February, during which time only oxygenated gasoline may be sold and dispensed in any control area.

"Destination" means:

A. for all control periods prior to the trigger date:

(1) the Provo-Orem Metropolitan Statistical Area (MSA), all of Utah County or

(2) anywhere except Utah County; and

B. for all control periods subsequent to the trigger date:

(1) Utah County, the Provo-Orem Metropolitan Statistical Area,

(2) Weber County, or

(3) anywhere except Utah County and Weber County.

"Distributor" means any person who transports or stores or causes the transportation or storage of gasoline at any point between any gasoline refiner's installation and any retail outlet or wholesale purchaser-consumer's installation. A distributor is a blender CAR if the distributor alters the oxygen content of gasoline intended for use in any control area through the addition of one or more oxygenates, or lowers its oxygen content below the minimum oxygen content specified in Section R307-8-6.

"Gasoline" means any fuel sold for use in motor vehicles and motor vehicle engines, and commonly or commercially known or sold as gasoline.

"Gasoline blendstock" means a hydrocarbon material which by itself does not meet specifications for finished gasoline, but which can be blended with other components, including oxygenates, to produce a blended gasoline fully meeting the American Society for Testing and Materials (ASTM) or state specifications.

"Non-oxygenated gasoline" means any gasoline which does not meet the definition of oxygenated gasoline.

"Oxygen content of gasoline blends" means percentage of oxygen by weight contained in a gasoline blend, based upon the percent by volume of each type of oxygenate contained in the gasoline blend, excluding denaturants and other non-oxygen-containing compounds. All measurements shall be adjusted to 60 degrees Fahrenheit.

"Oxygenate" means any substance, which when added to gasoline, increases the amount of oxygen in that gasoline blend. Lawful use of any combination of these substances requires that they be substantially similar as provided for under 42 U.S.C. 7545(f)(1), or be permitted under a waiver granted by the Administrator of the Environmental Protection Agency under the authority of 42 U.S.C. 7545(f)(4).

"Oxygenate blender" means a person who owns, leases, operates, controls, or supervises a control area oxygenate blending installation.

"Oxygenated gasoline" means any gasoline which contains at least 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1%, that was produced through the addition of one or more oxygenates to a gasoline and has been included in the oxygenated gasoline program accounting by a control area responsible party or blender control area responsible party and which is intended to be sold or dispensed for use in any control area. Notwithstanding the foregoing, if the Board determines that the requirement of 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1%, will prevent or interfere with attainment of the PM_{10} National Ambient Air Quality Standard and the State requests and is granted a waiver from the Administrator of the Environmental Protection Agency under 42 U.S.C. 7545, the waiver amount granted by the Administrator of the Environmental Protection Agency shall apply. Oxygenated gasoline containing lead is required to conform to the same waiver conditions or substantially similar ruling as unleaded gasoline as described in the definition of oxygenate.

"Refiner" means any person who owns, leases, operates, controls, or supervises a refinery which produces gasoline for use in a control area during the applicable control period.

"Refinery" means a plant at which gasoline is produced.

"Reseller" means any person who purchases gasoline and resells or transfers it to a retailer or a wholesale purchaser-consumer.

"Retail outlet" means any establishment at which gasoline is sold or offered for sale to the ultimate consumer for use in motor vehicles.

"Retailer" means any person who owns, leases, operates, controls, or supervises a retail outlet.

"Terminal" means an installation at which gasoline is sold, or dispensed into trucks for transportation to retail outlets or wholesale purchaser-consumer installations.

"Trigger date" means the date on which is triggered the Contingency Action Level specified in Section IX.C.8.h of the state implementation plan.

"Wholesale purchaser-consumer" means any organization that:

A. is an ultimate consumer of gasoline;

B. purchases or obtains gasoline from a supplier for use in motor vehicles; and

C. receives delivery of that product into a storage tank of at least 550-gallon capacity substantially under the control of that organization.

"Working day" means Monday through Friday, excluding observed federal and Utah state holidays.

R307-8-2. Applicability and Control Period Start Dates.

1. Unless waived under authority of 42 U.S.C. 7545(m)(3) by the Administrator of the Environmental Protection Agency, Rule R307-8 is applicable in Utah and Weber Counties.

2. The first control period for areas for which Rule R307-8 is applicable begins:

A. November 1, 1992, for the entire Provo-Orem Metropolitan Statistical Area which includes all of Utah County; and

B. November 1 following the trigger date for Weber County.

R307-8-3. Average Oxygen Content Standard.

1. All gasoline sold or dispensed during the control period, for use in each control area, by each CAR or blender CAR as defined in Section R307-8-1, shall be blended for each averaging period to contain an average oxygen content of not less than 2.7% oxygen by weight, except that:

A. if the Board determines that the 2.7% oxygen by weight requirement will prevent or interfere with attainment of the PM_{10} National Ambient Air Quality Standards and the State requests and is granted a waiver from the Administrator of the Environmental Protection Agency under 42 U.S.C. 7545, the waiver amount granted by the Administrator of the Environmental Protection Agency, shall apply;

B. if the enhanced inspection and maintenance program specified in Section IX, Part C.6.j(2)(b) of the state implementation plan is not implemented by January 1, 1996 (or if an equivalent automotive improvement program is not implemented that results in emissions factors equal to or less than the emission factors in Table IX.C.23 of the state implementation plan), all gasoline sold or dispensed during the control period beginning November 1, 1996, and subsequent control periods, for use in the Provo-Orem MSA, by each CAR or blender CAR as defined in Section R307-8-1, shall be blended to contain an average oxygen content of not less than 3.1% by weight until the next full control period following one year after the implementation of an enhanced inspection and maintenance program with mobile source emission factors equal to or less than every emission factor in the matrix in Table IX.C.23 of the state implementation plan and the enhanced inspection and maintenance performance standards of 40 CFR 51.351 or until the next full control period following implementation of a program that would result in emission factors equal to or less than the mobile source emission factors in the matrix contained in Table IX.C.23 of the state implementation plan;

C. if triggered as a contingency measure, as specified in Section IX, Part C.6.f of the state implementation plan, all gasoline sold or dispensed during the control period for use in the Provo-Orem MSA, by each CAR or blender CAR as defined in Section R307-8-1, shall be blended to contain an average oxygen content of not less than 3.1% by weight until it is shown to be unnecessary in the maintenance demonstration required by the Clean Air Act or until it is replaced with other control measures in a state implementation plan revision that demonstrates attainment of the National Ambient Air Quality Standard.

2. The averaging period over which all gasoline sold or dispensed in the control area is to be averaged shall be equal to the control period.

3. All gasoline, both leaded and unleaded, shall be blended in compliance with 40 CFR Part 79 (1991) - Registration of Fuels and Fuel Additives and 40 CFR Part 80 (1991) - Regulation of Fuels and Fuel Additives.

4. Any gasoline blended under 42 U.S.C. 7545(f)(1) dealing with substantially similar fuels must be blended in compliance with the criteria specified in the substantially similar ruling. Any extra volume of oxygenate or oxygenates added to gasoline blended under a substantially similar ruling as provided for under 42 U.S.C. 7545(f)(1) in excess of the criteria specified in 42 U.S.C. 7545(f)(1) may not be included in the compliance calculations specified in Subsections R307-8-5.2 and 5.3.

5. Any gasoline blended under a waiver granted by the Environmental Protection Agency under the provisions of 42 U.S.C. 7545(f)(4) must be blended in compliance with the criteria specified in the appropriate waiver. Gasoline blends waived to oxygen content above 2.7% oxygen by weight are not permitted a blending allowance for blending tolerance purposes. Any extra volume of oxygenate in excess of the criteria specified in the appropriate waiver may not be included in the compliance calculations specified in Subsection R307-8-5.2 or Subsection R307-8-5.3.

6. Oxygen content shall be determined in accordance with Section R307-8-4.

R307-8-4. Sampling, Testing, and Oxygen Content Calculations.

1. For the purpose of determining compliance with the requirements of Rule R307-8, the oxygen content of gasoline shall be determined by one or both of the two following methods.

A. Volumetric Method. Oxygen content may be calculated by the volumetric method specified in the Environmental Protection Agency Guidelines for Oxygenated Gasoline Credit Programs under Section 211(m) of the Clean Air Act as

Amended - Supplementary Information - Oxygen Content Conversions, published in the Federal Register on October 20, 1992.

B. Chemical Analysis Method.

(1) Use the sampling methodologies detailed in 40 CFR Part 80 (1993), Appendix D, to obtain a representative sample of the gasoline to be tested;

(2) Determine the oxygenate content of the sample by use of:

(a) the test method specified in ASTM Designation D4815-93, Testing Procedures--Method--ASTM Standard Test Method for Determination of C1 to C4 Alcohols and MTBE in Gasoline by Gas Chromatography,

(b) the test method specified in Appendix C of Environmental Protection Agency Guidelines for Oxygenated Gasoline Credit Programs under Section 211(m) of the Clean Air Act as Amended - Test Procedure Test for the Determination of Oxygenates in Gasoline as published in the Federal Register on October 20, 1992, or

(c) an alternative test method approved by the executive secretary.

(3). Calculate the oxygen content of the gasoline sampled by multiplying the mass concentration of each oxygenate in the gasoline sampled by the oxygen molecular weight contribution of the oxygenate set forth in Subsection R307-8-4.3.

2. All volume measurements required in Section R307-8-4 shall be adjusted to 60 degrees Fahrenheit.

3. For the purposes of Rule R307-8, the oxygen molecular weight contributions and specific gravities of oxygenates currently approved for use in the United States by the U.S. Environmental Protection Agency are the following:

TABLE 1

Specific Gravity and Weight Percent Oxygen of Common Oxygenates

oxygenate	weight fraction oxygen	specific gravity at 60 degrees F
ethyl alcohol	0.3473	0.7939
normal propyl alcohol	0.2662	0.8080
isopropyl alcohol	0.2662	0.7899
normal butyl alcohol	0.2158	0.8137
isobutyl alcohol	0.2158	0.8058
secondary butyl alcohol	0.2158	0.8114
tertiary butyl alcohol	0.2158	0.7922
methyl tertiary-butyl ether (MTBE)	0.1815	0.7460
tertiary amyl methyl ether (TAME)	0.1566	0.7752
ethyl tertiary-butyl ether (ETBE)	0.1566	0.7452

4. Sampling, testing, and oxygen content calculation records shall be maintained for not less than two years after the end of each control period for which the information is required.

5. Every refiner must determine the oxygen content of all gasoline produced for use in a control area by use of the methodology specified in Subsection R307-8-4.1. Documentation shall include the percent oxygen by weight, each type of oxygenate, the purity of each oxygenate, and the percent oxygenate by volume for each oxygenate. If a CAR or blender CAR alters the oxygen content of a gasoline intended for use within a control area during a control period, the CAR or blender CAR must determine the oxygen content of the gasoline by use of the methodology specified in Subsection R307-8-4.1.

R307-8-5. Alternative Compliance Options.

1. Each CAR or blender CAR shall comply with the standard specified in Section R307-8-3 by means of the method set forth in either Subsection R307-8-5.2 or Subsection R307-8-5.3 and shall specify which option will be used at the time of the registration required under Section R307-8-7.

2. Compliance calculation on average basis.

A. The CAR or blender CAR shall determine compliance with the standard specified in Section R307-8-3 for each averaging period and for each control area by:

(1) Calculating the total volume of gasoline labeled as oxygenated that is sold or dispensed, not including volume dispensed or sold to another CAR or blender CAR, for use in the control area which is the sum of:

(a) the volume of each separate batch or truckload of gasoline labeled as oxygenated that is sold or dispensed;

(b) minus the volume of each separate batch or truckload of gasoline labeled as oxygenated that is sold or dispensed for use in a different control area;

(c) minus the volume of each separate batch or truckload of gasoline labeled as oxygenated that is sold or dispensed for use in any non-control area.

(2) Calculating the required total oxygen credit units. Multiply the total volume in gallons of gasoline labeled as oxygenated that is sold or dispensed for use in the control area, as determined by Subsection R307-8-5.2.A(1), by the oxygen content standard specified in Subsection R307-8-3.1.

(3) Calculating the actual total oxygen credit units generated. The actual total oxygen credit units generated is the sum of the volume of each batch or truckload of gasoline labeled as oxygenated that was sold or dispensed for use in the control area as determined by Subsection R307-8-5.2.A(1), multiplied by the actual oxygen content by weight percent associated with each batch or truckload. If a batch or truckload of gasoline is blended under the substantially similar provisions of 42 U.S.C. 7545(f)(1) or under a waiver granted by the Environmental Protection Agency under the provisions of 42 U.S.C. 7545(f)(4), any extra volume of oxygenate in excess of the substantially similar criteria including the blending tolerance of 0.2% oxygen by weight, or in excess of the appropriate waiver, cannot be included in the calculation of oxygen credit units.

(4) Calculating the adjusted actual total oxygen credit units. The adjusted actual total oxygen content units is the sum of the actual total oxygen credit units generated, as determined by Subsection R307-8-5.2.A(3);

(a) plus the total oxygen credit units purchased, acquired through trade and received; and

(b) minus the total oxygen credit units sold, given away and provided through trade.

(5) Comparing the adjusted actual total oxygen credit units with the required total oxygen credit units. If the adjusted actual total content oxygen credit units is greater than or equal to the required total oxygen credit units, then the standard in Section R307-8-3 is met. If the adjusted actual total oxygen credit units is less than the required total oxygen credit units, then the purchase of oxygen credit units is required in order to achieve compliance.

(6) In transferring oxygen credit units, the transferor shall

provide the transferee with information as to how the credits were calculated, including the volume and oxygen content by weight percent of the gasoline associated with the credits.

B. To determine the oxygen credit units associated with each batch or truck load of oxygenated gasoline sold or dispensed into the control area, use the running weighted oxygen content (RWOC) of the tank from which and at the time the batch or truckload was received (see Subsection R307-8-5.2.C below). In the case of batches or truckloads of gasoline to which oxygenate was added outside of the terminal storage tank from which it was received, use the weighted average of the RWOC and the oxygen content added as a result of the volume of the additional oxygenate added.

C. Running weighted oxygen content. The RWOC accounts for the volume and oxygen content of all gasoline, including transfers to or from another CAR or blender CAR, which enters or leaves a terminal storage tank, and the oxygen contribution of all oxygenates which are added to the tank. The RWOC must be calculated each time gasoline enters or leaves the tank or whenever oxygenates are added to the tank. The RWOC is calculated weighing the following:

(1) the volume and oxygen content by weight percent of the gasoline in the storage tank at the beginning of the averaging period;

(2) the volume and oxygen content by weight percent of gasoline entering the storage tank;

(3) the volume and oxygen content by weight percent of gasoline leaving the storage tank; and

(4) the volume, type, purity and oxygen content by weight percent of the oxygenates added to the storage tank.

D. Credit transfers. Credits may be used in the compliance calculation in Subsection R307-8-5.2.A(1), provided that:

(1) the credits are generated in the same control area as they are used, i.e., no credits may be transferred between nonattainment areas;

(2) the credits are generated in the same averaging period as they are used;

(3) the ownership of credits is transferred only between CARs or blender CARs registered under the averaging compliance option specified in Section R307-8-7;

(4) the credit transfer agreement is made no later than 30 working days, as defined in Section R307-8-1, after the final day of the averaging period in which the credits are generated; and

(5) the credits are properly created.

E. Improperly created credits.

(1) No party may transfer any credits to the extent such a transfer would result in the transferor having a negative credit balance at the conclusion of the averaging period for which the credits were transferred. Any credits transferred in violation of this paragraph are improperly created credits.

(2) Improperly created credits may not be used, regardless of a credit transferee's good faith belief that the transferee was receiving valid credits.

3. Compliance calculation on a per gallon basis. Each gallon of gasoline sold or dispensed by a CAR or blender CAR for use within each control area during the averaging period as defined in Section R307-8-1 shall have an oxygen content of at least the average oxygen content standard specified in Subsection R307-8-3.1. The maximum oxygen content which may be used to calculate compliance is the average oxygen content standard specified in Section R307-8-3. In addition, the CAR or blender CAR is prohibited from selling, trading or providing oxygen credits based on gasoline for which compliance is calculated under this alternative per-gallon method.

R307-8-6. Minimum Oxygen Content.

1. Any gasoline which is sold or dispensed by a CAR, blender CAR, carrier, distributor, or reseller for use within a control area, as defined in Section R307-8-1, during the control period, shall contain not less than 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1%, unless it is sold or dispensed to another registered CAR or blender CAR. This requirement shall begin five working days, as defined in Section R307-8-1, before the applicable control period and shall apply until the end of that period.

2. This requirement shall apply to all parties downstream of the CAR or blender CAR unless the gasoline will be sold or dispensed to another CAR or blender CAR. Any gasoline which is offered for sale, sold or dispensed to an ultimate consumer within a control area during a control period, as defined in Section R307-8-1, shall not contain less than 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1%. This requirement shall apply during the entire applicable control period.

3. Every refiner must determine the oxygen content of all gasoline produced by use of the methodologies described in Section R307-8-4. This determination shall include the oxygen content by weight percent, each type of oxygenate, and percent oxygenate by volume for each type of oxygenate.

4. Any gasoline sold or dispensed by a CAR or blender CAR for use within a control area and for which compliance is demonstrated using the method specified in Subsection R307-8-5.3 shall contain not less than the average oxygen content standard specified in Subsection R307-8-3.1, unless the gasoline is sold or dispensed to another registered CAR or blender CAR.

R307-8-7. Registration.

1. All persons who sell or dispense gasoline directly or indirectly to persons who sell or dispense to ultimate consumers in a control area during a control period, including CARs, blender CARs, carriers, resellers, and distributors, shall petition the executive secretary for registration not less than one calendar month in advance of such sales or transfers of gasoline into the control area during the control period.

2. This petition for registration shall be on forms prescribed by the executive secretary and shall include the following information:

A. the name and business address of the CAR, blender CAR, carrier, reseller, or distributor;

B. in the case of a CAR, the address and physical location of each of the control area terminals from which the CAR operates;

C. in the case of a blender CAR, the address and physical location of each control area oxygenate blending installation which is owned, leased, operated, or controlled, or supervised by a blender CAR;

D. in the case of a carrier, distributor, or reseller, the

names and addresses of retailers they supply;

E. the address and physical location where documents which are required to be retained by Rule R307-8 shall be kept; and

F. in the case of a CAR or blender CAR, the compliance option chosen under provisions of Section R307-8-5 and a list of oxygenates which will be used.

3. If the registration information previously supplied by a registered party under the provisions of Subsections R307-8-7.A through E becomes incomplete or inaccurate, that party shall submit updated registration information to the executive secretary within 15 working days as defined in Section R307-8-1. If the information required under Subsection R307-8-7.F is to change, the updated registration information must be submitted to the executive secretary before the change is made.

4. No person shall participate in the oxygenated gasoline program as a CAR, blender CAR, carrier, reseller, or distributor until such person has been notified by the executive secretary that such person has been registered as a CAR, blender CAR, carrier, reseller, or distributor. Registration shall be valid for the time period specified by the executive secretary. The executive secretary shall issue each CAR, blender CAR, carrier, reseller, or distributor a unique identification number within one calendar month of the petition for registration.

R307-8-8. Recordkeeping and Reporting.

1. Records. All parties in the gasoline distribution network, as described below, shall maintain records containing compliance information enumerated or described below. These records shall be retained by the regulated parties for a period of two years after the end of each control period for which the information is required.

A. Refiners. Refiners shall, for each separate quantity of gasoline produced or imported for use in a control area during a control period, maintain records containing the following information:

(1) results of the tests utilized to determine the types of oxygenates and percent by volume;

(2) percent oxygenate content by volume of each oxygenate;

(3) oxygen content by weight percent;

(4) purity of each oxygenate;

(5) total volume of gasoline; and

(6) the name and address of the party to whom each separate quantity of oxygenated gasoline was sold or transferred.

B. Control area terminal operators. Persons who own, lease, operate or control gasoline terminals which serve control areas, or any truck- or terminal-lessee who subleases any portion of a leased tank or terminal to other persons, shall maintain a copy of the transfer document for each batch or truckload of gasoline received, purchased, sold or dispensed, and shall maintain records containing the following information:

(1) the owner of each batch of gasoline handled by each regulated installation if known, or the storage customer of record;

(2) volume of each batch or truckload of gasoline going into or out of the terminal;

(3) for all batches or truckloads of gasoline leaving the terminal, the RWOC of the batch or truckload;

(4) for each oxygenate, the type of oxygenate, purity if available, and percent oxygenate by volume;

(5) oxygen content by weight percent of all batches or truckloads received at the terminal;

(6) destination, as defined in Section R307-8-1, of each tank truck sale or batch of gasoline as declared by the purchaser of the gasoline;

(7) the name and address of the party to whom the gasoline was sold or transferred and the date of the sale or transfer, and

(8) the results of the tests for oxygenates, if performed, of each sale or transfer, and who performed the tests.

C. CARs and blender CARs. Each CAR must maintain records containing the information listed in Subsection R307-8-8.1.B. Each CAR and blender CAR must maintain a copy of the transfer document for each shipment of gasoline received, purchased, sold or dispensed, as well as the records containing the following information:

(1) CAR or blender CAR identification number;

(2) the name and address of the person from whom each shipment of gasoline was received, and the date when it was received;

(3) data on each shipment of gasoline received, including:

(a) the volume of each shipment;

(b) type of oxygenate or oxygenates, and percentage by volume; and

(c) oxygen content by weight percent;

(4) the volume of each receipt of bulk oxygenates;

(5) the name and address of the parties from whom bulk oxygenate was received;

(6) the date and destination, as defined in Section R307-8-1, of each sale of gasoline;

(7) data on each shipment of gasoline sold or dispensed including:

(a) the volume of each shipment;

(b) type of each oxygenate, and percent by volume for each oxygenate, and

(c) oxygen content by weight percent;

(8) documentation of the results of all tests done regarding the oxygen content of gasoline;

(9) the names, addresses and CAR or blender CAR identification numbers of the parties to whom any gasoline was sold or dispensed, and the dates of these transactions; and

(10) in the case of CARs or blender CARs that elect to comply with the average oxygen content standard specified in Section R307-8-3 by means of the compliance option specified in Subsection R307-8-5.2 must also maintain records containing the following information:

(a) records supporting and demonstrating compliance with the averaging standard specified in Section R307-8-3; and

(b) for any credits bought, sold, traded, or transferred, the dates of the transactions, the names, addresses and CAR or blender CAR identification numbers of the CARs and blender CARs involved in the individual transactions, and the amount of credits transferred. Any credits transferred must be accompanied by a demonstration of how those credits were calculated. Adequate documentation that both parties have agreed to all credit transfers within 30 working days, as defined in Section R307-8-1, following the close of the averaging period

must be included.

D. Retailers and wholesale purchaser-consumers within a control area must maintain the following records:

(1) the names, addresses and CAR, blender CAR, carrier, distributor, or reseller identification numbers of the parties from whom all shipments of gasoline were purchased or received, and the dates when they were received and for each shipment of gasoline bought, sold or transported:

(a) the transfer document as specified in Subsection R307-8-8.3 and

(b) a copy of each contract for delivery of oxygenated gasoline and

(2) data on every shipment of gasoline bought, sold or transported, including:

(a) volume of each shipment;

(b) for each oxygenate, the type, percent by volume and purity (if available);

(c) oxygen content by weight percent; and

(d) destination, as defined in Section R307-8-1, of each sale or shipment of gasoline; and

(3) the name and telephone number of the person responsible for maintaining the records and the address where the records are located, if the location of the records is different from the station or outlet location.

E. Carriers, distributors, resellers, terminal operators, and oxygenate blenders must keep a copy of the transfer document for each truckload or shipment of gasoline received, obtained, purchased, sold or dispensed.

2. Reports.

A. Each CAR or blender CAR that elects to comply with the average oxygen content standard specified in Section R307-8-3 by the compliance option specified in Subsection R307-8-5.2 shall submit a report to the executive secretary for each control period for each control area as defined in Section R307-8-1 reflecting the compliance information detailed in Subsection R307-8-5.2.

B. Each CAR or blender CAR that elects to comply with the average oxygen content standard specified in Section R307-8-3 shall submit a report to the executive secretary for each control period for each control area as defined in Section R307-8-1 reflecting the compliance information detailed in Subsection R307-8-5.3, including the volume of oxygenated gasoline sold or dispensed into each control area during the control period.

C. The report is due 30 working days, as defined in Section R307-8-1, after the last day of the control period for which the information is required. The report shall be filed using forms provided by the executive secretary.

3. Transfer documents. Each time that physical custody or title of gasoline destined for a control area changes hands other than when gasoline is sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser-consumer installation, the transferor shall provide to the transferee, in addition to, or as part of, normal bills of lading, invoices, etc., a document containing information regarding that shipment. This document shall accompany every shipment of gasoline to a control area after it has been dispensed by a terminal, or the information shall be included in the normal paperwork which accompanies every shipment of gasoline. The information shall legibly and conspicuously contain the following information:

A. the date of the transfer;

B. the name, address, and CAR, blender CAR, carrier, distributor, or reseller identification number, if applicable, of the transferor;

C. the name, address, and CAR, blender CAR, carrier, distributor, or reseller identification number, if applicable, of the transferee;

D. the volume of gasoline which is being transferred;

E. identification of the gasoline as oxygenated or, if non-oxygenated, with a statement labeling it as "Non-oxygenated gasoline, not for sale to ultimate consumer in a control area during a control period";

F. the location of the gasoline at the time of the transfer;

G. type of each oxygenate and percentage by volume for each oxygenate;

H. oxygen content by weight percent; and

I. for gasoline which is in the gasoline distribution network between the refinery or import installation and the control area terminal, for each oxygenate used, the type of oxygenate, its purity and percentage by volume and the oxygen content by weight percent.

R307-8-9. Prohibited Activities.

1. During the control period, no refiner, oxygenate blender, CAR, blender CAR, control area terminal operator, carrier, distributor or reseller may manufacturer, sell, offer for sale, dispense, supply, offer for supply, store, transport, or cause the transport of:

A. gasoline which contains less than 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1% oxygen, for use during the control period, in a control area unless clearly marked documents accompany the gasoline labeling it as "Non-oxygenated gasoline, not for sale to ultimate consumer in a control area during a control period"; or

B. gasoline represented as oxygenated which has an oxygen content which is improperly stated in the documents which accompany such gasoline.

2. No retailer or wholesale purchaser-consumer may dispense, offer for sale, sell or store, for use during the control period, gasoline which contains less than 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1% in a control area.

3. No person may operate as a CAR or blender CAR or hold themselves out as such unless they have been properly registered by the executive secretary. No CAR or blender CAR may offer for sale or store, sell, or dispense gasoline, to any person not registered as a CAR or blender CAR for use in a control area, unless:

A. the average oxygen content of the gasoline during the averaging period meets the standard established in Section R307-8-3; and

B. the gasoline contains at least 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1% on a per-gallon basis.

4. For terminals which sell or dispense gasoline intended for use in a control area during a control period, the terminal owner or operator may not accept gasoline into the terminal unless:

A. transfer documentation containing the information

specified in Subsection R307-8-8.3 accompanies the gasoline and

B. the terminal owner or operator conducts a quality assurance program to verify the accuracy of this information.

5. No person may sell or dispense non-oxygenated gasoline for use in any control area during the control period, unless:

A. the non-oxygenated gasoline is segregated from oxygenated gasoline;

B. clearly marked documents accompany the non-oxygenated gasoline labeling it as "non-oxygenated gasoline, not for sale to ultimate consumer in a control area during a control period," and

C. the non-oxygenated gasoline is in fact not sold or dispensed to ultimate consumers during the control period in the control area.

6. No named person may fail to comply with the recordkeeping and reporting requirements contained in Section R307-8-8.

7. No person may sell, dispense or transfer oxygenated gasoline, except for use by the ultimate consumer at a retail outlet or wholesale purchaser-consumer installation, without transfer documents which accurately contain the information required by Subsection R307-8-8.3.

8. Liability for violations of the prohibited activities.

A. Where the gasoline contained in any storage tank at any installation owned, leased, operated, controlled or supervised by any retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, or oxygenate blender is found in violation of the prohibitions described in Subsection R307-8-9.1.A or Subsection R307-8-9.2, the following persons shall be in violation:

(1) the retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, or oxygenate blender who owns, leases, operates, controls or supervises the installation where the violation is found; and

(2) each oxygenate blender, distributor, reseller, and carrier who, downstream of the control area terminal, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline which is in the storage tank containing gasoline found to be in violation.

B. Where the gasoline contained in any storage tank at any installation owned, leased, operated, controlled or supervised by any retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, or oxygenate blender is found in violation of the prohibitions described in Subsection R307-8-9.1.B or Subsection R307-8-9.2, the following persons shall be in violation:

(1) the retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, or oxygenate blender who owns, leases, operates, controls or supervises the installation where the violation is found; and

(2) each refiner, oxygenate blender, distributor, reseller, and carrier who manufactured, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline which is in the storage tank containing gasoline found to be in violation.

9. Defenses for prohibited activities.

A. In any case in which a refiner, oxygenate blender, distributor, reseller or carrier would be in violation under Subsection R307-8-9.1, that person shall not be in violation if they can demonstrate that they meet all of the following:

(1) that the violation was not caused by the regulated party or its employee or agent;

(2) that refiner, oxygenate blender, distributor, reseller or carrier possesses documents which should accompany the gasoline, which contain the information required by Section R307-8-8; and

(3) that refiner, oxygenate blender, distributor, reseller or carrier conducts a quality assurance sampling and testing program as described in Subsection R307-8-9.10.

B. In any case in which a retailer or wholesale purchaser-consumer would be in violation under Subsection R307-8-9.2, the retailer or wholesale purchaser-consumer shall not be in violation if it can demonstrate that they meet all of the following:

(1) that the violation was not caused by the regulated party or its employee or agent; and

(2) that the retailer or wholesale purchaser-consumer possess documents which should accompany the gasoline, which contain the information required by Section R307-8-8.

C. Where a violation is found at an installation which is operating under the corporate, trade or brand name of a refiner, that refiner must show, in addition to the defense elements required by Subsection R307-8-9.9.A, that the violation was caused by any of the following:

(1) an act in violation of law (other than the Clean Air Act or Rule R307-8), or an act of sabotage or vandalism, or

(2) the action of a reseller, distributor, oxygenate blender, carrier, or a retailer, or wholesale purchaser-consumer which is supplied by any of the persons listed in Subsection R307-8-9.9.A, in violation of a contractual undertaking imposed by the refiner designed to prevent such action, and despite periodic sampling and testing by the refiner to ensure compliance with such contractual obligation; or

(3) the action of any carrier or other distributor not subject to a contract with the refiner but engaged by the refiner for transportation of gasoline, despite specification or inspection of procedures and equipment by the refiner or periodic sampling and testing which are reasonably calculated to prevent such action.

D. In Section R307-8-9, the term "was caused" means that the party must demonstrate by specific showings or by direct evidence, that the violation was caused or must have been caused by another.

10. Quality Assurance Program. In order to demonstrate an acceptable quality assurance program, a party must conduct periodic sampling and testing to determine if the oxygenated gasoline has oxygen content which is consistent with the product transfer documentation.

R307-8-11. Labeling of Pumps.

1. Any person selling or dispensing oxygenated gasoline pursuant to Rule R307-8 is required to label the fuel dispensing system with one of the following notices.

A. "The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles.

This fuel contains up to (specify maximum percent by volume) (specific oxygenate or specific combination of oxygenates in concentrations of at least one percent)."

B. "The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles. This fuel contains up to (specify maximum percent by volume) (specific oxygenate or combination of oxygenates present in concentrations of at least one percent) from November 1 through February 29."

2. The label letters shall be block letters of no less than 20-point type, at least 1/16 inch stroke (width of type), and of a color that contrasts with the label background color. The label letters that specify maximum percent oxygenate by volume and that disclose the specific oxygenate shall be at least 1/2 inch in height, 1/16 inch stroke (width of type).

3. The label must be affixed to the upper one-half of the vertical surface of the pump on each side with gallonage and dollar amount meters from which gasoline can be dispensed and must be clearly readable to the public.

4. The retailer or wholesale purchaser-consumer shall be responsible for compliance with Section R307-8-11.

R307-8-12. Inspections.

Inspections of registered parties, control area retailers, refineries, control area terminals, oxygenate blenders and control area wholesale purchaser-consumers may include the following:

1. physical sampling, testing, and calculation of oxygen content of the gasoline as specified in Section R307-8-4;

2. review of documentation relating to the oxygenated gasoline program, including but not limited to records specified in Section R307-8-8; and

3. in the case of control area retailers and wholesale purchaser-consumers, verification that gasoline dispensing pumps are labeled in accordance with Section R307-8-11.

R307-8-13. Public and Industry Education Program.

The executive secretary shall provide to the affected public, mechanics, and industry information regarding the benefits of the program and other issues related to oxygenated gasoline.

KEY: air pollution control, motor vehicles, gasoline, petroleum

April 22, 1998 **19-2-101**

Notice of Continuation June 9, 1997 **19-2-104**

R313. Environmental Quality, Radiation Control.
R313-15. Standards for Protection Against Radiation.
R313-15-1. Purpose, Authority and Scope.

(1) R313-15 establishes standards for protection against ionizing radiation resulting from activities conducted pursuant to licenses issued by the Executive Secretary. These rules are issued pursuant to Sections 19-3-104(3) and 19-3-104(6).

(2) The requirements of Rule R313-15 are designed to control the receipt, possession, use, transfer, and disposal of sources of radiation by any licensee or registrant so the total dose to an individual, including doses resulting from all sources of radiation other than background radiation, does not exceed the standards for protection against radiation prescribed in Rule R313-15. However, nothing in Rule R313-15 shall be construed as limiting actions that may be necessary to protect health and safety.

(3) Except as specifically provided in other sections of these rules, Rule R313-15 applies to persons licensed or registered by the Executive Secretary to receive, possess, use, transfer, or dispose of sources of radiation. The limits in Rule R313-15 do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of medical diagnosis or therapy, to exposure from individuals administered radioactive material and released in accordance with Section R313-32-75, or to exposure from voluntary participation in medical research programs.

R313-15-2. Definitions.

"Annual limit on intake" (ALI) means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the reference man that would result in a committed effective dose equivalent of 0.05 Sv (5 rem) or a committed dose equivalent of 0.5 Sv (50 rem) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table I, Columns 1 and 2, of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference.

"Class" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: for Class D, Days, of less than ten days, for Class W, Weeks, from ten to 100 days , and for Class Y, Years, of greater than 100 days. For purposes of these rules, "lung class" and "inhalation class" are equivalent terms.

"Constraint (dose constraint)" in accordance with 10 CFR 20.1003, means a value above which specified licensee actions are required.

"Declared pregnant woman" means a woman who has voluntarily informed her employer, in writing, of her pregnancy and the estimated date of conception.

"Derived air concentration" (DAC) means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of 2,000 hours under conditions of light work, results in an intake of one ALI. For purposes of these rules, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for 2,000 hours in a year. DAC values are given in Table I, Column 3, of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference.

"Derived air concentration-hour" (DAC-hour) means the product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee or registrant may take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of 0.05 Sv (5 rem).

"Dosimetry processor" means an individual or an organization that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

"Inhalation class", refer to "Class".

"Labeled package" means a package labeled with a Radioactive White I, Yellow II, or Yellow III label as specified in U.S. Department of Transportation regulations 49 CFR 172.403 and 49 CFR 172.436 through 440, 1997 ed. Labeling of packages containing radioactive materials is required by the U.S. Department of Transportation if the amount and type of radioactive material exceeds the limits for an excepted quantity or article as defined and limited by U.S. Department of Transportation regulations 49 CFR 173.403(m) and (w) and 49 CFR 173.421 through 424, 1997 ed.

"Lung class", refer to "Class".

"Nonstochastic effect" means a health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of these rules, "deterministic effect" is an equivalent term.

"Planned special exposure" means an infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

"Quarter" means a period of time equal to one-fourth of the year observed by the licensee, approximately 13 consecutive weeks, providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

"Reference Man" means a hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics may be used by researchers and public health employees to standardize results of experiments and to relate biological insult to a common base. A description of the Reference Man is contained in the International Commission on Radiological Protection report, ICRP Publication 23, "Report of the Task Group on Reference Man."

"Respiratory protective equipment" means an apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials.

"Sanitary sewerage" means a system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee or registrant.

"Stochastic effect" means a health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of these rules,

"probabilistic effect" is an equivalent term.

"Very high radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving an absorbed dose in excess of five Gy (500 rad) in one hour at one meter from a source of radiation or from any surface that the radiation penetrates. At very high doses received at high dose rates, units of absorbed dose, gray and rad, are appropriate, rather than units of dose equivalent, sievert and rem.

"Weighting factor" w_T for an organ or tissue (T) means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_T are:

TABLE

ORGAN DOSE WEIGHTING FACTORS

Organ or Tissue	w_T
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30(1)
Whole Body	1.00(2)

(1) 0.30 results from 0.06 for each of five "remainder" organs, excluding the skin and the lens of the eye, that receive the highest doses.
(2) For the purpose of weighting the external whole body dose, for adding it to the internal dose, a single weighting factor, w_T = 1.0, has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until such time as specific guidance is issued.

R313-15-3. Implementation.

(1) Any existing license or registration condition that is more restrictive than Rule R313-15 remains in force until there is an amendment or renewal of the license or registration.

(2) If a license or registration condition exempts a licensee or registrant from a provision of Rule R313-15 in effect on or before January 1, 1994, it also exempts the licensee or registrant from the corresponding provision of Rule R313-15.

(3) If a license or registration condition cites provisions of Rule R313-15 in effect prior to January 1, 1994, which do not correspond to any provisions of Rule R313-15, the license or registration condition remains in force until there is an amendment or renewal of the license or registration that modifies or removes this condition.

R313-15-101. Radiation Protection Programs.

(1) Each licensee or registrant shall develop, document, and implement a radiation protection program sufficient to ensure compliance with the provisions of Rule R313-15. See Section R313-15-1102 for recordkeeping requirements relating to these programs.

(2) The licensee or registrant shall use, to the extent practical, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and public doses that are as low as is reasonably achievable (ALARA).

(3) The licensee or registrant shall, at intervals not to exceed 12 months, review the radiation protection program content and implementation.

(4) To implement the ALARA requirements of Subsection R313-15-101(2), and notwithstanding the requirements in Section R313-15-301, a constraint on air emissions of radioactive material to the environment, excluding radon-222 and its decay products, shall be established by licensees or registrants such that the individual member of the public likely to receive the highest dose will not be expected to receive a total effective dose equivalent in excess of 0.1 mSv (10 mrem) per year from these emissions. If a licensee or registrant subject to this requirement exceeds this dose constraint, the licensee or registrant shall report the exceedance as provided in Section R313-15-1203 and promptly take appropriate corrective action to ensure against recurrence.

R313-15-201. Occupational Dose Limits for Adults.

(1) The licensee or registrant shall control the occupational dose to individual adults, except for planned special exposures pursuant to Section R313-15-206, to the following dose limits:

(a) An annual limit, which is the more limiting of:

(i) The total effective dose equivalent being equal to 0.05 Sv (5 rem); or

(ii) The sum of the deep dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye being equal to 0.50 Sv (50 rem).

(b) The annual limits to the lens of the eye, to the skin, and to the extremities which are:

(i) An eye dose equivalent of 0.15 Sv (15 rem), and

(ii) A shallow dose equivalent of 0.50 Sv (50 rem) to the skin or to any extremity.

(2) Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, shall be subtracted from the limits for planned special exposures that the individual may receive during the current year and during the individual's lifetime. See Subsections R313-15-206(5)(a) and R313-15-206(5)(b).

(3) The assigned deep dose equivalent and shallow dose equivalent shall be for the portion of the body receiving the highest exposure determined as follows:

(a) The deep dose equivalent, eye dose equivalent and shallow dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable; or

(b) When a protective apron is worn while working with medical fluoroscopic equipment and monitoring is conducted as specified in Subsection R313-15-502(1)(d), the effective dose equivalent for external radiation shall be determined as follows:

(i) When only one individual monitoring device is used and it is located at the neck outside the protective apron, and the reported dose exceeds 25 percent of the limit specified in Subsection R313-15-201(1), the reported deep dose equivalent value multiplied by 0.3 shall be the effective dose equivalent for external radiation; or

(ii) When individual monitoring devices are worn, both under the protective apron at the waist and outside the

protective apron at the neck, the effective dose equivalent for external radiation shall be assigned the value of the sum of the deep dose equivalent reported for the individual monitoring device located at the waist under the protective apron multiplied by 1.5 and the deep dose equivalent reported for the individual monitoring device located at the neck outside the protective apron multiplied by 0.04.

(4) Derived air concentration (DAC) and annual limit on intake (ALI) values are specified in Table I of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference, and may be used to determine the individual's dose and to demonstrate compliance with the occupational dose limits. See Section R313-15-1107.

(5) Notwithstanding the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to ten milligrams in a week in consideration of chemical toxicity. See footnote 3, of Appendix B of 10 CFR 20.1001 to 20-2402, 1997 ed., which is incorporated by reference.

(6) The licensee or registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by any other person. See Subsection R313-15-205(5).

R313-15-202. Compliance with Requirements for Summation of External and Internal Doses.

(1) If the licensee or registrant is required to monitor pursuant to both Subsections R313-15-502(1) and R313-15-502(2), the licensee or registrant shall demonstrate compliance with the dose limits by summing external and internal doses. If the licensee or registrant is required to monitor only pursuant to Subsection R313-15-502(1) or only pursuant to Subsection R313-15-502(2), then summation is not required to demonstrate compliance with the dose limits. The licensee or registrant may demonstrate compliance with the requirements for summation of external and internal doses pursuant to Subsections R313-15-202(2), R313-15-202(3) and R313-15-202(4). The dose equivalents for the lens of the eye, the skin, and the extremities are not included in the summation, but are subject to separate limits.

(2) Intake by Inhalation. If the only intake of radionuclides is by inhalation, the total effective dose equivalent limit is not exceeded if the sum of the deep dose equivalent divided by the total effective dose equivalent limit, and one of the following, does not exceed unity:

(a) The sum of the fractions of the inhalation ALI for each radionuclide, or

(b) The total number of derived air concentration-hours (DAC-hours) for all radionuclides divided by 2,000, or

(c) The sum of the calculated committed effective dose equivalents to all significantly irradiated organs or tissues (T) calculated from bioassay data using appropriate biological models and expressed as a fraction of the annual limit. For purposes of this requirement, an organ or tissue is deemed to be significantly irradiated if, for that organ or tissue, the product of the weighting factors, w_T, and the committed dose equivalent, $H_{T,50}$, per unit intake is greater than ten percent of the maximum weighted value of $H_{T,50}$, that is, $w_T H_{T,50}$, per unit intake for any organ or tissue.

(3) Intake by Oral Ingestion. If the occupationally exposed individual receives an intake of radionuclides by oral ingestion greater than ten percent of the applicable oral ALI, the licensee or registrant shall account for this intake and include it in demonstrating compliance with the limits.

(4) Intake through Wounds or Absorption through Skin. The licensee or registrant shall evaluate and, to the extent practical, account for intakes through wounds or skin absorption. The intake through intact skin has been included in the calculation of DAC for hydrogen-3 and does not need to be evaluated or accounted for pursuant to Subsection R313-15-202(4).

R313-15-203. Determination of External Dose from Airborne Radioactive Material.

(1) Licensees or registrants shall, when determining the dose from airborne radioactive material, include the contribution to the deep dose equivalent, eye dose equivalent, and shallow dose equivalent from external exposure to the radioactive cloud. See footnotes 1 and 2 of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference.

(2) Airborne radioactivity measurements and DAC values shall not be used as the primary means to assess the deep dose equivalent when the airborne radioactive material includes radionuclides other than noble gases or if the cloud of airborne radioactive material is not relatively uniform. The determination of the deep dose equivalent to an individual shall be based upon measurements using instruments or individual monitoring devices.

R313-15-204. Determination of Internal Exposure.

(1) For purposes of assessing dose used to determine compliance with occupational dose equivalent limits, the licensee or registrant shall, when required pursuant to Section R313-15-502, take suitable and timely measurements of:

(a) Concentrations of radioactive materials in air in work areas; or

(b) Quantities of radionuclides in the body; or

(c) Quantities of radionuclides excreted from the body; or

(d) Combinations of these measurements.

(2) Unless respiratory protective equipment is used, as provided in Section R313-15-703, or the assessment of intake is based on bioassays, the licensee or registrant shall assume that an individual inhales radioactive material at the airborne concentration in which the individual is present.

(3) When specific information on the physical and biochemical properties of the radionuclides taken into the body or the behavior of the material in an individual is known, the licensee or registrant may:

(a) Use that information to calculate the committed effective dose equivalent, and, if used, the licensee or registrant shall document that information in the individual's record; and

(b) Upon prior approval of the Executive Secretary, adjust the DAC or ALI values to reflect the actual physical and chemical characteristics of airborne radioactive material, for example, aerosol size distribution or density; and

(c) Separately assess the contribution of fractional intakes of Class D, W, or Y compounds of a given radionuclide to the committed effective dose equivalent. See Appendix B of 10

CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference.

(4) If the licensee or registrant chooses to assess intakes of Class Y material using the measurements given in Subsections R313-15-204(1)(b) or R313-15-204(1)(c), the licensee or registrant may delay the recording and reporting of the assessments for periods up to seven months, unless otherwise required by Section R313-15-1202 or Section R313-15-1203. This delay permits the licensee or registrant to make additional measurements basic to the assessments.

(5) If the identity and concentration of each radionuclide in a mixture are known, the fraction of the DAC applicable to the mixture for use in calculating DAC-hours shall be either:

(a) The sum of the ratios of the concentration to the appropriate DAC value, that is, D, W, or Y, from Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference, for each radionuclide in the mixture; or

(b) The ratio of the total concentration for all radionuclides in the mixture to the most restrictive DAC value for any radionuclide in the mixture.

(6) If the identity of each radionuclide in a mixture is known, but the concentration of one or more of the radionuclides in the mixture is not known, the DAC for the mixture shall be the most restrictive DAC of any radionuclide in the mixture.

(7) When a mixture of radionuclides in air exists, a licensee or registrant may disregard certain radionuclides in the mixture if:

(a) The licensee or registrant uses the total activity of the mixture in demonstrating compliance with the dose limits in Section R313-15-201 and in complying with the monitoring requirements in Subsection R313-15-502(2), and

(b) The concentration of any radionuclide disregarded is less than ten percent of its DAC, and

(c) The sum of these percentages for all of the radionuclides disregarded in the mixture does not exceed 30 percent.

(8) When determining the committed effective dose equivalent, the following information may be considered:

(a) In order to calculate the committed effective dose equivalent, the licensee or registrant may assume that the inhalation of one ALI, or an exposure of 2,000 DAC-hours, results in a committed effective dose equivalent of 0.05 Sv (5 rem) for radionuclides that have their ALIs or DACs based on the committed effective dose equivalent.

(b) For an ALI and the associated DAC determined by the nonstochastic organ dose limit of 0.50 Sv (50 rem), the intake of radionuclides that would result in a committed effective dose equivalent of 0.05 Sv (5 rem), that is, the stochastic ALI, is listed in parentheses in Table I of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference. The licensee or registrant may, as a simplifying assumption, use the stochastic ALI to determine committed effective dose equivalent. However, if the licensee or registrant uses the stochastic ALI, the licensee or registrant shall also demonstrate that the limit in Subsection R313-15-201(1)(a)(ii) is met.

R313-15-205. Determination of Prior Occupational Dose.

(1) For each individual likely to receive, in a year, an occupational dose requiring monitoring pursuant to Section R313-15-502, the licensee or registrant shall:

(a) Determine the occupational radiation dose received during the current year; and

(b) Attempt to obtain the records of cumulative occupational radiation dose. A licensee or registrant may accept, as the record of cumulative radiation dose, an up-to-date form DRC-05 or equivalent, signed by the individual and countersigned by an appropriate official of the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant.

(2) Prior to permitting an individual to participate in a planned special exposure, the licensee or registrant shall determine:

(a) The internal and external doses from all previous planned special exposures; and

(b) All doses in excess of the limits, including doses received during accidents and emergencies, received during the lifetime of the individual.

(3) In complying with the requirements of Subsection R313-15-205(1), a licensee or registrant may:

(a) Accept, as a record of the occupational dose that the individual received during the current year, a written signed statement from the individual, or from the individual's most recent employer for work involving radiation exposure, that discloses the nature and the amount of any occupational dose that the individual received during the current year; and

(b) Obtain reports of the individual's dose equivalents from the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant, by telephone, telegram, facsimile, other electronic media or letter. The licensee or registrant shall request a written verification of the dose data if the authenticity of the transmitted report cannot be established.

(4) The licensee or registrant shall record the exposure history, as required by Subsection R313-15-205(1), on form DRC-05, or other clear and legible record, of all the information required on that form.

(a) The form or record shall show each period in which the individual received occupational exposure to radiation or radioactive material and shall be signed by the individual who received the exposure. For each period for which the licensee or registrant obtains reports, the licensee or registrant shall use the dose shown in the report in preparing form DRC-05 or equivalent. For any period in which the licensee or registrant does not obtain a report, the licensee or registrant shall place a notation on form DRC-05 or equivalent indicating the periods of time for which data are not available.

(b) For the purpose of complying with this requirement, licensees or registrants are not required to reevaluate the separate external dose equivalents and internal committed dose equivalents or intakes of radionuclides assessed pursuant to the rules in Rule R313-15 in effect before January 1, 1994. Further, occupational exposure histories obtained and recorded on form DRC-05 or equivalent before January 1, 1994, would not have included effective dose equivalent, but may be used in the

absence of specific information on the intake of radionuclides by the individual.

(5) If the licensee or registrant is unable to obtain a complete record of an individual's current and previously accumulated occupational dose, the licensee or registrant shall assume:

(a) In establishing administrative controls under Subsection R313-15-201(6) for the current year, that the allowable dose limit for the individual is reduced by 12.5 mSv (1.25 rem) for each quarter for which records were unavailable and the individual was engaged in activities that could have resulted in occupational radiation exposure; and

(b) That the individual is not available for planned special exposures.

(6) The licensee or registrant shall retain the records on form DRC-05 or equivalent until the Executive Secretary terminates each pertinent license or registration requiring this record. The licensee or registrant shall retain records used in preparing form DRC-05 or equivalent for three years after the record is made.

R313-15-206. Planned Special Exposures.

A licensee or registrant may authorize an adult worker to receive doses in addition to and accounted for separately from the doses received under the limits specified in Section R313-15-201 provided that each of the following conditions is satisfied:

(1) The licensee or registrant authorizes a planned special exposure only in an exceptional situation when alternatives that might avoid the higher exposure are unavailable or impractical.

(2) The licensee or registrant, and employer if the employer is not the licensee or registrant, specifically authorizes the planned special exposure, in writing, before the exposure occurs.

(3) Before a planned special exposure, the licensee or registrant ensures that each individual involved is:

(a) Informed of the purpose of the planned operation; and

(b) Informed of the estimated doses and associated potential risks and specific radiation levels or other conditions that might be involved in performing the task; and

(c) Instructed in the measures to be taken to keep the dose ALARA considering other risks that may be present.

(4) Prior to permitting an individual to participate in a planned special exposure, the licensee or registrant ascertains prior doses as required by Subsection R313-15-205(2) during the lifetime of the individual for each individual involved.

(5) Subject to Subsection R313-15-201(2), the licensee or registrant shall not authorize a planned special exposure that would cause an individual to receive a dose from all planned special exposures and all doses in excess of the limits to exceed:

(a) The numerical values of any of the dose limits in Subsection R313-15-201(1) in any year; and

(b) Five times the annual dose limits in Subsection R313-15-201(1) during the individual's lifetime.

(6) The licensee or registrant maintains records of the conduct of a planned special exposure in accordance with Section R313-15-1106 and submits a written report in accordance with Section R313-15-1204.

(7) The licensee or registrant records the best estimate of the dose resulting from the planned special exposure in the individual's record and informs the individual, in writing, of the dose within 30 days from the date of the planned special exposure. The dose from planned special exposures shall not be considered in controlling future occupational dose of the individual pursuant to Subsection R313-15-201(1) but shall be included in evaluations required by Subsections R313-15-206(4) and R313-15-206(5).

R313-15-207. Occupational Dose Limits for Minors.

The annual occupational dose limits for minors are ten percent of the annual occupational dose limits specified for adult workers in Section R313-15-201.

R313-15-208. Dose to an Embryo/Fetus.

(1) The licensee or registrant shall ensure that the dose to an embryo/fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed five mSv (0.5 rem). See Section R313-15-1107 for recordkeeping requirements.

(2) The licensee or registrant shall make efforts to avoid substantial variation above a uniform monthly exposure rate to a declared pregnant woman so as to satisfy the limit in Subsection R313-15-208(1).

(3) The dose to an embryo/fetus shall be taken as the sum of:

(a) The dose to the embryo/fetus from radionuclides in the embryo/fetus and radionuclides in the declared pregnant woman; and

(b) The dose that is most representative of the dose to the embryo/fetus from external radiation, that is, in the mother's lower torso region.

(i) If multiple measurements have not been made, assignment of the highest deep dose equivalent for the declared pregnant woman shall be the dose to the embryo/fetus, in accordance with Subsection R313-15-201(3); or

(ii) If multiple measurements have been made, assignment of the deep dose equivalent for the declared pregnant woman from the individual monitoring device which is most representative of the dose to the embryo/fetus shall be the dose to the embryo fetus. Assignment of the highest deep dose equivalent for the declared pregnant woman to the embryo/fetus is not required unless that dose is also the most representative deep dose equivalent for the region of the embryo/fetus.

(4) If by the time the woman declares pregnancy to the licensee or registrant, the dose to the embryo/fetus has exceeded 4.5 mSv (0.45 rem) the licensee or registrant shall be deemed to be in compliance with Subsection R313-15-208(1) if the additional dose to the embryo/fetus does not exceed 0.50 mSv (0.05 rem) during the remainder of the pregnancy.

R313-15-301. Dose Limits for Individual Members of the Public.

(1) Each licensee or registrant shall conduct operations so that:

(a) Except as provided in Subsection R313-15-301(1)(c), the total effective dose equivalent to individual members of the public from the licensed or registered operation does not exceed one mSv (0.1 rem) in a year, exclusive of the dose contribution

from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with Section R313-32-75, from voluntary participation in medical research programs, and from the licensee's or registrant's disposal of radioactive material into sanitary sewerage in accordance with Section R313-15-1003; and

(b) The dose in any unrestricted area from external sources, exclusive of the dose contributions from patients administered radioactive material and released in accordance with Section R313-32-75, does not exceed 0.02 mSv (0.002 rem) in any one hour; and

(c) The total effective dose equivalent to individual members of the public from infrequent exposure to radiation from radiation machines does not exceed 5 mSv (0.5 rem) in a year.

(2) If the licensee or registrant permits members of the public to have access to controlled areas, the limits for members of the public continue to apply to those individuals.

(3) A licensee, registrant, or an applicant for a license or registration may apply for prior Executive Secretary authorization to operate up to an annual dose limit for an individual member of the public of five mSv (0.5 rem). This application shall include the following information:

(a) Demonstration of the need for and the expected duration of operations in excess of the limit in Subsection R313-15-301(1); and

(b) The licensee's or registrant's program to assess and control dose within the five mSv (0.5 rem) annual limit; and

(c) The procedures to be followed to maintain the dose ALARA.

(4) The Executive Secretary may impose additional restrictions on radiation levels in unrestricted areas and on the total quantity of radionuclides that a licensee or registrant may release in effluents in order to restrict the collective dose.

R313-15-302. Compliance with Dose Limits for Individual Members of the Public.

(1) The licensee or registrant shall make or cause to be made surveys of radiation levels in unrestricted and controlled areas and radioactive materials in effluents released to unrestricted and controlled areas to demonstrate compliance with the dose limits for individual members of the public in Section R313-15-301.

(2) A licensee or registrant shall show compliance with the annual dose limit in Section R313-15-301 by:

(a) Demonstrating by measurement or calculation that the total effective dose equivalent to the individual likely to receive the highest dose from the licensed or registered operation does not exceed the annual dose limit; or

(b) Demonstrating that:

(i) The annual average concentrations of radioactive material released in gaseous and liquid effluents at the boundary of the unrestricted area do not exceed the values specified in Table II of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference; and

(ii) If an individual were continuously present in an unrestricted area, the dose from external sources would not exceed 0.02 mSv (0.002 rem) in an hour and 0.50 mSv (0.05 rem) in a year.

(3) Upon approval from the Executive Secretary, the licensee or registrant may adjust the effluent concentration values in Appendix B, Table II of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference, for members of the public, to take into account the actual physical and chemical characteristics of the effluents, such as, aerosol size distribution, solubility, density, radioactive decay equilibrium, and chemical form.

R313-15-401. Testing for Leakage or Contamination of Sealed Sources.

(1) The licensee or registrant in possession of any sealed source shall assure that:

(a) Each sealed source, except as specified in Subsection R313-15-401(2), is tested for leakage or contamination and the test results are received before the sealed source is put into use unless the licensee or registrant has a certificate from the transferor indicating that the sealed source was tested within six months before transfer to the licensee or registrant.

(b) Each sealed source that is not designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed six months or at alternative intervals approved by the Executive Secretary, an Agreement State, a Licensing State, or the U.S. Nuclear Regulatory Commission.

(c) Each sealed source that is designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed three months or at alternative intervals approved by the Executive Secretary, an Agreement State, a Licensing State, or the Nuclear Regulatory Commission.

(d) For each sealed source that is required to be tested for leakage or contamination, at any other time there is reason to suspect that the sealed source might have been damaged or might be leaking, the licensee or registrant shall assure that the sealed source is tested for leakage or contamination before further use.

(e) Tests for leakage for all sealed sources, except brachytherapy sources manufactured to contain radium, shall be capable of detecting the presence of 185 Bq (0.005 uCi) of radioactive material on a test sample. Test samples shall be taken from the sealed source or from the surfaces of the container in which the sealed source is stored or mounted on which one might expect contamination to accumulate. For a sealed source contained in a device, test samples are obtained when the source is in the "off" position.

(f) The test for leakage for brachytherapy sources manufactured to contain radium shall be capable of detecting an absolute leakage rate of 37 Bq (0.001 uCi) of radon-222 in a 24 hour period when the collection efficiency for radon-222 and its daughters has been determined with respect to collection method, volume and time.

(g) Tests for contamination from radium daughters shall be taken on the interior surface of brachytherapy source storage containers and shall be capable of detecting the presence of 185 Bq (0.005 uCi) of a radium daughter which has a half-life greater than four days.

(2) A licensee or registrant need not perform tests for leakage or contamination on the following sealed sources:

(a) Sealed sources containing only radioactive material

with a half-life of less than 30 days;

(b) Sealed sources containing only radioactive material as a gas;

(c) Sealed sources containing 3.7 MBq (100 uCi) or less of beta or photon-emitting material or 370 kBq (ten uCi) or less of alpha-emitting material;

(d) Sealed sources containing only hydrogen-3;

(e) Seeds of iridium-192 encased in nylon ribbon; and

(f) Sealed sources, except teletherapy and brachytherapy sources, which are stored, not being used and identified as in storage. The licensee or registrant shall, however, test each such sealed source for leakage or contamination and receive the test results before any use or transfer unless it has been tested for leakage or contamination within six months before the date of use or transfer.

(3) Tests for leakage or contamination from sealed sources shall be performed by persons specifically authorized by the Executive Secretary, an Agreement State, a Licensing State, or the U.S. Nuclear Regulatory Commission to perform such services.

(4) Test results shall be kept in units of becquerel or microcurie and maintained for inspection by representatives of the Executive Secretary. Records of test results for sealed sources shall be made pursuant to Section R313-15-1104.

(5) The following shall be considered evidence that a sealed source is leaking:

(a) The presence of 185 Bq (0.005 uCi) or more of removable contamination on any test sample.

(b) Leakage of 37 Bq (0.001 uCi) of radon-222 per 24 hours for brachytherapy sources manufactured to contain radium.

(c) The presence of removable contamination resulting from the decay of 185 Bq (0.005 uCi) or more of radium.

(6) The licensee or registrant shall immediately withdraw a leaking sealed source from use and shall take action to prevent the spread of contamination. The leaking sealed source shall be repaired or disposed of in accordance with Rule R313-15.

(7) Reports of test results for leaking or contaminated sealed sources shall be made pursuant to Section R313-15-1208.

R313-15-501. Surveys and Monitoring - General.

(1) Each licensee or registrant shall make, or cause to be made, surveys that:

(a) Are necessary for the licensee or registrant to comply with Rule R313-15; and

(b) Are necessary under the circumstances to evaluate:

(i) Radiation levels; and

(ii) Concentrations or quantities of radioactive material; and

(iii) The potential radiological hazards that could be present.

(2) The licensee or registrant shall ensure that instruments and equipment used for quantitative radiation measurements, for example, dose rate and effluent monitoring, are calibrated at intervals not to exceed 12 months for the radiation measured, except when a more frequent interval is specified in another applicable part of these rules or a license condition.

(3) All personnel dosimeters, except for direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to any extremity, that require processing to determine the radiation dose and that are used by licensees and registrants to comply with Section R313-15-201, with other applicable provisions of these rules, or with conditions specified in a license or registration shall be processed and evaluated by a dosimetry processor:

(a) Holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology; and

(b) Approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

(4) The licensee or registrant shall ensure that adequate precautions are taken to prevent a deceptive exposure of an individual monitoring device.

R313-15-502. Conditions Requiring Individual Monitoring of External and Internal Occupational Dose.

Each licensee or registrant shall monitor exposures from sources of radiation at levels sufficient to demonstrate compliance with the occupational dose limits of Rule R313-15. As a minimum:

(1) Each licensee or registrant shall monitor occupational exposure to radiation and shall supply and require the use of individual monitoring devices by:

(a) Adults likely to receive, in one year from sources external to the body, a dose in excess of ten percent of the limits in Subsection R313-15-201(1); and

(b) Minors and declared pregnant women likely to receive, in one year from sources external to the body, a dose in excess of ten percent of any of the applicable limits in Sections R313-15-207 or R313-15-208; and

(c) Individuals entering a high or very high radiation area; and

(d) Individuals working with medical fluoroscopic equipment.

(i) An individual monitoring device used for the dose to an embryo/fetus of a declared pregnant woman, pursuant to Subsection R313-15-208(1), shall be located under the protective apron at the waist.

(A) If an individual monitoring device worn by a declared pregnant woman has a monthly reported dose equivalent value in excess of 0.5 mSv (50 mrem), the value to be used for determining the dose to the embryo/fetus, pursuant to Subsection R313-15-208(3)(a) for radiation from medical fluoroscopy, may be the value reported by the individual monitoring device worn at the waist underneath the protective apron which has been corrected for the potential overestimation of dose recorded by the monitoring device because of the overlying tissue of the pregnant individual. This correction shall be performed by a radiation safety officer of an institutional radiation safety committee, a qualified expert approved by the Board, or a representative of the Executive Secretary.

(ii) An individual monitoring device used for eye dose equivalent shall be located at the neck, or an unshielded location closer to the eye, outside the protective apron.

(iii) When only one individual monitoring device is used to determine the effective dose equivalent for external radiation pursuant to Subsection R313-15-201(3)(b), it shall be located at the neck outside the protective apron. When a second individual monitoring device is used, for the same purpose, it shall be located under the protective apron at the waist. Note: The second individual monitoring device is required for a declared pregnant woman.

(2) Each licensee or registrant shall monitor, to determine compliance with Section R313-15-204, the occupational intake of radioactive material by and assess the committed effective dose equivalent to:

(a) Adults likely to receive, in one year, an intake in excess of ten percent of the applicable ALI in Table I, Columns 1 and 2, of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference; and

(b) Minors and declared pregnant women likely to receive, in one year, a committed effective dose equivalent in excess of 0.50 mSv (0.05 rem).

R313-15-503. Location of Individual Monitoring Devices.

Each licensee or registrant shall ensure that individuals who are required to monitor occupational doses in accordance with Subsection R313-15-502(1) wear individual monitoring devices as follows:

(1) An individual monitoring device used for monitoring the dose to the whole body shall be worn at the unshielded location of the whole body likely to receive the highest exposure. When a protective apron is worn, the location of the individual monitoring device is typically at the neck (collar).

(2) An individual monitoring device used for monitoring the dose to an embryo/fetus of a declared pregnant woman, pursuant to Subsection R313-15-208(1), shall be located at the waist under any protective apron being worn by the woman.

(3) An individual monitoring device used for monitoring the eye dose equivalent, to demonstrate compliance with Subsection R313-15-201(1)(b)(i), shall be located at the neck (collar), outside any protective apron being worn by the monitored individual, or at an unshielded location closer to the eye.

(4) An individual monitoring device used for monitoring the dose to the extremities, to demonstrate compliance with Subsection R313-15-201(1)(b)(ii), shall be worn on the extremity likely to receive the highest exposure. Each individual monitoring device shall be oriented to measure the highest dose to the extremity being monitored.

R313-15-601. Control of Access to High Radiation Areas.

(1) The licensee or registrant shall ensure that each entrance or access point to a high radiation area has one or more of the following features:

(a) A control device that, upon entry into the area, causes the level of radiation to be reduced below that level at which an individual might receive a deep dose equivalent of one mSv (0.1 rem) in one hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates; or

(b) A control device that energizes a conspicuous visible or audible alarm signal so that the individual entering the high radiation area and the supervisor of the activity are made aware of the entry; or

(c) Entryways that are locked, except during periods when access to the areas is required, with positive control over each individual entry.

(2) In place of the controls required by Subsection R313-15-601(1) for a high radiation area, the licensee or registrant may substitute continuous direct or electronic surveillance that is capable of preventing unauthorized entry.

(3) The licensee or registrant may apply to the Executive Secretary for approval of alternative methods for controlling access to high radiation areas.

(4) The licensee or registrant shall establish the controls required by Subsections R313-15-601(1) and R313-15-601(3) in a way that does not prevent individuals from leaving a high radiation area.

(5) The licensee or registrant is not required to control each entrance or access point to a room or other area that is a high radiation area solely because of the presence of radioactive materials prepared for transport and packaged and labeled in accordance with the rules of the U.S. Department of Transportation provided that:

(a) The packages do not remain in the area longer than three days; and

(b) The dose rate at one meter from the external surface of any package does not exceed 0.1 mSv (0.01 rem) per hour.

(6) The licensee or registrant is not required to control entrance or access to rooms or other areas in hospitals solely because of the presence of patients containing radioactive material, provided that there are personnel in attendance who are taking the necessary precautions to prevent the exposure of individuals to radiation or radioactive material in excess of the established limits in Rule R313-15 and to operate within the ALARA provisions of the licensee's or registrant's radiation protection program.

(7) The registrant is not required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a high radiation area as described in Section R313-15-601 if the registrant has met all the specific requirements for access and control specified in other applicable sections of these rules, such as, Rule R313-36 for industrial radiography, Rule R313-28 for x rays in the healing arts, Rule R313-30 for therapeutic radiation machines, and Rule R313-35 for industrial use of x-ray systems.

R313-15-602. Control of Access to Very High Radiation Areas.

(1) In addition to the requirements in Section R313-15-601, the licensee or registrant shall institute measures to ensure that an individual is not able to gain unauthorized or inadvertent access to areas in which radiation levels could be encountered at five Gy (500 rad) or more in one hour at one meter from a source of radiation or any surface through which the radiation penetrates. This requirement does not apply to rooms or areas in which diagnostic x-ray systems are the only source of radiation, or to non-self-shielded irradiators.

(2) The registrant is not required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a very high radiation area as described in Subsection R313-15-602(1) if the registrant has met all the

specific requirements for access and control specified in other applicable sections of these rules, such as, Rule R313-36 for industrial radiography, Rule R313-28 for x rays in the healing arts, Rule R313-30 for therapeutic radiation machines, and Rule R313-35 for industrial use of x-ray systems.

R313-15-603. Control of Access to Very High Radiation Areas -- Irradiators.

(1) Section R313-15-603 applies to licensees or registrants with sources of radiation in non-self-shielded irradiators. Section R313-15-603 does not apply to sources of radiation that are used in teletherapy, in industrial radiography, or in completely self-shielded irradiators in which the source of radiation is both stored and operated within the same shielding radiation barrier and, in the designed configuration of the irradiator, is always physically inaccessible to any individual and cannot create a high levels of radiation in an area that is accessible to any individual.

(2) Each area in which there may exist radiation levels in excess of five Gy (500 rad) in one hour at one meter from a source of radiation that is used to irradiate materials shall meet the following requirements:

(a) Each entrance or access point shall be equipped with entry control devices which:

(i) Function automatically to prevent any individual from inadvertently entering a very high radiation area; and

(ii) Permit deliberate entry into the area only after a control device is actuated that causes the radiation level within the area, from the source of radiation, to be reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour; and

(iii) Prevent operation of the source of radiation if it would produce radiation levels in the area that could result in a deep dose equivalent to an individual in excess of one mSv (0.1 rem) in one hour.

(b) Additional control devices shall be provided so that, upon failure of the entry control devices to function as required by Subsection R313-15-603(2)(a):

(i) The radiation level within the area, from the source of radiation, is reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour; and

(ii) Conspicuous visible and audible alarm signals are generated to make an individual attempting to enter the area aware of the hazard and at least one other authorized individual, who is physically present, familiar with the activity, and prepared to render or summon assistance, aware of the failure of the entry control devices.

(c) The licensee or registrant shall provide control devices so that, upon failure or removal of physical radiation barriers other than the sealed source's shielded storage container:

(i) The radiation level from the source of radiation is reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour; and

(ii) Conspicuous visible and audible alarm signals are generated to make potentially affected individuals aware of the hazard and the licensee or registrant or at least one other individual, who is familiar with the activity and prepared to render or summon assistance, aware of the failure or removal of the physical barrier.

(d) When the shield for stored sealed sources is a liquid, the licensee or registrant shall provide means to monitor the integrity of the shield and to signal, automatically, loss of adequate shielding.

(e) Physical radiation barriers that comprise permanent structural components, such as walls, that have no credible probability of failure or removal in ordinary circumstances need not meet the requirements of Subsections R313-15-603(2)(c) and R313-15-603(2)(d).

(f) Each area shall be equipped with devices that will automatically generate conspicuous visible and audible alarm signals to alert personnel in the area before the source of radiation can be put into operation and in time for any individual in the area to operate a clearly identified control device, which shall be installed in the area and which can prevent the source of radiation from being put into operation.

(g) Each area shall be controlled by use of such administrative procedures and such devices as are necessary to ensure that the area is cleared of personnel prior to each use of the source of radiation.

(h) Each area shall be checked by a radiation measurement to ensure that, prior to the first individual's entry into the area after any use of the source of radiation, the radiation level from the source of radiation in the area is below that at which it would be possible for an individual to receive a deep dose equivalent in excess of one mSv (0.1 rem) in one hour.

(i) The entry control devices required in Subsection R313-15-603(2)(a) shall be tested for proper functioning. See Section R313-15-1110 for recordkeeping requirements.

(i) Testing shall be conducted prior to initial operation with the source of radiation on any day, unless operations were continued uninterrupted from the previous day; and

(ii) Testing shall be conducted prior to resumption of operation of the source of radiation after any unintentional interruption; and

(iii) The licensee or registrant shall submit and adhere to a schedule for periodic tests of the entry control and warning systems.

(j) The licensee or registrant shall not conduct operations, other than those necessary to place the source of radiation in safe condition or to effect repairs on controls, unless control devices are functioning properly.

(k) Entry and exit portals that are used in transporting materials to and from the irradiation area, and that are not intended for use by individuals, shall be controlled by such devices and administrative procedures as are necessary to physically protect and warn against inadvertent entry by any individual through these portals. Exit portals for irradiated materials shall be equipped to detect and signal the presence of any loose radioactive material that is carried toward such an exit and automatically to prevent loose radioactive material from being carried out of the area.

(3) Licensees, registrants, or applicants for licenses or registrations for sources of radiation within the purview of Subsection R313-15-603(2) which will be used in a variety of positions or in locations, such as open fields or forests, that make it impractical to comply with certain requirements of

Subsection R313-15-603(2), such as those for the automatic control of radiation levels, may apply to the Executive Secretary for approval of alternative safety measures. Alternative safety measures shall provide personnel protection at least equivalent to those specified in Subsection R313-15-603(2). At least one of the alternative measures shall include an entry-preventing interlock control based on a measurement of the radiation that ensures the absence of high radiation levels before an individual can gain access to the area where such sources of radiation are used.

(4) The entry control devices required by Subsections R313-15-603(2) and R313-15-603(3) shall be established in such a way that no individual will be prevented from leaving the area.

R313-15-701. Use of Process or Other Engineering Controls.

The licensee or registrant shall use, to the extent practical, process or other engineering controls, such as, containment or ventilation, to control the concentrations of radioactive material in air.

R313-15-702. Use of Other Controls.

When it is not practical to apply process or other engineering controls to control the concentrations of radioactive material in air to values below those that define an airborne radioactivity area, the licensee or registrant shall, consistent with maintaining the total effective dose equivalent ALARA, increase monitoring and limit intakes by one or more of the following means:

(1) Control of access; or
(2) Limitation of exposure times; or
(3) Use of respiratory protection equipment; or
(4) Other controls.

R313-15-703. Use of Individual Respiratory Protection Equipment.

(1) If the licensee or registrant uses respiratory protection equipment to limit intakes pursuant to Section R313-15-702:

(a) Except as provided in Subsection R313-15-703(1)(b), the licensee or registrant shall use only respiratory protection equipment that is tested and certified or had certification extended by the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration.

(b) The licensee or registrant may use equipment that has not been tested or certified by the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration, has not had certification extended by the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration, or for which there is no schedule for testing or certification, provided the licensee or registrant has submitted to the Executive Secretary and the Executive Secretary has approved an application for authorized use of that equipment, including a demonstration by testing, or a demonstration on the basis of test information, that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use.

(c) The licensee or registrant shall implement and maintain a respiratory protection program that includes:

(i) Air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate exposures; and

(ii) Surveys and bioassays, as appropriate, to evaluate actual intakes; and

(iii) Testing of respirators for operability immediately prior to each use; and

(iv) Written procedures regarding selection, fitting, issuance, maintenance, and testing of respirators, including testing for operability immediately prior to each use; supervision and training of personnel; monitoring, including air sampling and bioassays; and recordkeeping; and

(v) Determination by a physician prior to initial fitting of respirators, and either every 12 months thereafter or periodically at a frequency determined by a physician, that the individual user is medically fit to use the respiratory protection equipment.

(d) The licensee or registrant shall issue a written policy statement on respirator usage covering:

(i) The use of process or other engineering controls, instead of respirators; and

(ii) The routine, nonroutine, and emergency use of respirators; and

(iii) The length of periods of respirator use and relief from respirator use.

(e) The licensee or registrant shall advise each respirator user that the user may leave the area at any time for relief from respirator use in the event of equipment malfunction, physical or psychological distress, procedural or communication failure, significant deterioration of operating conditions, or any other conditions that might require such relief.

(f) The licensee or registrant shall use respiratory protection equipment within the equipment manufacturer's expressed limitations for type and mode of use and shall provide proper visual, communication, and other special capabilities, such as adequate skin protection, when needed.

(2) When estimating exposure of individuals to airborne radioactive materials, the licensee or registrant may make allowance for respiratory protection equipment used to limit intakes pursuant to Section R313-15-702, provided that the following conditions, in addition to those in Subsection R313-15-703(1), are satisfied:

(a) The licensee or registrant selects respiratory protection equipment that provides a protection factor, specified in Appendix A of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference, greater than the multiple by which peak concentrations of airborne radioactive materials in the working area are expected to exceed the values specified in Appendix B, Table I, Column 3 of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference. However, if the selection of respiratory protection equipment with a protection factor greater than the multiple defined in the preceding sentence is inconsistent with the goal specified in Section R313-15-702 of keeping the total effective dose equivalent ALARA, the licensee or registrant may select respiratory protection equipment with a lower protection factor provided that such a selection would result in a total effective dose equivalent that is ALARA. The concentration of radioactive material in the air that is inhaled when respirators are worn may be initially estimated by dividing the average concentration in air, during each period of uninterrupted use, by the protection factor. If the

exposure is later found to be greater than initially estimated, the corrected value shall be used; if the exposure is later found to be less than initially estimated, the corrected value may be used.

(b) The licensee or registrant shall obtain authorization from the Executive Secretary before assigning respiratory protection factors in excess of those specified in Appendix A of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference. The Executive Secretary may authorize a licensee or registrant to use higher protection factors on receipt of an application that:

(i) Describes the situation for which a need exists for higher protection factors, and

(ii) Demonstrates that the respiratory protection equipment provides these higher protection factors under the proposed conditions of use.

(3) In an emergency, the licensee or registrant shall use as emergency equipment only respiratory protection equipment that has been specifically certified or had certification extended for emergency use by the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration.

(d) The licensee or registrant shall notify the Executive Secretary in writing at least 30 days before the date that respiratory protection equipment is first used pursuant to either Subsections R313-15-703(1) or R313-15-703(2).

R313-15-801. Security and Control of Licensed or Registered Sources of Radiation.

(1) The licensee or registrant shall secure licensed or registered radioactive material from unauthorized removal or access.

(2) The licensee or registrant shall maintain constant surveillance, and use devices or administrative procedures to prevent unauthorized use of licensed or registered radioactive material that is in an unrestricted area and that is not in storage.

(3) The registrant shall secure registered radiation machines from unauthorized removal.

(4) The registrant shall use devices or administrative procedures to prevent unauthorized use of registered radiation machines.

R313-15-901. Caution Signs.

(1) Standard Radiation Symbol. Unless otherwise authorized by the Executive Secretary, the symbol prescribed by 10 CFR 20.1901, 1997 ed., which is incorporated by reference, shall use the colors magenta, or purple, or black on yellow background. The symbol prescribed is the three-bladed design as follows:

(a) Cross-hatched area is to be magenta, or purple, or black, and

(b) The background is to be yellow.

(2) Exception to Color Requirements for Standard Radiation Symbol. Notwithstanding the requirements of 10 CFR 20.1901a, 1997 ed., which is incorporated by reference, licensees or registrants are authorized to label sources, source holders, or device components containing sources of radiation that are subjected to high temperatures, with conspicuously etched or stamped radiation caution symbols and without a color requirement.

(3) Additional Information on Signs and Labels. In addition to the contents of signs and labels prescribed in Rule R313-15, the licensee or registrant shall provide, on or near the required signs and labels, additional information, as appropriate, to make individuals aware of potential radiation exposures and to minimize the exposures.

R313-15-902. Posting Requirements.

(1) Posting of Radiation Areas. The licensee or registrant shall post each radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIATION AREA."

(2) Posting of High Radiation Areas. The licensee or registrant shall post each high radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, HIGH RADIATION AREA" or "DANGER, HIGH RADIATION AREA."

(3) Posting of Very High Radiation Areas. The licensee or registrant shall post each very high radiation area with a conspicuous sign or signs bearing the radiation symbol and words "GRAVE DANGER, VERY HIGH RADIATION AREA."

(4) Posting of Airborne Radioactivity Areas. The licensee or registrant shall post each airborne radioactivity area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, AIRBORNE RADIOACTIVITY AREA" or "DANGER, AIRBORNE RADIOACTIVITY AREA."

(5) Posting of Areas or Rooms in which Licensed or Registered Material is Used or Stored. The licensee or registrant shall post each area or room in which there is used or stored an amount of licensed or registered material exceeding ten times the quantity of such material specified in Appendix C of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference, with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL."

R313-15-903. Exceptions to Posting Requirements.

(1) A licensee or registrant is not required to post caution signs in areas or rooms containing sources of radiation for periods of less than eight hours, if each of the following conditions is met:

(a) The sources of radiation are constantly attended during these periods by an individual who takes the precautions necessary to prevent the exposure of individuals to sources of radiation in excess of the limits established in Rule R313-15; and

(b) The area or room is subject to the licensee's or registrant's control.

(2) Rooms or other areas in hospitals that are occupied by patients are not required to be posted with caution signs pursuant to Section R313-15-902 provided that the patient could be released from licensee control pursuant to Section R313-32-75.

(3) A room or area is not required to be posted with a caution sign because of the presence of a sealed source provided the radiation level at 30 centimeters from the surface of the sealed source container or housing does not exceed 0.05 mSv (0.005 rem) per hour.

(4) A room or area is not required to be posted with a

caution sign because of the presence of radiation machines used solely for diagnosis in the healing arts.

R313-15-904. Labeling Containers and Radiation Machines.

(1) The licensee or registrant shall ensure that each container of licensed or registered material bears a durable, clearly visible label bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL." The label shall also provide information, such as the radionuclides present, an estimate of the quantity of radioactivity, the date for which the activity is estimated, radiation levels, kinds of materials, and mass enrichment, to permit individuals handling or using the containers, or working in the vicinity of the containers, to take precautions to avoid or minimize exposures.

(2) Each licensee or registrant shall, prior to removal or disposal of empty uncontaminated containers to unrestricted areas, remove or deface the radioactive material label or otherwise clearly indicate that the container no longer contains radioactive materials.

(3) Each registrant shall ensure that each radiation machine is labeled in a conspicuous manner which cautions individuals that radiation is produced when it is energized.

R313-15-905. Exemptions to Labeling Requirements.

A licensee or registrant is not required to label:

(1) Containers holding licensed or registered material in quantities less than the quantities listed in Appendix C of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference; or

(2) Containers holding licensed or registered material in concentrations less than those specified in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference; or

(3) Containers attended by an individual who takes the precautions necessary to prevent the exposure of individuals in excess of the limits established by Rule R313-15; or

(4) Containers when they are in transport and packaged and labeled in accordance with the rules of the U.S. Department of Transportation; or

(5) Containers that are accessible only to individuals authorized to handle or use them, or to work in the vicinity of the containers, if the contents are identified to these individuals by a readily available written record. Examples of containers of this type are containers in locations such as water-filled canals, storage vaults, or hot cells. The record shall be retained as long as the containers are in use for the purpose indicated on the record; or

(6) Installed manufacturing or process equipment, such as piping and tanks.

R313-15-906. Procedures for Receiving and Opening Packages.

(1) Each licensee or registrant who expects to receive a package containing quantities of radioactive material in excess of a Type A quantity, as defined in Section R313-19-4 and Subsection R313-19-100(19), shall make arrangements to receive:

(a) The package when the carrier offers it for delivery; or

(b) The notification of the arrival of the package at the carrier's terminal and to take possession of the package expeditiously.

(2) Each licensee or registrant shall:

(a) Monitor the external surfaces of a labeled package for radioactive contamination unless the package contains only radioactive material in the form of gas or in special form as defined in Section R313-12-3; and

(b) Monitor the external surfaces of a labeled package for radiation levels unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity, as defined in Section R313-19-4 and Subsection R313-19-100(19); and

(c) Monitor all packages known to contain radioactive material for radioactive contamination and radiation levels if there is evidence of degradation of package integrity, such as packages that are crushed, wet, or damaged.

(3) The licensee or registrant shall perform the monitoring required by Subsection R313-15-906(2) as soon as practical after receipt of the package, but not later than three hours after the package is received at the licensee's or registrant's facility if it is received during the licensee's or registrant's normal working hours or if there is evidence of degradation of package integrity, such as a package that is crushed, wet, or damaged. If a package is received after working hours, and has no evidence of degradation of package integrity, the package shall be monitored no later than three hours from the beginning of the next working day.

(4) The licensee or registrant shall immediately notify the final delivery carrier and, by telephone and telegram, mailgram, or facsimile, the Executive Secretary when:

(a) Removable radioactive surface contamination exceeds the limits of Subsection R313-19-100(13)(h); or

(b) External radiation levels exceed the limits of Subsections R313-19-100(13)(i) and R313-19-100(13)(j).

(5) Each licensee or registrant shall:

(a) Establish, maintain, and retain written procedures for safely opening packages in which radioactive material is received; and

(b) Ensure that the procedures are followed and that due consideration is given to special instructions for the type of package being opened.

(6) Licensees or registrants transferring special form sources in vehicles owned or operated by the licensee or registrant to and from a work site are exempt from the contamination monitoring requirements of Subsection R313-15-906(2), but are not exempt from the monitoring requirement in Subsection R313-15-906(2) for measuring radiation levels that ensures that the source is still properly lodged in its shield.

R313-15-1001. Waste Disposal - General Requirements.

(1) A licensee or registrant shall dispose of licensed or registered material only:

(a) By transfer to an authorized recipient as provided in Section R313-15-1006 or in Rules R313-21, R313-22, or R313-25, or to the U.S. Department of Energy; or

(b) By decay in storage; or

(c) By release in effluents within the limits in Section R313-15-301; or

(d) As authorized pursuant to Sections R313-15-1002, R313-15-1003, R313-15-1004, or R313-15-1005.

(2) A person shall be specifically licensed or registered to receive waste containing licensed or registered material from other persons for:

(a) Treatment prior to disposal; or

(b) Treatment or disposal by incineration; or

(c) Decay in storage; or

(d) Disposal at a land disposal facility licensed pursuant to Rule R313-25; or

(e) Storage until transferred to a storage or disposal facility authorized to receive the waste.

R313-15-1002. Method for Obtaining Approval of Proposed Disposal Procedures.

A licensee or registrant or applicant for a license or registration may apply to the Executive Secretary for approval of proposed procedures, not otherwise authorized in these rules, to dispose of licensed or registered material generated in the licensee's or registrant's operations. Each application shall include:

(1) A description of the waste containing licensed or registered material to be disposed of, including the physical and chemical properties that have an impact on risk evaluation, and the proposed manner and conditions of waste disposal; and

(2) An analysis and evaluation of pertinent information on the nature of the environment; and

(3) The nature and location of other potentially affected facilities; and

(4) Analyses and procedures to ensure that doses are maintained ALARA and within the dose limits in Rule R313-15.

R313-15-1003. Disposal by Release into Sanitary Sewerage.

(1) A licensee or registrant may discharge licensed or registered material into sanitary sewerage if each of the following conditions is satisfied:

(a) The material is readily soluble, or is readily dispersible biological material, in water; and

(b) The quantity of licensed or registered radioactive material that the licensee or registrant releases into the sewer in one month divided by the average monthly volume of water released into the sewer by the licensee or registrant does not exceed the concentration listed in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference; and

(c) If more than one radionuclide is released, the following conditions shall also be satisfied:

(i) The licensee or registrant shall determine the fraction of the limit in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference, represented by discharges into sanitary sewerage by dividing the actual monthly average concentration of each radionuclide released by the licensee or registrant into the sewer by the concentration of that radionuclide listed in Table III of Appendix B of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference; and

(ii) The sum of the fractions for each radionuclide required by Subsection R313-15-1003(1)(c)(i) does not exceed unity; and

(d) The total quantity of licensed or registered radioactive material that the licensee or registrant releases into the sanitary sewerage system in a year does not exceed 185 GBq (five Ci) of hydrogen-3, 37 GBq (one Ci) of carbon-14, and 37 GBq (one Ci) of all other radioactive materials combined.

(2) Excreta from individuals undergoing medical diagnosis or therapy with radioactive material are not subject to the limitations contained in Subsection R313-15-1003(1).

R313-15-1004. Treatment or Disposal by Incineration.

A licensee or registrant may treat or dispose of licensed or registered material by incineration only in the form and concentration specified in Section R313-15-1005 or as specifically approved by the Executive Secretary pursuant to Section R313-15-1002.

R313-15-1005. Disposal of Specific Wastes.

(1) A licensee or registrant may dispose of the following licensed or registered material as if it were not radioactive:

(a) 1.85 kBq (0.05 uCi), or less, of hydrogen-3 or carbon-14 per gram of medium used for liquid scintillation counting; and

(b) 1.85 kBq (0.05 uCi) or less, of hydrogen-3 or carbon-14 per gram of animal tissue, averaged over the weight of the entire animal.

(2) A licensee or registrant shall not dispose of tissue pursuant to Subsection R313-15-1005(1)(b) in a manner that would permit its use either as food for humans or as animal feed.

(3) The licensee or registrant shall maintain records in accordance with Section R313-15-1109.

R313-15-1006. Transfer for Disposal and Manifests.

(1) Requirements of Section R313-15-1006 and Appendix F and G of 10 CFR 20.1001 to 20.2402, 1997 ed.

(a) The requirements of Section R313-15-1006 and Appendix F and G of 10 CFR 20.1001 to 20.2402, 1997 ed., which are incorporated into these rules by reference, are designed to:

(i) control transfers of low-level radioactive waste by any waste generator, waste collector, or waste processor licensee, as defined in Appendix F or G in 10 CFR 20.1001 to 20.2402, 1997 ed., who ships low-level waste either directly, or indirectly through a waste collector or waste processor, to a licensed low-level waste land disposal facility as defined in Section R313-25-2;

(ii) establish a manifest tracking system; and

(iii) supplement existing requirements concerning transfers and recordkeeping for those wastes.

(b) Beginning March 1, 1998, all affected licensees must use Appendix G of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated into these rules by reference. Prior to March 1, 1998, a low-level waste disposal facility operator or its regulatory authority may require the shipper to use Appendix F or Appendix G of 10 CFR 20.1001 to 20.2402, 1997 ed. Licensees using Appendix F shall comply with Subsection R313-15-1006(2)(a). Licensees using Appendix G shall comply with Subsection R313-15-1006(2)(b).

(2) Shipment of Radioactive Waste.

(a) Each shipment of radioactive waste designated for

disposal at a licensed low-level radioactive waste disposal facility shall be accompanied by a shipment manifest as specified in Section I of Appendix F of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference.

(b) Any licensee shipping radioactive waste intended for ultimate disposal at a licensed land disposal facility must document the information required on the U.S. Nuclear Regulatory Commission's Uniform Low-Level Radioactive Waste Manifest and transfer this recorded information to the intended consignee in accordance with Appendix G to 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated into these rules by reference.

(3) Each shipment manifest shall include a certification by the waste generator as specified in Section II of Appendix F or G, as appropriate, of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference. See Subsection R313-15-1006(1)(b) to determine the appropriate Appendix.

(4) Each person involved in the transfer of waste for disposal or in the disposal of waste, including the waste generator, waste collector, waste processor, and disposal facility operator, shall comply with the requirements specified in Section III of Appendix F or G, as appropriate, of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference. See Subsection R313-15-1006(1)(b) to determine the appropriate Appendix.

R313-15-1007. Compliance with Environmental and Health Protection Rules.

Nothing in Sections R313-15-1001, R313-15-1002, R313-15-1003, R313-15-1004, R313-15-1005, or R313-15-1006 relieves the licensee or registrant from complying with other applicable Federal, State and local rules governing any other toxic or hazardous properties of materials that may be disposed of pursuant to Sections R313-15-1001, R313-15-1002, R313-15-1003, R313-15-1004, R313-15-1005, or R313-15-1006.

R313-15-1008. Classification and Characteristics of Low-Level Radioactive Waste.

(1) Classification of Radioactive Waste for Land Disposal

(a) Considerations. Determination of the classification of radioactive waste involves two considerations. First, consideration shall be given to the concentration of long-lived radionuclides (and their shorter-lived precursors) whose potential hazard will persist long after such precautions as institutional controls, improved waste form, and deeper disposal have ceased to be effective. These precautions delay the time when long-lived radionuclides could cause exposures. In addition, the magnitude of the potential dose is limited by the concentration and availability of the radionuclide at the time of exposure. Second, consideration shall be given to the concentration of shorter-lived radionuclides for which requirements on institutional controls, waste form, and disposal methods are effective.

(b) Classes of waste.

(i) Class A waste is waste that is usually segregated from other waste classes at the disposal site. The physical form and characteristics of Class A waste shall meet the minimum requirements set forth in Subsection R313-15-1008(2)(a). If Class A waste also meets the stability requirements set forth in Subsection R313-15-1008(2)(b), it is not necessary to segregate the waste for disposal.

(ii) Class B waste is waste that shall meet more rigorous requirements on waste form to ensure stability after disposal. The physical form and characteristics of Class B waste shall meet both the minimum and stability requirements set forth in Subsection R313-15-1008(2).

(iii) Class C waste is waste that not only shall meet more rigorous requirements on waste form to ensure stability but also requires additional measures at the disposal facility to protect against inadvertent intrusion. The physical form and characteristics of Class C waste shall meet both the minimum and stability requirements set forth in Subsection R313-15-1008(2).

(c) Classification determined by long-lived radionuclides. If the radioactive waste contains only radionuclides listed in Table I, classification shall be determined as follows:

(i) If the concentration does not exceed 0.1 times the value in Table I, the waste is Class A.

(ii) If the concentration exceeds 0.1 times the value in Table I, but does not exceed the value in Table I, the waste is Class C.

(iii) If the concentration exceeds the value in Table I, the waste is not generally acceptable for land disposal.

(iv) For wastes containing mixtures of radionuclides listed in Table I, the total concentration shall be determined by the sum of fractions rule described in Subsection R313-15-1008(1)(g).

TABLE I

Concentration

Radionuclide	curie/cubic meter(1)	nanocurie/gram(2)
C-14	8	
C-14 in activated metal	80	
Ni-59 in activated metal	220	
Nb-94 in activated metal	0.2	
Tc-99	3	
I-129	0.08	
Alpha emitting transuranic radionuclides with half-life greater than five years		100
Pu-241		3,500
Cm-242		20,000
Ra-226		100

NOTE: (1) To convert the Ci/m^3 values to gigabecquerel (GBq)/cubic meter, multiply the Ci/m^3 value by 37.
(2) To convert the nCi/g values to becquerel (Bq)/gram, multiply the nCi/g value by 37.

(d) Classification determined by short-lived radionuclides. If the waste does not contain any of the radionuclides listed in Table I, classification shall be determined based on the concentrations shown in Table II. However, as specified in Subsection R313-15-1008(1)(f), if radioactive waste does not contain any nuclides listed in either Table I or II, it is Class A.

(i) If the concentration does not exceed the value in Column 1, the waste is Class A.

(ii) If the concentration exceeds the value in Column 1 but does not exceed the value in Column 2, the waste is Class B.

(iii) If the concentration exceeds the value in Column 2 but does not exceed the value in Column 3, the waste is Class C.

(iv) If the concentration exceeds the value in Column 3, the waste is not generally acceptable for near-surface disposal.

(v) For wastes containing mixtures of the radionuclides listed in Table II, the total concentration shall be determined by the sum of fractions rule described in Subsection R313-15-1008(1)(g).

TABLE II

Radionuclide	Concentration, curie/cubic meter(1)		
	Column 1	Column 2	Column 3
Total of all radionuclides with less than 5-year half-life	700	(2)	(2)
H-3	40	(2)	(2)
Co-60	700	(2)	(2)
Ni-63	3.5	70	700
Ni-63 in activated metal	35	700	7000
Sr-90	0.04	150	7000
Cs-137	1	44	4600

NOTE: (1) To convert the Ci/m^3 value to gigabecquerel (GBq)/cubic meter, multiply the Ci/m^3 value by 37.
(2) There are no limits established for these radionuclides in Class B or C wastes. Practical considerations such as the effects of external radiation and internal heat generation on transportation, handling, and disposal will limit the concentrations for these wastes. These wastes shall be Class B unless the concentrations of other radionuclides in Table II determine the waste to be Class C independent of these radionuclides.

(e) Classification determined by both long- and short-lived radionuclides. If the radioactive waste contains a mixture of radionuclides, some of which are listed in Table I and some of which are listed in Table II, classification shall be determined as follows:

(i) If the concentration of a radionuclide listed in Table I is less than 0.1 times the value listed in Table I, the class shall be that determined by the concentration of radionuclides listed in Table II.

(ii) If the concentration of a radionuclide listed in Table I exceeds 0.1 times the value listed in Table I, but does not exceed the value in Table I, the waste shall be Class C, provided the concentration of radionuclides listed in Table II does not exceed the value shown in Column 3 of Table II.

(f) Classification of wastes with radionuclides other than those listed in Tables I and II. If the waste does not contain any radionuclides listed in either Table I or II, it is Class A.

(g) The sum of the fractions rule for mixtures of radionuclides. For determining classification for waste that contains a mixture of radionuclides, it is necessary to determine the sum of fractions by dividing each radionuclide's concentration by the appropriate limit and adding the resulting values. The appropriate limits shall all be taken from the same column of the same table. The sum of the fractions for the column shall be less than 1.0 if the waste class is to be determined by that column. Example: A waste contains Sr-90 in a concentration of 1.85 TBq/m^3 (50 Ci/m^3) and Cs-137 in a concentration of 814 GBq/m^3 (22 Ci/m^3). Since the concentrations both exceed the values in Column 1, Table II, they shall be compared to Column 2 values. For Sr-90 fraction, 50/150 = 0.33., for Cs-137 fraction, 22/44 = 0.5; the sum of the fractions = 0.83. Since the sum is less than 1.0, the waste is Class B.

(h) Determination of concentrations in wastes. The concentration of a radionuclide may be determined by indirect methods such as use of scaling factors which relate the inferred concentration of one radionuclide to another that is measured, or radionuclide material accountability, if there is reasonable assurance that the indirect methods can be correlated with actual measurements. The concentration of a radionuclide may be averaged over the volume of the waste, or weight of the waste if the units are expressed as becquerel (nanocurie) per gram.

(2) Radioactive Waste Characteristics

(a) The following are minimum requirements for all classes of waste and are intended to facilitate handling and provide protection of health and safety of personnel at the disposal site.

(i) Wastes shall be packaged in conformance with the conditions of the license issued to the site operator to which the waste will be shipped. Where the conditions of the site license are more restrictive than the provisions of Rule R313-15, the site license conditions shall govern.

(ii) Wastes shall not be packaged for disposal in cardboard or fiberboard boxes.

(iii) Liquid waste shall be packaged in sufficient absorbent material to absorb twice the volume of the liquid.

(iv) Solid waste containing liquid shall contain as little free-standing and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed one percent of the volume.

(v) Waste shall not be readily capable of detonation or of explosive decomposition or reaction at normal pressures and temperatures, or of explosive reaction with water.

(vi) Waste shall not contain, or be capable of generating, quantities of toxic gases, vapors, or fumes harmful to persons transporting, handling, or disposing of the waste. This does not apply to radioactive gaseous waste packaged in accordance with Subsection R313-15-1008(2)(a)(viii).

(vii) Waste shall not be pyrophoric. Pyrophoric materials contained in wastes shall be treated, prepared, and packaged to be nonflammable.

(viii) Wastes in a gaseous form shall be packaged at an absolute pressure that does not exceed 1.5 atmospheres at 20 degrees celsius. Total activity shall not exceed 3.7 TBq (100 Ci) per container.

(ix) Wastes containing hazardous, biological, pathogenic, or infectious material shall be treated to reduce to the maximum extent practical the potential hazard from the non-radiological materials.

(b) The following requirements are intended to provide stability of the waste. Stability is intended to ensure that the waste does not degrade and affect overall stability of the site through slumping, collapse, or other failure of the disposal unit and thereby lead to water infiltration. Stability is also a factor in limiting exposure to an inadvertent intruder, since it provides a recognizable and nondispersible waste.

(i) Waste shall have structural stability. A structurally stable waste form will generally maintain its physical dimensions and its form, under the expected disposal conditions such as weight of overburden and compaction equipment, the presence of moisture, and microbial activity, and internal factors such as radiation effects and chemical changes. Structural

stability can be provided by the waste form itself, processing the waste to a stable form, or placing the waste in a disposal container or structure that provides stability after disposal.

(ii) Notwithstanding the provisions in Subsections R313-15-1008(2)(a)(iii) and R313-15-1008(2)(a)(iv), liquid wastes, or wastes containing liquid, shall be converted into a form that contains as little free-standing and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed one percent of the volume of the waste when the waste is in a disposal container designed to ensure stability, or 0.5 percent of the volume of the waste for waste processed to a stable form.

(iii) Void spaces within the waste and between the waste and its package shall be reduced to the extent practical.

(3) Labeling. Each package of waste shall be clearly labeled to identify whether it is Class A, Class B, or Class C waste, in accordance with Subsection R313-15-1008(1).

R313-15-1101. Records - General Provisions.

(1) Each licensee or registrant shall use the SI units becquerel, gray, sievert and coulomb per kilogram, or the special units, curie, rad, rem, and roentgen, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by Rule R313-15.

(2) Notwithstanding the requirements of Subsection R313-15-1101(1), when recording information on shipment manifests, as required in Subsection R313-15-1006(2), information must be recorded in SI units or in SI units and the special units specified in Subsection R313-15-1101(1).

(3) The licensee or registrant shall make a clear distinction among the quantities entered on the records required by Rule R313-15, such as, total effective dose equivalent, total organ dose equivalent, shallow dose equivalent, eye dose equivalent, deep dose equivalent, or committed effective dose equivalent.

R313-15-1102. Records of Radiation Protection Programs.

(1) Each licensee or registrant shall maintain records of the radiation protection program, including:

(a) The provisions of the program; and

(b) Audits and other reviews of program content and implementation.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1102(1)(a) until the Executive Secretary terminates each pertinent license or registration requiring the record. The licensee or registrant shall retain the records required by Subsection R313-15-1102(1)(b) for three years after the record is made.

R313-15-1103. Records of Surveys.

(1) Each licensee or registrant shall maintain records showing the results of surveys and calibrations required by Section R313-15-501 and Subsection R313-15-906(2). The licensee or registrant shall retain these records for three years after the record is made.

(2) The licensee or registrant shall retain each of the following records until the Executive Secretary terminates each pertinent license or registration requiring the record:

(a) Records of the results of surveys to determine the dose from external sources of radiation used, in the absence of or in combination with individual monitoring data, in the assessment of individual dose equivalents; and

(b) Records of the results of measurements and calculations used to determine individual intakes of radioactive material and used in the assessment of internal dose; and

(c) Records showing the results of air sampling, surveys, and bioassays required pursuant to Subsections R313-15-703(1)(c)(i) and R313-15-703(1)(c)(ii); and

(d) Records of the results of measurements and calculations used to evaluate the release of radioactive effluents to the environment.

R313-15-1104. Records of Tests for Leakage or Contamination of Sealed Sources.

Records of tests for leakage or contamination of sealed sources required by Section R313-15-401 shall be kept in units of becquerel or microcurie and maintained for inspection by the Executive Secretary for five years after the records are made.

R313-15-1105. Records of Prior Occupational Dose.

For each individual who is likely to receive in a year an occupational dose requiring monitoring pursuant to Section R313-15-502, the licensee or registrant shall retain the records of prior occupational dose and exposure history as specified in Section R313-15-205 on form DRC-05 or equivalent until the Executive Secretary terminates each pertinent license requiring this record. The licensee or registrant shall retain records used in preparing form DRC-05 or equivalent for three years after the record is made.

R313-15-1106. Records of Planned Special Exposures.

(1) For each use of the provisions of Section R313-15-206 for planned special exposures, the licensee or registrant shall maintain records that describe:

(a) The exceptional circumstances requiring the use of a planned special exposure; and

(b) The name of the management official who authorized the planned special exposure and a copy of the signed authorization; and

(c) What actions were necessary; and

(d) Why the actions were necessary; and

(e) What precautions were taken to assure that doses were maintained ALARA; and

(f) What individual and collective doses were expected to result; and

(g) The doses actually received in the planned special exposure.

(2) The licensee or registrant shall retain the records until the Executive Secretary terminates each pertinent license or registration requiring these records.

R313-15-1107. Records of Individual Monitoring Results.

(1) Recordkeeping Requirement. Each licensee or registrant shall maintain records of doses received by all individuals for whom monitoring was required pursuant to Section R313-15-502, and records of doses received during planned special exposures, accidents, and emergency conditions. Assessments of dose equivalent and records made using units in effect before January 1, 1994, need not be changed. These records shall include, when applicable:

(a) The deep dose equivalent to the whole body, eye dose equivalent, shallow dose equivalent to the skin, and shallow dose equivalent to the extremities; and

(b) The estimated intake of radionuclides, see Section R313-15-202; and

(c) The committed effective dose equivalent assigned to the intake of radionuclides; and

(d) The specific information used to calculate the committed effective dose equivalent pursuant to Subsection R313-15-204(3); and

(e) The total effective dose equivalent when required by Section R313-15-202; and

(f) The total of the deep dose equivalent and the committed dose to the organ receiving the highest total dose.

(2) Recordkeeping Frequency. The licensee or registrant shall make entries of the records specified in Subsection R313-15-1107(1) at intervals not to exceed one year.

(3) Recordkeeping Format. The licensee or registrant shall maintain the records specified in Subsection R313-15-1107(1) on form DRC-06, in accordance with the instructions for form DRC-06, or in clear and legible records containing all the information required by form DRC-06.

(4) The licensee or registrant shall maintain the records of dose to an embryo/fetus with the records of dose to the declared pregnant woman. The declaration of pregnancy, including the estimated date of conception, shall also be kept on file, but may be maintained separately from the dose records.

(5) The licensee or registrant shall retain each required form or record until the Executive Secretary terminates each pertinent license or registration requiring the record.

R313-15-1108. Records of Dose to Individual Members of the Public.

(1) Each licensee or registrant shall maintain records sufficient to demonstrate compliance with the dose limit for individual members of the public. See Section R313-15-301.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1108(1) until the Executive Secretary terminates each pertinent license or registration requiring the record. Requirements for disposition of these records, prior to license termination, are located in Section R313-12-51 for activities licensed under these rules.

R313-15-1109. Records of Waste Disposal.

(1) Each licensee or registrant shall maintain records of the disposal of licensed or registered materials made pursuant to Sections R313-15-1002, R313-15-1003, R313-15-1004, R313-15-1005, Rule R313-25, and disposal by burial in soil, including burials authorized before January 28, 1981.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1109(1) until the Executive Secretary terminates each pertinent license or registration requiring the record.

R313-15-1110. Records of Testing Entry Control Devices for Very High Radiation Areas.

(1) Each licensee or registrant shall maintain records of tests made pursuant to Subsection R313-15-603(2)(i) on entry control devices for very high radiation areas. These records shall include the date, time, and results of each such test of function.

(2) The licensee or registrant shall retain the records required by Subsection R313-15-1110(1) for three years after the record is made.

R313-15-1111. Form of Records.

Each record required by Rule R313-15 shall be legible throughout the specified retention period. The record shall be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period or the record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records, such as letters, drawings, and specifications, shall include all pertinent information, such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

R313-15-1201. Reports of Stolen, Lost, or Missing Licensed or Registered Sources of Radiation.

(1) Telephone Reports. Each licensee or registrant shall report to the Executive Secretary by telephone or as follows:

(a) Immediately after its occurrence becomes known to the licensee or registrant, stolen, lost, or missing licensed or registered radioactive material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in Appendix C of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference, under such circumstances that it appears to the licensee or registrant that an exposure could result to individuals in unrestricted areas;

(b) Within 30 days after its occurrence becomes known to the licensee or registrant, lost, stolen, or missing licensed or registered radioactive material in an aggregate quantity greater than ten times the quantity specified in Appendix C of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated by reference, that is still missing.

(c) Immediately after its occurrence becomes known to the registrant, a stolen, lost, or missing radiation machine.

(2) Written Reports. Each licensee or registrant required to make a report pursuant to Subsection R313-15-1201(1) shall, within 30 days after making the telephone report, make a written report to the Executive Secretary setting forth the following information:

(a) A description of the licensed or registered source of radiation involved, including, for radioactive material, the kind, quantity, and chemical and physical form; and, for radiation machines, the manufacturer, model and serial number, type and maximum energy of radiation emitted;

(b) A description of the circumstances under which the loss or theft occurred; and

(c) A statement of disposition, or probable disposition, of the licensed or registered source of radiation involved; and

(d) Exposures of individuals to radiation, circumstances under which the exposures occurred, and the possible total effective dose equivalent to persons in unrestricted areas; and

(e) Actions that have been taken, or will be taken, to recover the source of radiation; and

(f) Procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed or registered sources of radiation.

(3) Subsequent to filing the written report, the licensee or registrant shall also report additional substantive information on the loss or theft within 30 days after the licensee or registrant learns of such information.

(4) The licensee or registrant shall prepare any report filed with the Executive Secretary pursuant to Section R313-15-1201 so that names of individuals who may have received exposure to radiation are stated in a separate and detachable portion of the report.

R313-15-1202. Notification of Incidents.

(1) Immediate Notification. Notwithstanding other requirements for notification, each licensee or registrant shall immediately report each event involving a source of radiation possessed by the licensee or registrant that may have caused or threatens to cause any of the following conditions:

(a) An individual to receive:

(i) A total effective dose equivalent of 0.25 Sv (25 rem) or more; or

(ii) An eye dose equivalent of 0.75 Sv (75 rem) or more; or

(iii) A shallow dose equivalent to the skin or extremities or a total organ dose equivalent of 2.5 Gy (250 rad) or more; or

(b) The release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake five times the occupational ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

(2) Twenty-Four Hour Notification. Each licensee or registrant shall, within 24 hours of discovery of the event, report to the Executive Secretary each event involving loss of control of a licensed or registered source of radiation possessed by the licensee or registrant that may have caused, or threatens to cause, any of the following conditions:

(a) An individual to receive, in a period of 24 hours:

(i) A total effective dose equivalent exceeding 0.05 Sv (five rem); or

(ii) An eye dose equivalent exceeding 0.15 Sv (15 rem); or

(iii) A shallow dose equivalent to the skin or extremities or a total organ dose equivalent exceeding 0.5 Sv (50 rem); or

(b) The release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake in excess of one occupational ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

(3) The licensee or registrant shall prepare each report filed with the Executive Secretary pursuant to Section R313-15-1202 so that names of individuals who have received exposure to sources of radiation are stated in a separate and detachable portion of the report.

(4) Licensees or registrants shall make the reports required by Subsections R313-15-1202(1) and R313-15-1202(2) to the Executive Secretary by telephone, telegram, mailgram, or facsimile to the Executive Secretary.

(5) The provisions of Section R313-15-1202 do not apply to doses that result from planned special exposures, provided such doses are within the limits for planned special exposures and are reported pursuant to Section R313-15-1204.

R313-15-1203. Reports of Exposures, Radiation Levels, and Concentrations of Radioactive Material Exceeding the Constraints or Limits.

(1) Reportable Events. In addition to the notification required by Section R313-15-1202, each licensee or registrant shall submit a written report within 30 days after learning of any of the following occurrences:

(a) Incidents for which notification is required by Section R313-15-1202; or

(b) Doses in excess of any of the following:

(i) The occupational dose limits for adults in Section R313-15-201; or

(ii) The occupational dose limits for a minor in Section R313-15-207; or

(iii) The limits for an embryo/fetus of a declared pregnant woman in Section R313-15-208; or

(iv) The limits for an individual member of the public in Section R313-15-301; or

(v) Any applicable limit in the license or registration; or

(vi) The ALARA constraints for air emissions established under Subsection R313-15-101(4); or

(c) Levels of radiation or concentrations of radioactive material in:

(i) A restricted area in excess of applicable limits in the license or registration; or

(ii) An unrestricted area in excess of ten times the applicable limit set forth in Rule R313-15 or in the license or registration, whether or not involving exposure of any individual in excess of the limits in Section R313-15-301; or

(d) For licensees subject to the provisions of U.S. Environmental Protection Agency's generally applicable environmental radiation standards in 40 CFR 190, levels of radiation or releases of radioactive material in excess of those standards, or of license conditions related to those standards.

(2) Contents of Reports.

(a) Each report required by Subsection R313-15-1203(1) shall describe the extent of exposure of individuals to radiation and radioactive material, including, as appropriate:

(i) Estimates of each individual's dose; and

(ii) The levels of radiation and concentrations of radioactive material involved; and

(iii) The cause of the elevated exposures, dose rates, or concentrations; and

(iv) Corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with applicable limits, ALARA constraints, generally applicable environmental standards, and associated license or registration conditions.

(b) Each report filed pursuant to Subsection R313-15-1203(1) shall include for each occupationally overexposed individual: the name, Social Security account number, and date of birth. With respect to the limit for the embryo/fetus in Section R313-15-208, the identifiers should be those of the declared pregnant woman. The report shall be prepared so that

this information is stated in a separate and detachable portion of the report.

(3) All licensees or registrants who make reports pursuant to Subsection R313-15-1203(1) shall submit the report in writing to the Executive Secretary.

R313-15-1204. Reports of Planned Special Exposures.

The licensee or registrant shall submit a written report to the Executive Secretary within 30 days following any planned special exposure conducted in accordance with Section R313-15-206, informing the Executive Secretary that a planned special exposure was conducted and indicating the date the planned special exposure occurred and the information required by Section R313-15-1106.

R313-15-1205. Reports to Individuals of Exceeding Dose Limits.

When a licensee or registrant is required, pursuant to the provisions of Sections R313-15-1203 or R313-15-1204, to report to the Executive Secretary any exposure of an identified occupationally exposed individual, or an identified member of the public, to sources of radiation, the licensee or registrant shall also provide a copy of the report submitted to the Executive Secretary to the individual. This report shall be transmitted at a time no later than the transmittal to the Executive Secretary.

R313-15-1207. Notifications and Reports to Individuals.

(1) Requirements for notification and reports to individuals of exposure to radiation or radioactive material are specified in Rule R313-18.

(2) When a licensee or registrant is required pursuant to Section R313-15-1203 to report to the Executive Secretary any exposure of an individual to radiation or radioactive material, the licensee or registrant shall also notify the individual. Such notice shall be transmitted at a time not later than the transmittal to the Executive Secretary, and shall comply with the provisions of Rule R313-18.

R313-15-1208. Reports of Leaking or Contaminated Sealed Sources.

If the test for leakage or contamination required pursuant to Section R313-15-401 indicates a sealed source is leaking or contaminated, a report of the test shall be filed within five days with the Executive Secretary describing the equipment involved, the test results and the corrective action taken.

R313-15-1301. Vacating Premises.

Each specific licensee or registrant shall, no less than 30 days before vacating or relinquishing possession or control of premises which may have been contaminated with radioactive material as a result of his activities, notify the Executive Secretary in writing of intent to vacate. When deemed necessary by the Executive Secretary, the licensee shall decontaminate the premises in such a manner as the Executive Secretary may specify.

KEY: radioactive material, contamination, waste disposal, safety

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R313. Environmental Quality, Radiation Control.
R313-25. License Requirements for Land Disposal of Radioactive Waste - General Provisions.
R313-25-1. Purpose and Scope.

The rules in this chapter establish procedures, criteria, and terms and conditions upon which the Department issues licenses for the land disposal of wastes received from other persons. The requirements of R313-25 are in addition to, and not in substitution for, other applicable requirements of these rules.

R313-25-2. Definitions.

As used in R313-25, the following definitions apply:

"Active maintenance" means significant activity needed during the period of institutional control to maintain a reasonable assurance that the performance objectives in R313-25-19 and R313-25-20 are met. Active maintenance may include the pumping and treatment of water from a disposal unit, the replacement of a disposal unit cover, or other episodic or continuous measures. Active maintenance does not include custodial activities like repair of fencing, repair or replacement of monitoring equipment, revegetation, minor additions to soil cover, minor repair of disposal unit covers, and general disposal site upkeep.

"Buffer zone" means a portion of the disposal site that is controlled by the licensee and that lies under the disposal units and between the disposal units and the boundary of the site.

"Commencement of construction" means clearing of land, excavation, or other substantial action that could adversely affect the environment of a land disposal facility. The term does not mean disposal site exploration, necessary roads for disposal site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the disposal site or the protection of environmental values.

"Custodial agency" means an agency of the government designated to act on behalf of the government owner of the disposal site.

"Disposal" means the isolation of wastes from the biosphere by placing them in a land disposal facility.

"Disposal site" means that portion of a land disposal facility which is used for disposal of waste. It consists of disposal units and a buffer zone.

"Disposal unit" means a discrete portion of the disposal site into which waste is placed for disposal. For near-surface disposal, the disposal unit may be a trench.

"Engineered barrier" means a man-made structure or device intended to improve the land disposal facility's performance under R313-25.

"Hydrogeologic unit" means a soil or rock unit or zone that has a distinct influence on the storage or movement of ground water.

"Inadvertent intruder" means a person who may enter the disposal site after closure and engage in activities unrelated to post closure management, such as agriculture, dwelling construction, or other pursuits which could, by disturbing the site, expose individuals to radiation.

"Intruder barrier" means a sufficient depth of cover over the waste that inhibits contact with waste and helps to ensure that radiation exposures to an inadvertent intruder will meet the performance objectives set forth in R313-25, or engineered structures that provide equivalent protection to the inadvertent intruder.

"Land disposal facility" means the land, buildings and structures, and equipment which are intended to be used for the disposal of radioactive waste.

"Monitoring" means observing and making measurements to provide data to evaluate the performance and characteristics of the disposal site.

"Near-surface disposal facility" means a land disposal facility in which waste is disposed of within approximately the upper 30 meters of the earth's surface.

"Site closure and stabilization" means those actions that are taken upon completion of operations that prepare the disposal site for custodial care, and that assure that the disposal site will remain stable and will not need ongoing active maintenance.

"Stability" means structural stability.

"Surveillance" means monitoring and observation of the disposal site to detect needs for maintenance or custodial care, to observe evidence of intrusion, and to ascertain compliance with other license and regulatory requirements.

"Treatment" means the stabilization or the reduction in volume of waste by a chemical or a physical process.

"Waste" means those low-level radioactive wastes as defined in Section 19-3-102 that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level waste has the same meaning as it does in the Low-Level Radioactive Waste Policy Act, Pub.L. 96-573, 94 Stat. 3347; thus, the term denotes radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, waste does not mean byproduct material as defined in 42 U.S.C. 2011(e)(2) of the Atomic Energy Act, uranium or thorium tailings and waste.

R313-25-3. Siting Criteria and Pre-licensing Plan Approval for Commercial Radioactive Waste Disposal Facilities.

(1) Persons proposing to construct or operate commercial radioactive waste disposal facilities, including waste incinerators, shall obtain a plan approval from the Executive Secretary before applying for a license. Plans meet the siting criteria and plan approval requirements of R313-25-3 and R313-19-3-105.

(2) The siting criteria and plan approval requirements in R313-25-3 apply to prelicensing plan approval applications.

(3) Treatment and disposal facilities, including commercial radioactive waste incinerators, shall not be located:

(a) within or underlain by:

(i) national, state, and county parks, monuments, and recreation areas; designated wilderness and wilderness study areas; wild and scenic river areas;

(ii) ecologically and scientifically significant natural areas, including wildlife management areas and habitats for listed or proposed endangered species as designated by federal law;

(iii) 100 year floodplains;

(iv) areas 200 feet from Holocene faults;

(v) underground mines, salt domes and salt beds;

(vi) dam failure flood areas;

(vii) areas subject to landslide, mud flow, or other earth movement, unless adverse impacts can be mitigated;

(viii) farmlands classified or evaluated as "prime", "unique", or of "statewide importance" by the U.S. Department of Agricultural Soil Conservation Service under the Prime Farmland Protection Act;

(ix) areas five miles of existing permanent dwellings, residential areas, and other habitable structures, including schools, churches, and historic structures;

(x) areas five miles of surface waters including intermittent streams, perennial streams, rivers, lakes, reservoirs, and wetlands;

(xi) areas 100 feet of uranium mill tailings;

(xii) areas 1000 feet of archeological sites to which adverse impacts cannot reasonably be mitigated;

(xiii) recharge zones of aquifers containing ground water which has a total dissolved solids content of less than 10,000 mg/l; or

(xiv) drinking water source protection areas designated by the State Drinking Water Committee;

(b) in areas:

(i) above or underlain by aquifers containing ground water which has a total dissolved solids content of less than 500 mg/l and which aquifers do not exceed state ground water standards for pollutants;

(ii) above or underlain by aquifers containing ground water which has a total dissolved solids content between 3000 and 10,000 mg/l when the distance from the surface to the ground water is less than 100 ft.;

(iii) areas, such as areas of extensive withdrawal of water, gas, or oil;

(iv) above or underlain by weak and unstable soils, including soils that lose their ability to support foundations as a result of hydrocompaction, expansion, or shrinkage;

(v) above or underlain by karst terrains.

(4) Incinerators associated with land disposal facilities may not be located above aquifers containing ground water which has a total dissolved solids content below 3000 mg/l. Incinerators not associated with ground disposal facilities shall not be located above aquifers containing ground water which has a total dissolved solids content below 500 mg/l.

(5) Facilities may not be located within a distance to existing drinking water wells and watersheds for public water supplies of one year ground water travel time plus 1000 feet for incinerators and of five years ground water travel time plus 1000 feet for land disposal facilities.

(6) The plan approval application shall include hydraulic conductivity and other information necessary to estimate adequately the ground water travel distance.

(7) The plan approval application shall include the results of studies adequate to identify the presence of ground water aquifers in the area of the proposed site and to assess the quality of the ground water of all aquifers identified in the area of the proposed site.

(8) The Executive Secretary may require the applicant to conduct vadose zone or other near surface monitoring.

(9) Emergency response and safety.

(a) The plan approval application shall demonstrate the availability and adequacy of emergency services, including medical and fire response. The application shall provide evidence that the applicant has coordinated emergency response plans with local and regional emergency response resources.

(b) The plan approval application shall include plans for responding to emergencies both at the site and those involving the transport of wastes within the state. Details of the proposed emergency response plan shall be given in the plan approval application and will be stipulated in the plan approval and radioactive materials license.

(c) The plan approval application shall show proposed routes for transportation of radioactive wastes within the state. The Executive Secretary will not approve plans that propose radioactive waste transportation routes over roads or bridges where weight restrictions would be exceeded. The Executive Secretary will not approve plans that pose adverse impact or risk of harm to inhabited areas. The plan approval application shall address risks to inhabited areas, including both residential and non-residential areas; the width, condition, and types of roads to be used; roadside development on proposed routes; seasonal and climatic factors which may affect safety; alternate emergency access to the facility; the type, size, and configuration of vehicles proposed to haul wastes; transportation restrictions on proposed routes; and the transportation means and routes available to evacuate the population at risk in the event of accidents, including spills and fires.

(10) Siting Authority. The Executive Secretary recognizes that Titles 10 and 17 of the Utah Code give cities and counties authority for local use planning and zoning. Nothing in R313-25-3 precludes cities and counties from establishing additional requirements as provided by applicable state and federal law.

R313-25-4. License Required.

(1) Persons shall not receive, possess, or dispose of waste at a land disposal facility unless authorized by a license issued by the Executive Secretary pursuant to R313-25 and R313-22.

(2) Persons shall file an application with the Executive Secretary pursuant to R313-22-32 and obtain a license as provided in R313-25 before commencement of construction of a land disposal facility. Failure to comply with this requirement may be grounds for denial of a license and other penalties established by law and rules.

R313-25-5. Content of Application.

In addition to the requirements set forth in R313-22-33, an application to receive from others, possess, and dispose of wastes shall consist of general information, specific technical information, institutional information, and financial information as set forth in R313-25-6 through R313-25-10.

R313-25-6. General Information.

The general information shall include the following:

(1) identity of the applicant including:

(a) the full name, address, telephone number, and description of the business or occupation of the applicant;

(b) if the applicant is a partnership, the names and addresses of the partners and the principal location where the partnership does business;

(c) if the applicant is a corporation or an unincorporated association;

(i) the state where it is incorporated or organized and the

principal location where it does business; and

(ii) the names and addresses of its directors and principal officers; and

(d) if the applicant is acting as an agent or representative of another person in filing the application, the applicant shall provide, with respect to the other person, information required under R313-25-6(1).

(2) Qualifications of the applicant shall include the following;

(a) the organizational structure of the applicant, both offsite and onsite, including a description of lines of authority and assignments of responsibilities, whether in the form of administrative directives, contract provisions, or otherwise;

(b) the technical qualifications, including training and experience of the applicant and members of the applicant's staff, to engage in the proposed activities. Minimum training and experience requirements for personnel filling key positions described in R313-25-6(2)(a) shall be provided;

(c) a description of the applicant's personnel training program; and

(d) the plan to maintain an adequate complement of trained personnel to carry out waste receipt, handling, and disposal operations in a safe manner.

(3) A description of:

(a) the location of the proposed disposal site;

(b) the general character of the proposed activities;

(c) the types and quantities of waste to be received, possessed, and disposed of;

(d) plans for use of the land disposal facility for purposes other than disposal of wastes; and

(e) the proposed facilities and equipment; and

(4) proposed schedules for construction, receipt of waste, and first emplacement of waste at the proposed land disposal facility.

R313-25-7. Specific Technical Information.

The application shall include certain technical information. The following information is needed to determine whether or not the applicant can meet the performance objectives and the applicable technical requirements of R313-25:

(1) A description of the natural and demographic disposal site characteristics shall be based on and determined by disposal site selection and characterization activities. The description shall include geologic, geochemical, geotechnical, hydrologic, ecologic, archaeologic, meteorologic, climatologic, and biotic features of the disposal site and vicinity.

(2) Descriptions of the design features of the land disposal facility and of the disposal units for near-surface disposal shall include those design features related to infiltration of water; integrity of covers for disposal units; structural stability of backfill, wastes, and covers; contact of wastes with standing water; disposal site drainage; disposal site closure and stabilization; elimination to the extent practicable of long-term disposal site maintenance; inadvertent intrusion; occupational exposures; disposal site monitoring; and adequacy of the size of the buffer zone for monitoring and potential mitigative measures.

(3) Descriptions of the principal design criteria and their relationship to the performance objectives.

(4) Descriptions of the natural events or phenomena on which the design is based and their relationship to the principal design criteria.

(5) Descriptions of codes and standards which the applicant has applied to the design, and will apply to construction of the land disposal facilities.

(6) Descriptions of the construction and operation of the land disposal facility. The description shall include as a minimum the methods of construction of disposal units; waste emplacement; the procedures for and areas of waste segregation; types of intruder barriers; onsite traffic and drainage systems; survey control program; methods and areas of waste storage; and methods to control surface water and ground water access to the wastes. The description shall also include a description of the methods to be employed in the handling and disposal of wastes containing chelating agents or other non-radiological substances which might affect meeting the performance objectives of R313-25

(7) A description of the disposal site closure plan, including those design features which are intended to facilitate disposal site closures and to eliminate the need for active maintenance after closure.

(8) Identification of the known natural resources at the disposal site whose exploitation could result in inadvertent intrusion into the wastes after removal of active institutional control.

(9) Descriptions of the kind, amount, classification and specifications of the radioactive material proposed to be received, possessed, and disposed of at the land disposal facility.

(10) Descriptions of quality assurance programs, tailored to low-level waste disposal, including audit and managerial controls, for the determination of natural disposal site characteristics and for quality control during the design, construction, operation, and closure of the land disposal facility and the receipt, handling, and emplacement of waste.

(11) A description of the radiation safety program for control and monitoring of radioactive effluents to ensure compliance with the performance objective in R313-25-19 and monitoring of occupational radiation exposure to ensure compliance with the requirements of R313-15 and to control contamination of personnel, vehicles, equipment, buildings, and the disposal site. The applicant shall describe procedures, instrumentation, facilities, and equipment appropriate to both routine and emergency operations.

(12) A description of the environmental monitoring program to provide data and to evaluate potential health and environmental impacts and the plan for taking corrective measures if migration is indicated.

(13) Descriptions of the administrative procedures that the applicant will apply to control activities at the land disposal facility.

(14) A description of the facility electronic recordkeeping system as required in R313-25-33.

R313-25-8. Technical Analyses.

The specific technical information shall also include the following analyses needed to demonstrate that the performance objectives of R313-25 will be met:

(1) Analyses demonstrating that the general population

will be protected from releases of radioactivity shall consider the pathways of air, soil, ground water, surface water, plant uptake, and exhumation by burrowing animals. The analyses shall clearly identify and differentiate between the roles performed by the natural disposal site characteristics and design features in isolating and segregating the wastes. The analyses shall clearly demonstrate a reasonable assurance that the exposures to humans from the release of radioactivity will not exceed the limits set forth in R313-25-19.

(2) Analyses of the protection of inadvertent intruders shall demonstrate a reasonable assurance that the waste classification and segregation requirements will be met and that adequate barriers to inadvertent intrusion will be provided.

(3) Analysis of the protection of individuals during operations shall include assessments of expected exposures due to routine operations and likely accidents during handling, storage, and disposal of waste. The analysis shall provide reasonable assurance that exposures will be controlled to meet the requirements of R313-15.

(4) Analyses of the long-term stability of the disposal site shall be based upon analyses of active natural processes including erosion, mass wasting, slope failure, settlement of wastes and backfill, infiltration through covers over disposal areas and adjacent soils, and surface drainage of the disposal site. The analyses shall provide reasonable assurance that there will not be a need for ongoing active maintenance of the disposal site following closure.

R313-25-9. Institutional Information.

The institutional information submitted by the applicant shall include:

(1) A certification by the federal or state agency which owns the disposal site that the agency is prepared to accept transfer of the license when the provisions of R313-25-16 are met and will assume responsibility for institutional control after site closure and for post-closure observation and maintenance.

(2) Evidence, if the proposed disposal site is on land not owned by the federal or a state government, that arrangements have been made for assumption of ownership in fee by the federal or a state agency.

R313-25-10. Financial Information.

This information shall demonstrate that the applicant is financially qualified to carry out the activities for which the license is sought. The information shall meet other financial assurance requirements of R313-25.

R313-25-11. Requirements for Issuance of a License.

A license for the receipt, possession, and disposal of waste containing radioactive material will be issued by the Executive Secretary upon finding that:

(1) the issuance of the license will not constitute an unreasonable risk to the health and safety of the public;

(2) the applicant is qualified by reason of training and experience to carry out the described disposal operations in a manner that protects health and minimizes danger to life or property;

(3) the applicant's proposed disposal site, disposal design, land disposal facility operations, including equipment, facilities, and procedures, disposal site closure, and post-closure institutional control, are adequate to protect the public health and safety as specified in the performance objectives of R313-25-19;

(4) the applicant's proposed disposal site, disposal site design, land disposal facility operations, including equipment, facilities, and procedures, disposal site closure, and post-closure institutional control are adequate to protect the public health and safety in accordance with the performance objectives of R313-25-20;

(5) the applicant's proposed land disposal facility operations, including equipment, facilities, and procedures, are adequate to protect the public health and safety in accordance with R313-15;

(6) the applicant's proposed disposal site, disposal site design, land disposal facility operations, disposal site closure, and post-closure institutional control plans are adequate to protect the public health and safety in that they will provide reasonable assurance of the long-term stability of the disposed waste and the disposal site and will eliminate to the extent practicable the need for continued maintenance of the disposal site following closure;

(7) the applicant's demonstration provides reasonable assurance that the requirements of R313-25 will be met;

(8) the applicant's proposal for institutional control provides reasonable assurance that control will be provided for the length of time found necessary to ensure the findings in R313-25-11(3) through (6) and that the institutional control meets the requirements of R313-25-28.

(9) the financial or surety arrangements meet the requirements of R313-25.

R313-25-12. Conditions of Licenses.

(1) A license issued under R313-25, or a right thereunder, may not be transferred, assigned, or disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to a person, unless the Executive Secretary finds, after securing full information, that the transfer is in accordance with the provisions of the Radiation Control Act and Rules and gives his consent in writing in the form of a license amendment.

(2) The Executive Secretary may require the licensee to submit written statements under oath.

(3) The license will be terminated only on the full implementation of the final closure plan, including post-closure observation and maintenance, as approved by the Executive Secretary.

(4) The licensee shall submit to the provisions of the Act now or hereafter in effect, and to all findings and orders of the Executive Secretary. The terms and conditions of the license are subject to amendment, revision, or modification, by reason of amendments to, or by reason of rules, and orders issued in accordance with the terms of the Act and these rules.

(5) Persons licensed by the Executive Secretary pursuant to R313-25 shall confine possession and use of the materials to the locations and purposes authorized in the license.

(6) The licensee shall not dispose of waste until the Executive Secretary has inspected the land disposal facility and has found it to conform with the description, design, and

construction described in the application for a license.

(7) The Executive Secretary may incorporate, by rule or order, into licenses at the time of issuance or thereafter, additional requirements and conditions with respect to the licensee's receipt, possession, and disposal of waste as the Executive Secretary deems appropriate or necessary in order to:

(a) protect health or to minimize danger to life or property;

(b) require reports and the keeping of records, and to provide for inspections of licensed activities as the Executive Secretary deems necessary or appropriate to effectuate the purposes of the Radiation Control Act and Rules.

(8) The authority to dispose of wastes expires on the expiration date stated in the license. An expiration date on a license applies only to the above ground activities and to the authority to dispose of waste. Failure to renew the license shall not relieve the licensee of responsibility for implementing site closure, post-closure observation, and transfer of the license to the site owner.

R313-25-13. Application for Renewal or Closure.

(1) An application for renewal or an application for closure under R313-25-14 shall be filed at least 90 days prior to license expiration.

(2) Applications for renewal of a license shall be filed in accordance with R313-25-5 through 25-10. Applications for closure shall be filed in accordance with R313-25-14. Information contained in previous applications, statements, or reports filed with the Executive Secretary under the license may be incorporated by reference if the references are clear and specific.

(3) If a licensee has filed an application in proper form for renewal of a license, the license shall not expire unless and until the Executive Secretary has taken final action to deny application for renewal.

(4) In evaluating an application for license renewal, the Executive Secretary will apply the criteria set forth in R313-25-11.

R313-25-14. Contents of Application for Site Closure and Stabilization.

(1) Prior to final closure of the disposal site, or as otherwise directed by the Executive Secretary, the licensee shall submit an application to amend the license for closure. This closure application shall include a final revision and specific details of the disposal site closure plan included in the original license application submitted and approved under R313-25-7(7). The plan shall include the following:

(a) additional geologic, hydrologic, or other data pertinent to the long-term containment of emplaced wastes obtained during the operational period;

(b) the results of tests, experiments, or other analyses relating to backfill of excavated areas, closure and sealing, waste migration and interaction with emplacement media, or other tests, experiments, or analyses pertinent to the long-term containment of emplaced waste within the disposal site;

(c) proposed revision of plans for:

(i) decontamination or dismantlement of surface facilities;

(ii) backfilling of excavated areas; or

(iii) stabilization of the disposal site for post-closure care.

(d) Significant new information regarding the environmental impact of closure activities and long-term performance of the disposal site.

(2) Upon review and consideration of an application to amend the license for closure submitted in accordance with R313-25-14(1), the Executive Secretary shall issue an amendment authorizing closure if there is reasonable assurance that the long-term performance objectives of R313-25 will be met.

R313-25-15. Post-Closure Observation and Maintenance.

The licensee shall observe, monitor, and carry out necessary maintenance and repairs at the disposal site until the site closure is complete and the license is transferred by the Executive Secretary in accordance with R313-25-16. The licensee shall remain responsible for the disposal site for an additional five years. The Executive Secretary may approve closure plans that provide for shorter or longer time periods of post-closure observation and maintenance, if sufficient rationale is developed for the variance.

R313-25-16. Transfer of License.

Following closure and the period of post-closure observation and maintenance, the licensee may apply for an amendment to transfer the license to the disposal site owner. The license shall be transferred when the Executive Secretary finds:

(1) that the disposal site was closed according to the licensee's approved disposal site closure plan;

(2) that the licensee has provided reasonable assurance that the performance objectives of R313-25 have been met;

(3) that funds for care and records required by R313-25-33(4) and (5) have been transferred to the disposal site owner;

(4) that the post-closure monitoring program is operational and can be implemented by the disposal site owner; and

(5) that the Federal or State agency which will assume responsibility for institutional control of the disposal site is prepared to assume responsibility and ensure that the institutional requirements found necessary under R313-25-11(8) will be met.

R313-25-17. Termination of License.

(1) Following the period of institutional control needed to meet the requirements of R313-25-11, the licensee may apply for an amendment to terminate the license.

(2) This application will be reviewed in accordance with the provisions of R313-22-32.

(3) A license shall be terminated only when the Executive Secretary finds:

(a) that the institutional control requirements of R313-25-11(8) have been met;

(b) that additional requirements resulting from new information developed during the institutional control period have been met;

(c) that permanent monuments or markers warning against intrusion have been installed; and

(d) that records required by R313-25-33(4) and (5) have been sent to the party responsible for institutional control of the disposal site and a copy has been sent to the Executive Secretary

immediately prior to license termination.

R313-25-18. General Requirement.

Land disposal facilities shall be sited, designed, operated, closed, and controlled after closure so that reasonable assurance exists that exposures to individuals do not exceed the limits stated in R313-25-19 and 25-22.

R313-25-19. Protection of the General Population from Releases of Radioactivity.

Concentrations of radioactive material which may be released to the general environment in ground water, surface water, air, soil, plants or animals shall not result in an annual dose exceeding an equivalent of 25 millirems (0.25 mSv) to the whole body, 75 millirems (0.75 mSv) to the thyroid, and 25 millirems (0.25 mSv) to any other organ of any member of the public. Reasonable efforts should be made to maintain releases of radioactivity in effluents to the general environment as low as is reasonably achievable.

R313-25-20. Protection of Individuals from Inadvertent Intrusion.

Design, operation, and closure of the land disposal facility shall ensure protection of any individuals inadvertently intruding into the disposal site and occupying the site or contacting the waste after active institutional controls over the disposal site are removed.

R313-25-21. Protection of Individuals During Operations.

Operations at the land disposal facility shall be conducted in compliance with the standards for radiation protection set out in R313-15 of these rules, except for release of radioactivity in effluents from the land disposal facility, which shall be governed by R313-25-19. Every reasonable effort should be made to maintain radiation exposures as low as is reasonably achievable, ALARA.

R313-25-22. Stability of the Disposal Site After Closure.

The disposal facility shall be sited, designed, used, operated, and closed to achieve long-term stability of the disposal site and to eliminate, to the extent practicable, the need for ongoing active maintenance of the disposal site following closure so that only surveillance, monitoring, or minor custodial care are required.

R313-25-23. Disposal Site Suitability Requirements for Land Disposal - Near-Surface Disposal.

(1) The primary emphasis in disposal site suitability is given to isolation of wastes and to disposal site features that ensure that the long-term performance objectives are met.

(2) The disposal site shall be capable of being characterized, modeled, analyzed and monitored.

(3) Within the region where the facility is to be located, a disposal site should be selected so that projected population growth and future developments are not likely to affect the ability of the disposal facility to meet the performance objectives of R313-25.

(4) Areas shall be avoided having known natural resources which, if exploited, would result in failure to meet the performance objectives of R313-25.

(5) The disposal site shall be generally well drained and free of areas of flooding or frequent ponding. Waste disposal shall not take place in a 100-year flood plain, coastal high-hazard area or wetland, as defined in Executive Order 11988, "Floodplain Management Guidelines."

(6) Upstream drainage areas shall be minimized to decrease the amount of runoff which could erode or inundate waste disposal units.

(7) The disposal site shall provide sufficient depth to the water table that ground water intrusion, perennial or otherwise, into the waste will not occur. The Executive Secretary will consider an exception to this requirement to allow disposal below the water table if it can be conclusively shown that disposal site characteristics will result in molecular diffusion being the predominant means of radionuclide movement and the rate of movement will result in the performance objectives being met. In no case will waste disposal be permitted in the zone of fluctuation of the water table.

(8) The hydrogeologic unit used for disposal shall not discharge ground water to the surface within the disposal site.

(9) Areas shall be avoided where tectonic processes such as faulting, folding, seismic activity, vulcanism, or similar phenomena may occur with such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of R313-25 or may preclude defensible modeling and prediction of long-term impacts.

(10) Areas shall be avoided where surface geologic processes such as mass wasting, erosion, slumping, landsliding, or weathering occur with sufficient such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of R313-25, or may preclude defensible modeling and prediction of long-term impacts.

(11) The disposal site shall not be located where nearby facilities or activities could adversely impact the ability of the site to meet the performance objectives of R313-25 or significantly mask the environmental monitoring program.

R313-25-24. Disposal Site Design for Near-Surface Land Disposal.

(1) Site design features shall be directed toward long-term isolation and avoidance of the need for continuing active maintenance after site closure.

(2) The disposal site design and operation shall be compatible with the disposal site closure and stabilization plan and lead to disposal site closure that provides reasonable assurance that the performance objectives will be met.

(3) The disposal site shall be designed to complement and improve, where appropriate, the ability of the disposal site's natural characteristics to assure that the performance objectives will be met.

(4) Covers shall be designed to minimize, to the extent practicable, water infiltration, to direct percolating or surface water away from the disposed waste, and to resist degradation by surface geologic processes and biotic activity.

(5) Surface features shall direct surface water drainage away from disposal units at velocities and gradients which will not result in erosion that will require ongoing active maintenance in the future.

(6) The disposal site shall be designed to minimize to the extent practicable the contact of water with waste during storage, the contact of standing water with waste during disposal, and the contact of percolating or standing water with wastes after disposal.

R313-25-25. Near Surface Land Disposal Facility Operation and Disposal Site Closure.

(1) Wastes designated as Class A pursuant to R313-15-307 of these rules shall be segregated from other wastes by placing them in disposal units which are sufficiently separated from disposal units for the other waste classes so that any interaction between Class A wastes and other wastes will not result in the failure to meet the performance objectives of R313-25. This segregation is not necessary for Class A wastes if they meet the stability requirements of R313-15-308(2).

(2) Wastes designated as Class C pursuant to R313-15-307 shall be disposed of so that the top of the waste is a minimum of five meters below the top surface of the cover or shall be disposed of with intruder barriers that are designed to protect against an inadvertent intrusion for at least 500 years.

(3) Except as provided in R313-25-1(1), only waste classified as Class A, B, or C shall be acceptable for near-surface disposal. Wastes shall be disposed of in accordance with the requirements of R313-25-25(4) through 11.

(4) Wastes shall be emplaced in a manner that maintains the package integrity during emplacement, minimizes the void spaces between packages, and permits the void spaces to be filled.

(5) Void spaces between waste packages shall be filled with earth or other material to reduce future subsidence within the fill.

(6) Waste shall be placed and covered in a manner that limits the radiation dose rate at the surface of the cover to levels that at a minimum will permit the licensee to comply with all provisions of R313-15-105 at the time the license is transferred pursuant to R313-25-16.

(7) The boundaries and locations of disposal units shall be accurately located and mapped by means of a land survey. Near-surface disposal units shall be marked in such a way that the boundaries of the units can be easily defined. Three permanent survey marker control points, referenced to United States Geological Survey or National Geodetic Survey control stations, shall be established on the site to facilitate surveys. The United States Geological Survey or National Geodetic Survey control stations shall provide horizontal and vertical controls as checked against United States Geological Survey or National Geodetic Survey record files.

(8) A buffer zone of land shall be maintained between any buried waste and the disposal site boundary and beneath the disposed waste. The buffer zone shall be of adequate dimensions to carry out environmental monitoring activities specified in R313-25-26(4) and take mitigative measures if needed.

(9) Closure and stabilization measures as set forth in the approved site closure plan shall be carried out as the disposal units are filled and covered.

(10) Active waste disposal operations shall not have an adverse effect on completed closure and stabilization measures.

(11) Only wastes containing or contaminated with radioactive material shall be disposed of at the disposal site.

(12) Proposals for disposal of waste that are not generally acceptable for near-surface disposal because the wastes form and disposal methods shall be different and, in general, more stringent than those specified for Class C waste, may be submitted to the Executive Secretary for approval.

R313-25-26. Environmental Monitoring.

(1) At the time a license application is submitted, the applicant shall have conducted a preoperational monitoring program to provide basic environmental data on the disposal site characteristics. The applicant shall obtain information about the ecology, meteorology, climate, hydrology, geology, geochemistry, and seismology of the disposal site. For those characteristics that are subject to seasonal variation, data shall cover at least a 12-month period.

(2) During the land disposal facility site construction and operation, the licensee shall maintain an environmental monitoring program. Measurements and observations shall be made and recorded to provide data to evaluate the potential health and environmental impacts during both the construction and the operation of the facility and to enable the evaluation of long-term effects and need for mitigative measures. The monitoring system shall be capable of providing early warning of releases of waste from the disposal site before they leave the site boundary.

(3) After the disposal site is closed, the licensee responsible for post-operational surveillance of the disposal site shall maintain a monitoring system based on the operating history and the closure and stabilization of the disposal site. The monitoring system shall be capable of providing early warning of releases of waste from the disposal site before they leave the site boundary.

(4) The licensee shall have plans for taking corrective measures if the environmental monitoring program detects migration of waste which would indicate that the performance objectives may not be met.

R313-25-27. Alternative Requirements for Design and Operations.

The Executive Secretary may, upon request or on his own initiative, authorize provisions other than those set forth in R313-25-24 and 25-26 for the segregation and disposal of waste and for the design and operation of a land disposal facility on a specific basis, if it finds reasonable assurance of compliance with the performance objectives of R313-25.

R313-25-28. Institutional Requirements.

(1) Land Ownership. Disposal of waste received from other persons may be permitted only on land owned in fee by the Federal or a State government.

(2) Institutional Control. The land owner or custodial agency shall conduct an institutional control program to physically control access to the disposal site following transfer of control of the disposal site from the disposal site operator. The institutional control program shall also include, but not be limited to, conducting an environmental monitoring program at the disposal site, periodic surveillance, minor custodial care, and

other equivalents as determined by the Executive Secretary, and administration of funds to cover the costs for these activities. The period of institutional controls will be determined by the Executive Secretary, but institutional controls may not be relied upon for more than 100 years following transfer of control of the disposal site to the owner.

R313-25-30. Applicant Qualifications and Assurances.

The applicant shall show that it either possesses the necessary funds, or has reasonable assurance of obtaining the necessary funds, or by a combination of the two, to cover the estimated costs of conducting all licensed activities over the planned operating life of the project, including costs of construction and disposal.

R313-25-31. Funding for Disposal Site Closure and Stabilization.

(1) The applicant shall provide assurances prior to the commencement of operations that sufficient funds will be available to carry out disposal site closure and stabilization, including:

(a) decontamination or dismantlement of land disposal facility structures, and

(b) closure and stabilization of the disposal site so that following transfer of the disposal site to the site owner, the need for ongoing active maintenance is eliminated to the extent practicable and only minor custodial care, surveillance, and monitoring are required. These assurances shall be based on Executive Secretary approved cost estimates reflecting the Executive Secretary approved plan for disposal site closure and stabilization. The applicant's cost estimates shall take into account total costs that would be incurred if an independent contractor were hired to perform the closure and stabilization work.

(2) In order to avoid unnecessary duplication and expense, the Executive Secretary will accept financial sureties that have been consolidated with earmarked financial or surety arrangements established to meet requirements of Federal or other State agencies or local governmental bodies for decontamination, closure, and stabilization. The Executive Secretary will accept these arrangements only if they are considered adequate to satisfy the requirements of R313-25-31 and if they clearly identify that the portion of the surety which covers the closure of the disposal site is clearly identified and committed for use in accomplishing these activities.

(3) The licensee's financial or surety arrangement shall be submitted annually for review by the Executive Secretary to assure that sufficient funds will be available for completion of the closure plan.

(4) The amount of the licensee's financial or surety arrangement shall change in accordance with changes in the predicted costs of closure and stabilization. Factors affecting closure and stabilization cost estimates include inflation, increases in the amount of disturbed land, changes in engineering plans, closure and stabilization that have already been accomplished, and other conditions affecting costs. The financial or surety arrangement shall be sufficient at all times to cover the costs of closure and stabilization of the disposal units that are expected to be used before the next license renewal.

(5) The financial or surety arrangement shall be written for a specified period of time and shall be automatically renewed unless the person who issues the surety notifies the Executive Secretary; the beneficiary, the site owner; and the principal, the licensee, not less than 90 days prior to the renewal date of its intention not to renew. In such a situation, the licensee shall submit a replacement surety within 30 days after notification of cancellation. If the licensee fails to provide a replacement surety acceptable to the Executive Secretary, the beneficiary may collect on the original surety.

(6) Proof of forfeiture shall not be necessary to collect the surety so that, in the event that the licensee could not provide an acceptable replacement surety within the required time, the surety shall be automatically collected prior to its expiration. The conditions described above shall be clearly stated on surety instruments.

(7) Financial or surety arrangements generally acceptable to the Executive Secretary include surety bonds, cash deposits, certificates of deposit, deposits of government securities, escrow accounts, irrevocable letters or lines of credit, trust funds, and combinations of the above or other types of arrangements as may be approved by the Executive Secretary. Self-insurance, or an arrangement which essentially constitutes self-insurance, will not satisfy the surety requirement for private sector applicants.

(8) The licensee's financial or surety arrangement shall remain in effect until the closure and stabilization program has been completed and approved by the Executive Secretary, and the license has been transferred to the site owner.

R313-25-32. Financial Assurances for Institutional Controls.

(1) Prior to the issuance of the license, the applicant shall provide for Executive Secretary approval, a binding arrangement, between the applicant and the disposal site owner that ensures that sufficient funds will be available to cover the costs of monitoring and required maintenance during the institutional control period. The binding arrangement shall be reviewed annually by the Executive Secretary to ensure that changes in inflation, technology, and disposal facility operations are reflected in the arrangements.

(2) Subsequent changes to the binding arrangement specified in R313-25-32(1) relevant to institutional control shall be submitted to the Executive Secretary for prior approval.

R313-25-33. Maintenance of Records, Reports, and Transfers.

(1) Licensees shall maintain records and make reports in connection with the licensed activities as may be required by the conditions of the license or by the rules and orders of the Executive Secretary.

(2) Records which are required by these rules or by license conditions shall be maintained for a period specified by the appropriate rules or by license condition. If a retention period is not otherwise specified, these records shall be maintained and transferred to the officials specified in R313-25-33(4) as a condition of license termination unless the Executive Secretary otherwise authorizes their disposition.

(3) Records which shall be maintained pursuant to R313-25 may be the original or a reproduced copy or microfilm if this reproduced copy or microfilm is capable of producing copy that

is clear and legible at the end of the required retention period.

(4) Notwithstanding R313-25-33(1) through (3), copies of records of the location and the quantity of wastes contained in the disposal site shall be transferred upon license termination to the chief executive of the nearest municipality, the chief executive of the county in which the facility is located, the county zoning board or land development and planning agency, the State Governor, and other state, local, and federal governmental agencies as designated by the Executive Secretary at the time of license termination.

(5) Following receipt and acceptance of a shipment of waste, the licensee shall record the date that the shipment is received at the disposal facility, the date of disposal of the waste, a traceable shipment manifest number, a description of any engineered barrier or structural overpack provided for disposal of the waste, the location of disposal at the disposal site, the condition of the waste packages as received, discrepancies between the materials listed on the manifest and those received, the volume of any pallets, bracing, or other shipping or onsite generated materials that are contaminated, and are disposed of as contaminated or suspect materials, and evidence of leakage or damaged packages or radiation or contamination levels in excess of limits specified in U.S. Department of Transportation and Executive Secretary regulations or rules. The licensee shall briefly describe repackaging operations of the waste packages included in the shipment, plus other information required by the Executive Secretary as a license condition.

(6) Licensees authorized to dispose of waste received from other persons shall file a copy of their financial report or a certified financial statement annually with the Executive Secretary in order to update the information base for determining financial qualifications.

(7)(a) Licensees authorized to dispose of waste received from other persons, pursuant to R313-25, shall submit annual reports to the Executive Secretary. Reports shall be submitted by the end of the first calendar quarter of each year for the preceding year.

(b) The reports shall include:

(i) specification of the quantity of each of the principal contaminants released to unrestricted areas in liquid and in airborne effluents during the preceding year;

(ii) the results of the environmental monitoring program;

(iii) a summary of licensee disposal unit survey and maintenance activities;

(iv) a summary, by waste class, of activities and quantities of radionuclides disposed of;

(v) instances in which observed site characteristics were significantly different from those described in the application for a license; and

(vi) other information the Executive Secretary may require.

(c) If the quantities of waste released during the reporting period, monitoring results, or maintenance performed are significantly different from those predicted, the report shall cover this specifically.

(8) In addition to the other requirements in R313-25-33, the licensee shall store, or have stored, manifest and other information pertaining to receipt and disposal of radioactive waste in an electronic recordkeeping system.

(a) The manifest information that must be electronically stored is:

(i) that required in Appendix G of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated into these rules by reference, with the exception of shipper and carrier telephone numbers and shipper and consignee certifications; and

(ii) that information required in R313-25-33(5).

(b) As specified in facility license conditions, the licensee shall report the stored information, or subsets of this information, on a computer-readable medium.

R313-25-34. Tests on Land Disposal Facilities.

Licensees shall perform, or permit the Executive Secretary to perform, any tests the Executive Secretary deems appropriate or necessary for the administration of the rules in R313-25, including, but not limited to, tests of;

(1) wastes;

(2) facilities used for the receipt, storage, treatment, handling or disposal of wastes;

(3) radiation detection and monitoring instruments; or

(4) other equipment and devices used in connection with the receipt, possession, handling, treatment, storage, or disposal of waste.

R313-25-35. Executive Secretary Inspections of Land Disposal Facilities.

(1) Licensees shall afford to the Executive Secretary, at reasonable times, opportunity to inspect waste not yet disposed of, and the premises, equipment, operations, and facilities in which wastes are received, possessed, handled, treated, stored, or disposed of.

(2) Licensees shall make available to the Executive Secretary for inspection, upon reasonable notice, records kept by it pursuant to these rules. Authorized representatives of the Executive Secretary may copy and take away copies of, for the Executive Secretary's use, any records required to be kept pursuant to R313-25.

KEY: radiation, radioactive waste disposal
January 23, 1998 **19-3-104**
Notice of Continuation May 1, 1997 **19-3-108**

R315. Environmental Quality, Solid and Hazardous Waste.
R315-301. Solid Waste Authority, Definitions, and General Requirements.
R315-301-1. Authority and Purpose.

The Solid Waste Permitting and Management Rules are promulgated under the authority of the Solid and Hazardous Waste Act, Chapter 6 of Title 19, to protect human health, to prevent land, air and water pollution, and to conserve the state's natural, economic and energy resources by setting minimum performance standards for the proper management of solid wastes originating from residences, commercial, agricultural, and other sources.

R315-301-2. Definitions.

Terms used in Rules R315-301 through R315-320 are defined in Sections 19-1-103 and 19-6-102. In addition, for the purpose of these rules, the following definitions apply.

(1) "Active area" means that portion of a facility where solid waste recycling, reuse, treatment, storage, or disposal operations are being conducted.

(2) "Airport" means a public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(3) "Aquifer" means a geological formation, group of formations, or portion of a formation that contains sufficiently saturated permeable material to yield useable quantities of ground water to wells or springs.

(4) "Areas susceptible to mass movement" means those areas of influence, characterized as having an active or substantial possibility of mass movement, where the movement of earth material at, beneath, or adjacent to the landfill unit, because of natural or human-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock falls.

(5) "Asbestos Waste" means friable asbestos, which is any material containing more than 1% asbestos as determined using the method specified in Appendix A, 40 CFR Part 763.1, 1991 ed., which is adopted and incorporated by reference, that when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

(6) "Background concentration" means the concentration of a contaminant in ground water upgradient or a lateral hydraulically equivalent point from a facility, practice, or activity, and which has not been affected by that facility, practice, or activity.

(7) "Class I landfill" means a municipal landfill or a commercial landfill solely under contract with a local government taking municipal waste generated within the boundaries of the local government and receiving, on a yearly average, over 20 tons of solid waste per day.

(8) "Class II landfill" means a municipal landfill or a commercial landfill solely under contract with a local government taking municipal waste generated within the boundaries of the local government and receiving, on a yearly average, 20 tons, or less, of solid waste per day.

(9) "Class III landfill" means a non-commercial landfill that is to receive only industrial solid waste, but excluding farms and ranches.

(10) "Class IV landfill" means a landfill that is to receive only construction/demolition waste, yard waste, inert waste, dead animals, or upon meeting the requirements of Section 26-32a-103.5 and Section R315-320-3, waste tires and materials derived from waste tires.

(11) "Class V landfill" means a commercial landfill which receives any nonhazardous solid waste for disposal. Class V landfill does not include a landfill that is solely under contract with a local government within the state to dispose of nonhazardous solid waste generated within the boundaries of the local government.

(12) "Closed facility" means any facility that no longer receives solid waste and has completed an approved closure plan, and any landfill on which an approved final cover has been installed.

(13) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding household waste and industrial wastes.

(14) "Composite liner" means a liner system consisting of two components: the upper component consisting of a synthetic flexible membrane liner, and the lower component consisting of a layer of compacted soil. The composite liner must have the synthetic flexible membrane liner installed in direct and uniform contact with the compacted soil component and be constructed of specified materials and compaction to meet specified permeabilities.

(15) "Composting" means a method of solid waste management whereby the organic component of the waste stream is biologically decomposed under controlled conditions to a state in which the end product or compost can be safely handled, stored, or applied to the land without adversely affecting human health or the environment.

(16) "Construction/demolition waste" means waste from building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition operations on pavements, houses, commercial buildings, and other structures. Such waste may include: bricks, concrete, other masonry materials, soil, asphalt, rock, untreated lumber, rebar, and tree stumps. It does not include asbestos, contaminated soils or tanks resulting from remediation or clean-up at any release or spill, waste paints, solvents, sealers, adhesives, or similar hazardous or potentially hazardous materials.

(17) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water or soil which is a result of human activity.

(18) "Displaced or displacement" means the relative movement of any two sides of a fault measured in any direction.

(19) "Drop box facility" means a facility used for the placement of a large detachable container or drop box for the collection of solid waste for transport to a solid waste disposal facility. The facility includes the area adjacent to the containers for necessary entrance, exit, unloading, and turn-around areas. Drop box facilities normally serve the general public with uncompacted loads and receive waste from off-site. Drop box facilities do not include residential or commercial waste containers on the site of waste generation.

(20) "Energy recovery" means the recovery of energy in a

useable form from incineration, burning, or any other means of using the heat of combustion of solid waste that involves high temperature (above 1200 degrees Fahrenheit) processing.

(21) "Existing facility" means any facility that was receiving solid waste on or before July 15, 1993.

(22) "Expansion of a solid waste disposal facility" means any lateral or vertical expansion beyond or above the boundaries outlined in the initial permit application. Where no boundaries were designated in the disposal facility permit, expansion shall apply to all new land purchased or acquired after the effective date of these rules.

(23) "Facility" means all contiguous land, structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal operational units, e.g., one or more incinerators, landfills, container storage areas, or combinations of them.

(24) "Floodplain" means the land which has been or may be hereafter covered by flood water which has a 1% chance of occurring any given year. The flood is also referred to as the base flood or 100-year flood.

(25) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure or as determined by EPA test method 9095 (Paint Filter Liquids Test) as provided in EPA Report SW-846 "Test Methods for Evaluating Solid Waste" third edition, November 1986, as revised December 1987 which is adopted and incorporated by reference.

(26) "Garbage" means discarded animal and vegetable wastes and animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food, and of such a character and proportion as to be capable of attracting or providing food for vectors. Garbage does not include sewage and sewage sludge.

(27) "Ground water" means subsurface water which is in the zone of saturation including perched ground water.

(28) "Ground water quality standard" means a standard for maximum allowable contamination in ground water as set by Section R315-308-4.

(29) "Hazardous waste" means hazardous waste as defined by Subsection 19-6-102(7) and Section R315-2-3.

(30) "Holocene fault" means a fracture or zone of fractures along which rocks on one side of the fracture have been displaced with respect to those on the other side, which has occurred in the most recent epoch of the Quaternary period extending from the end of the Pleistocene, approximately 11,000 years ago, to the present.

(31) "Household size" means a container for a material or product that is normally and reasonably associated with households or household activities. The containers are of a size and design to hold materials or products generally for immediate use and not for storage, five gallons or less in size.

(32) "Household waste" means any solid waste, including garbage, trash, and sanitary waste in septic tanks, derived from households including single and multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

(33) "Incineration" means a controlled thermal process by which solid wastes are physically or chemically altered to gas, liquid, or solid residues which are also regulated solid wastes. Incineration does not include smelting operations where metals are reprocessed or the refining, processing, or the burning of used oil for energy recovery as described in Rule R315-15.

(34) "Industrial solid waste" means any solid waste generated by manufacturing or other industrial processes that is not a hazardous waste. Industrial solid waste includes waste resulting from the following manufacturing processes and associated activities: electric power generation; fertilizer or agricultural chemicals; food and related products or by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing or foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste; oil and gas waste; or other waste excluded by Subsection 19-6-102(16)(b).

(35) "Industrial solid waste facility" means a facility which receives only industrial solid waste from on-site or off-site sources for disposal.

(36) "Inert waste" means noncombustible, nonhazardous solid wastes that retain its physical and chemical structure under expected conditions of disposal, including resistance to biological or chemical attack.

(37) "Landfill" means a disposal facility where solid waste is placed in or on the land and which is not a landtreatment facility or surface impoundment.

(38) "Landtreatment, landfarming, or landspreading facility" means a facility or part of a facility where solid waste is applied onto or incorporated into the soil surface for the purpose of biodegradation.

(39) "Lateral expansion of a solid waste disposal facility" means any horizontal expansion of the waste boundaries of an existing landfill cell, module, or unit or expansions not consistent with past normal operating practices.

(40) "Lateral hydraulically equivalent point" means a point located hydraulically equal to a facility and in the same ground water with similar geochemistry such that the ground water, at that point, has not been affected by the facility.

(41) "Leachate" means a liquid that has passed through or emerged from solid waste and may contain soluble, suspended, miscible, or immiscible materials removed from such waste.

(42) "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include human-made materials, such as fill, concrete and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

(43) "Lower explosive limit" means the lowest percentage by volume of a mixture of explosive gases which will propagate a flame in air at 25 degrees Celsius (77 degrees Fahrenheit) and atmospheric pressure.

(44) "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizonal acceleration depicted on a seismic hazard map, with a 90% or greater probability that the acceleration will not be exceeded in 250

years, or the maximum expected horizontal acceleration based on site specific seismic risk assessment.

(45) "Municipal landfill" means a landfill that is not for profit and is either owned and operated by a local government or a government entity such as a city, town, county, service district, or an entity created by interlocal agreement of local governments, or is solely under contract with a local government or government entity. The landfill accepts, for disposal, the nonhazardous solid waste, including municipal solid waste, generated within the jurisdictional boundaries of the local government or government entity.

(46) "Municipal solid waste" means household waste, commercial solid waste, non-hazardous sludge, and exempt small quantity generator waste.

(47) "New facility" means any facility that begins receiving solid waste after July 15, 1993.

(48) "Off-site" means any site which is not on-site.

(49) "On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided that 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. Property separated by a private right-of-way, which the site owner or operator controls, and to which the public does not have access, is also considered on-site property.

(50) "Operator" means the person, as defined by Subsection 19-1-103(4), responsible for the overall operation of a facility.

(51) "Owner" means the person, as defined by Subsection 19-1-103(4), who owns a facility or part of a facility.

(52) "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 materials which contain such substances and is regulated under 40 CFR Part 761, 1995 ed.

(53) "Permeability" means the ease with which a porous material allows water and the solutes contained therein to flow through it. This is usually expressed in units of centimeters per second (cm/sec) and termed hydraulic conductivity. Soils and synthetic liners with a permeability for water of 1×10^{7} cm/sec or less may be considered impermeable.

(54) "Permit" means the plan approval as required by Subsection 19-6-108(3)(a), or equivalent control document issued by the Executive Secretary to implement the requirements of the Utah Solid and Hazardous Waste Act.

(55) "Pile" means any noncontainerized accumulation of solid waste that is used for treatment or storage.

(56) "Poor foundation conditions" means those areas where features exist which indicate that a natural or human-induced event may result in inadequate foundation support for the structural components of a landfill unit.

(57) "Putrescible" means organic material subject to decomposition by microorganisms.

(58) "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 certification, or completion of accredited university programs that enable that individual to make sound professional judgements regarding ground water monitoring, contaminant fate and transport, and corrective action.

(59) "Recycling" means extracting valuable materials from the waste stream and transforming or remanufacturing them into useable materials that have a demonstrated or potential market.

(a) Recycling does not include processes that generate such volumes of material that no market exists for the material.

(b) Any part of the waste stream entering a recycling facility and subsequently returned to a waste stream or disposed has the same regulatory designation as the original waste.

(c) Recycling includes the substitution of nonhazardous solid waste fuels for conventional fuels (such as coal, natural gas, and petroleum products) for the purpose of generating the heat necessary to manufacture a product.

(60) "Recyclable materials" means those solid wastes that can be recovered from or otherwise diverted from the waste stream for the purpose of recycling, such as metals, paper, glass, and plastics.

(61) "Run-off" means any rainwater, leachate, or other liquid that has contacted solid waste and drains over land from any part of a facility.

(62) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto the active area of a facility.

(63) "Scavenging" means the uncontrolled removal of solid waste from a facility.

(64) "Seismic impact zone" means an area with a 10% or greater probability that the maximum horizonal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull, will exceed 0.10g in 250 years.

(65) "Septage" means a semisolid consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from septic tank systems.

(66) "Sharps" means any discarded or contaminated article or instrument from a health facility that may cause puncture or cuts. Such waste may include needles, syringes, blades, needles with attached tubing, pipettes, pasteurs, broken glass, and blood vials.

(67) "Sludge" means any solid, semisolid, or liquid waste, including grit and screenings generated from a:

(a) municipal, commercial, or industrial waste water treatment plant;

(b) water supply treatment plant;

(c) car wash facility;

(d) air pollution control facility; or

(e) any other such waste having similar characteristics.

(68) "Solid waste disposal facility" means a facility or part of a facility at which solid waste is received from on-site or off-site sources and intentionally placed into or on land and at which waste, if allowed by permit, may remain after closure. Solid waste disposal facilities include landfills, incinerators, and land treatment areas.

(69) "Solid waste incinerator facility" means a facility at which solid waste is received from on-site or off-site sources and is subjected to the incineration process. An incinerator facility that incinerates solid waste for any reason, including energy recovery, volume reduction, or to render it non-infectious, is a solid waste incinerator facility and is subject to the Utah Solid Waste Permitting and Management Rules.

(70) "Special waste" means discarded materials which may require special handling or may pose a threat to public safety, human health, or the environment. Special waste may include ash, automobile bodies, furniture and appliances, infectious waste, tires, dead animals, asbestos, industrial waste, wastes exempt from the hazardous waste classifications under the Federal Resource Conservation and Recovery Act, U.S.C., Section 6901, et seq., and sludge.

(71) "Structural components" means liners, leachate collection systems, final covers, run-on or run-off systems, and any other component used in the construction and operation of a landfill that is necessary for the protection of human health and the environment.

(72) "Surface impoundment or impoundment" means a facility or part of a facility which is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials, although it may be lined with synthetic materials, which is designed to hold an accumulation of liquid waste or waste containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(73) "Transfer station" means a permanent, fixed, supplemental collection and transportation facility used by persons and route collection vehicles to deposit collected solid waste from off-site into a larger transfer vehicle for transport to a solid waste handling or disposal facility.

(74) "Transport vehicle" means a vehicle capable of hauling large amounts of solid waste such as a truck, packer, or trailer that may be used by refuse haulers to transport solid waste from the point of generation to a transfer station or a disposal facility.

(75) "Twenty-five year storm" means a 24-hour storm of such intensity that it has a 4% probability of being equalled or exceeded any given year. The storm could result in what is referred to as a 25-year flood.

(76) "Unit boundary" means a vertical surface located at the hydraulically downgradient limit of a landfill unit or other solid waste disposal facility unit which is required to monitor ground water. This vertical surface extends down into the ground water.

(77) "Unstable area" means a location that is susceptible to natural or human induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a facility. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

(78) "Vadose zone" means the zone of aeration including soil and capillary water. The zone is bound above by the land surface and below by the water table.

(79) "Vector" means a living animal including insect or other arthropod which is capable of transmitting an infectious disease from one organism to another.

(80) "Washout" means the carrying away of solid waste by waters of a base or 100-year flood.

(81) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(82) "Yard waste" means vegetative matter resulting from landscaping, land maintenance, and land clearing operations including grass clippings, prunings, and other discarded material generated from yards, gardens, parks, and similar types of facilities. Yard waste does not include garbage, paper, plastic, sludge, septage, or manure.

R315-301-3. Owner Responsibilities for Solid Waste.

The owner, operator or occupant of any premises or business establishment shall be responsible for the management and disposal of all solid waste generated or accumulated by the owner, operator, or occupant of the property in compliance with the Utah Solid Waste Permitting and Management Rules and the Utah Solid and Hazardous Waste Act.

R315-301-4. Prohibition of Illegal Disposal or Incineration of Solid Waste.

No person shall incinerate, burn, or dispose of any solid waste in any place except at a facility which is in compliance with the requirements of these and other applicable rules. This requirement does not include the deposition of inert waste used as fill material, mine tailings and overburden, and agricultural waste if the deposition or disposal does not cause a public nuisance or hazard or contribute to land, air or water pollution.

R315-301-5. Permit Required.

(1) No solid waste disposal facility shall be maintained, established, or expanded until the county, city, town, or other person operating or owning such facility has obtained a permit from the Executive Secretary.

(2) The on-site disposal of on-site generated nonhazardous solid waste from a single family farm or a single family ranch does not require a permit.

KEY: solid waste management, waste disposal

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	40 CFR 258

R315. Environmental Quality, Solid and Hazardous Waste.
R315-302. Solid Waste Facility Location Standards, General Facility Requirements, and Closure Requirements.
R315-302-1. Location Standards for Disposal Facilities.

(1) Applicability.

(a) These standards apply to:

(i) Class I, II, and V Landfills;

(ii) Class III Landfills as specified in Rule R315-304;

(iii) Class IV Landfills as specified in Rule R315-305; and

(iv) each new disposal facility and any existing disposal facility seeking facility expansion, including landfills, landtreatment disposal sites, and piles that are to be closed as landfills.

(b) These standards, unless otherwise noted, do not apply to:

(i) an existing facility;

(ii) transfer stations and drop box facilities;

(iii) piles used for storage;

(iv) composting or utilization of sludge or other solid waste on land; or

(v) hazardous waste disposal sites regulated by Rules R315-1 through R315-50 and Rule R315-101.

(2) Location Standards. Each applicable solid waste facility shall be subject to the following location standards:

(a) Land Use Compatibility. No facility shall be located within:

(i) one thousand feet of a national, state or county park, monument, or recreation area; designated wilderness or wilderness study area; or wild and scenic river area;

(ii) ecologically and scientifically significant natural areas, including wildlife management areas and habitat for threatened or endangered species as designated pursuant to the Endangered Species Act of 1982;

(iii) farmland classified or evaluated as "prime," "unique," or of "statewide importance" by the U.S. Department of Agriculture Soil Conservation Service under the Prime Farmland Protection Act;

(iv) one-fourth mile of:

(A) existing permanent dwellings, residential areas, and other incompatible structures such as schools or churches unless otherwise allowed by local zoning or ordinance; and

(B) historic structures or properties listed or eligible to be listed in the State or National Register of Historic Places;

(v) ten thousand feet of any airport runway end used by turbojet aircraft or within 5,000 feet of any airport runway end used by only piston-type aircraft unless the owner or operator demonstrates that the facility design and operation will not increase the likelihood of bird/aircraft collisions. Every new and existing disposal facility is subject to this requirement. If a new landfill or a lateral expansion of an existing landfill is located within five miles of an airport runway end, the owner or operator must notify the affected airport and the Federal Aviation Administration; or

(vi) areas with respect to archeological sites that would violate Section 9-8-404.

(b) Geology. No new facility or lateral expansion of an existing facility shall be located in a subsidence area, a dam failure flood area, above an underground mine, above a salt dome, above a salt bed, or on or adjacent to geologic features which could compromise the structural integrity of the facility.

(i) Holocene Fault Areas. A new facility or a lateral expansions of an existing facility shall not be located within 200 feet of a Holocene fault unless the owner or operator demonstrates to the Executive Secretary that an alternative setback distance of less than 200 feet will prevent damage to the structural integrity of the unit and will be protective of human health and the environment.

(ii) Seismic Impact Zones. A new facility or a lateral expansion of an existing facility shall not be located in seismic impact zones unless the owner or operator demonstrates to the satisfaction of the Executive Secretary that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

(iii) Unstable Areas. The owner or operator of an existing facility, a lateral expansion of an existing facility, or a new facility located in an unstable area must demonstrate to the satisfaction of the Executive Secretary that engineering measures have been incorporated into the facility design to ensure that the integrity of the structural components of the facility will not be disrupted. The owner or operator must consider the following factors when determining whether an area is unstable:

(A) on-site or local soil conditions that may result in significant differential settling;

(B) on-site or local geologic or geomorphologic features; and

(C) on-site or local human-made features or events, both surface and subsurface.

(c) Surface Water.

(i) No new facility or lateral expansion of an existing facility shall be located on any public land that is being used by a public water system for water shed control for municipal drinking water purposes, or in a location that could cause contamination to a lake, reservoir, or pond.

(ii) Floodplains. No new or existing facility shall be located in a floodplain unless the owner or operator demonstrates to the Executive Secretary that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in a washout of solid waste so as to pose a hazard to human health or the environment.

(d) Wetlands. No new facility or lateral expansion of an existing facility shall be located in wetlands unless the owner or operator demonstrates to the Executive Secretary that:

(i) where applicable under section 404 of the Clean Water Act or applicable State wetlands laws, the presumption that a practicable alternative to the proposed landfill is available which does not involve wetlands is clearly rebutted;

(ii) the unit will not violate any applicable state water quality standard or section 307 of the Clean Water Act;

(iii) the unit will not jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of a critical habitat protected under the Endangered Species Act of 1973;

(iv) the unit will not cause or contribute to significant degradation of wetlands. The owner or operator must

demonstrate the integrity of the unit and its ability to protect ecological resources by addressing the following factors:

(A) erosion, stability, and migration potential of native wetland soils, muds, and deposits used to support the unit;

(B) erosion, stability, and migration potential of dredged and fill materials used to support the unit;

(C) the volume and chemical nature of the waste managed in the unit;

(D) impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(E) the potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(F) any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected;

(v) to the extent required under section 404 of the Clean Water Act or applicable state wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands, as defined by acreage and function, by first avoiding impacts to wetlands to the maximum extent practicable as required by Subsection R315-302-1(2)(d)(i), then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

(vi) sufficient information is available to make a reasonable determination with respect to these demonstrations.

(e) Ground Water.

(i) No new facility or lateral expansion of an existing facility shall be located at a site:

(A) where the bottom of the lowest liner is less than five feet above the historical high level of ground water; or

(B) for a landfill that is not required to install a liner, the lowest level of waste must be at least ten feet above the historical high level of ground water.

(C) If the aquifer beneath a landfill contains ground water which has a Total Dissolved Solids (TDS) of 10,000 mg/l or greater and the landfill is constructed with a composite liner, the bottom of the lowest liner may be less than five feet above the historical high level of the ground water.

(ii) No new facility shall be located over a sole source aquifer as designated in 40 CFR 149.

(iii) No new facility shall be located over groundwater classed as IB under Section R317-6-3.3.

(iv) Unless all units of the proposed facility are constructed with a composite liner or other equivalent design approved by the Executive Secretary:

(A) a new facility located above any aquifer containing ground water which has a TDS content below 1,000 mg/l which does not exceed applicable ground water quality standards for any contaminant is permitted only where the depth to ground water is greater than 100 feet; or

(B) a new facility located above any aquifer containing ground water which has a TDS content between 1,000 and 3,000 mg/l and does not exceed applicable ground water quality standards for any contaminant is permitted only where the depth to ground water is 50 feet or greater.

(C) The applicant for the proposed facility will make the demonstration of ground water quality necessary to determine the appropriate aquifer classification.

(v) No new facility shall be located in designated drinking water source protection areas or, if no source protection area is designated, within a distance to existing drinking water wells or springs for public water supplies of 250 days ground water travel time. This requirement does not include on-site operation wells. The applicant for the proposed facility will make the demonstration, acceptable to the Executive Secretary, of hydraulic conductivity and other information necessary to determine the 250 days ground water travel distance.

(vi) Ground Water Exception. Subject to the ground water performance standard stated in Subsection R315-303-3(1), if a solid waste disposal facility is to be located over an area where the ground water has a TDS of 10,000 mg/l or greater, or where there is an extreme depth to ground water, or where there is a natural impermeable barrier above the ground water, or where there is no ground water, the Executive Secretary may exempt the disposal site, on a site specific basis, from some design criteria and ground water monitoring. Exemption of ground water monitoring may require the owner or operator to make the demonstration stated in Subsection R315-308-1(3).

(3) Existing Facility Exception. Any existing facility not meeting the location standards pertaining to airports, Subsection R315-302-1(2)(a)(v); pertaining to floodplains, Subsection R315-302-1(2)(c)(i); or pertaining to unstable areas, Subsection R315-302-1(2)(b)(iii), must close by October 9, 1996 and conduct post-closure activities in accordance with the closure and post-closure requirements of Section R315-302-3 and Subsection R315-303-4(4). The Executive Secretary may approve an extension of up to two years if:

(a) there is no available alternative disposal capacity; and

(b) there is no immediate threat to human health or the environment.

(4) Exemptions. Exemptions from the location standards with respect to airports, floodplains, wetlands, fault areas, seismic impact zones, and unstable areas cannot be granted. Exemptions from other location standards of this section may be granted by the Executive Secretary on a site specific basis if it is determined that the exemption will cause no adverse impacts to public health or the environment.

(a) No exemption may be granted without application to the Executive Secretary.

(b) If an exemption is granted, a facility may be required to have more stringent design, construction, monitoring program, or operational practice to protect human health or the environment.

(c) All applications for exemptions shall meet the conditions of Section R315-311-3 pertaining to public notice and comment period.

R315-302-2. General Facility Requirements.

(1) Applicability.

(a) Each new landfill, expansion of an existing landfill, energy recovery or incinerator facility, landtreatment disposal site, transfer station, and existing facility applying for a permit or permit renewal shall meet the requirements of this section.

(b) Any facility which stores waste in piles shall meet the applicable requirements of this section.

(c) Any recycling facility or composting facility subject to the standards of Rule R315-312 shall submit a plan that demonstrates compliance with the applicable standards of Section R315-302-2. This plan does not require Executive Secretary approval.

(d) The requirements of Section R315-302-2 apply to industrial solid waste facilities as specified in Rule R315-304.

(2) Plan of Operation. Each owner or operator shall develop, keep on file, and abide by a plan of operation approved by the Executive Secretary. The plan shall describe the facility's operation and shall convey to site operating personnel the concept of operation intended by the designer. The plan of operation shall be available for inspection at the request of the Executive Secretary or his authorized representative. The facility must be operated in accordance with the plan or the plan must be so modified with the approval of the Executive Secretary, to allow the facility to operate in accordance with an approved plan. Each plan of operation shall include:

(a) an intended schedule of construction. Facility plan approvals will be reviewed by the Executive Secretary no later than 18 months after the permit is issued and periodically thereafter, to determine if the schedule of construction is reasonably being followed. Failure to comply with the schedule of construction may result in revocation of the plan approval;

(b) a description of on-site solid waste handling procedures during the active life of the facility;

(c) a schedule for conducting inspections and monitoring for the facility;

(d) contingency plans in the event of a fire or explosion;

(e) corrective action programs to be initiated if ground water is contaminated;

(f) contingency plans for other releases, e.g. release of explosive gases or failure of run-off containment system;

(g) a plan to control fugitive dust generated from roads, construction, general operations, and covering the waste;

(h) a description of maintenance of installed equipment including leachate and gas collection systems, and ground water monitoring systems;

(i) procedures for excluding the receipt of hazardous waste or waste containing PCBs;

(j) procedures for controlling disease vectors;

(k) a plan for an alternative waste handling or disposal system during periods when the solid waste facility is not able to dispose of solid waste, including procedures to be followed in case of equipment breakdown;

(l) closure and post-closure care plans;

(m) cost estimates and financial assurance as required by Subsection R315-309-2(3);

(n) a general training and safety plan for site operators; and

(o) other information pertaining to the plan of operation as required by the Executive Secretary.

(3) Recordkeeping. Each owner or operator shall maintain and keep, on-site or at a location approved by the Executive Secretary, the following permanent records:

(a) an operating record that shall contain:

(i) the weights or volumes, number of vehicles entering, and if available, the types of wastes received each day;

(ii) deviations from the approved plan of operation;

(iii) training and notification procedures;

(iv) results of ground water and gas monitoring that may be required; and

(v) an inspection log or summary; and

(b) other records to include:

(i) documentation of any demonstration made with respect to any location standard or exemption;

(ii) any design documentation for the placement or recirculation of leachate or gas condensate into the landfill as allowed by Subsection R315-303-3(2)(b);

(iii) closure and post-closure care plans as required by Subsections R315-302-3(4) and (7);

(iv) cost estimates and financial assurance documentation as required by Subsection R315-309-2(3);

(v) any information demonstrating compliance with Class II Landfill requirements if applicable; and

(vi) other information pertaining to operation, maintenance, monitoring, or inspections as may be required by the Executive Secretary.

(4) Reporting. Each owner or operator of any facility, including a facility performing post-closure care, shall prepare an annual report and place the report in the facility's operating record. The owner or operator of the facility shall submit a copy of the annual report to the Executive Secretary by March 1 of each year for the most recent calendar year or fiscal year of facility operation. The annual report shall cover facility activities during the previous year and must include, at a minimum, the following information:

(a) name and address of the facility;

(b) calendar year covered by the report;

(c) annual quantity, in tons or volume, in cubic yards, and estimated in-place density in pounds per cubic yard of solid waste handled for each type of treatment, storage, or disposal facility, including applicable recycling facilities;

(d) the annual update of the required financial assurances mechanism pursuant to Subsection R315-309-2(2);

(e) results of ground water monitoring and gas monitoring; and

(f) training programs or procedures completed.

(5) Inspections.

(a) The owner or operator shall inspect the facility to prevent malfunctions and deterioration, operator errors, and discharges which may cause or lead to the release of wastes to the environment or to a threat to human health. The owner or operator must conduct these inspections with sufficient frequency, no less than quarterly, to identify problems in time to correct them before they harm human health or the environment. The owner or operator shall keep an inspection log or summary including at least the date and time of inspection, the printed name and handwritten signature of the inspector, a notation of observations made, and the date and nature of any repairs or corrective action. The log or summary must be kept at the facility or other convenient location if permanent office facilities are not on-site, for at least three years from the date of inspection. Inspection records shall be available to the Executive Secretary or his authorized representative upon request.

(b) The Executive Secretary or any duly authorized officer, employee, or representative of the Board may, at any reasonable time and upon presentation of appropriate credentials, enter any

solid waste facility and inspect the property, records, monitoring systems, activities and practices, or solid waste being handled for the purpose of ascertaining compliance with this rule and the approved plan of operation for the facility.

(i) The inspector may conduct monitoring or testing, or collect samples for testing, to verify the accuracy of information submitted by the owner or operator or to ensure that the owner or operator is in compliance. The owner or operator may request split samples and analysis parameters on any samples collected by the inspector.

(ii) The inspector may use photographic equipment, video camera, electronic recording device, or any other reasonable means to record information during any inspection.

(iii) The results of any inspection shall be furnished promptly to the owner or operator of the facility.

(6) Recording with the County Recorder. Plats and a statement of fact concerning the location of any disposal site shall be recorded as part of the record of title with the county recorder not later than 60 days after certification of closure. Records and plans specifying solid waste amounts, location, and periods of operation may be required by the local zoning authority with jurisdiction over land use and be made available for public inspection.

R315-302-3. General Closure and Post Closure Requirements.

(1) Applicability.

(a) An existing facility, a new facility, or an existing facility seeking lateral expansion shall meet the applicable standards of Section R315-302-3.

(b) The requirements of Subsections (2), (3), and (4) of this section apply to any solid waste management facility as defined by Subsection 19-6-502(9). The requirements of Subsections (5), (6), (7), and (8) of this section apply to:

(i) Class I, II, IV and V Landfills;

(ii) Class III Landfills as specified in Rule R315-304: and

(iii) any landtreatment disposal facility.

(2) Closure Performance Standard. Each owner or operator shall close its facility or unit in a manner that:

(a) minimizes the need for further maintenance;

(b) minimizes or eliminates threats to human health and the environment from post-closure escape of solid waste constituents, leachate, landfill gases, contaminated run-off or waste decomposition products to the ground, ground water, surface water, or the atmosphere; and

(c) prepares the facility or unit for the post-closure period.

(3) Closure Plan and Amendment.

(a) Closure may include covering, grading, seeding, landscaping, contouring, and screening. For a transfer station or a drop box facility, closure includes waste removal and decontamination of the site, including soil analysis, ground water analysis, or other procedures as required by the Executive Secretary.

(b) Each owner or operator shall develop, keep on file and abide by a plan of closure required by Subsection R315-302-2(2)(l) which, when approved by the Executive Secretary, will become part of the permit.

(c) The closure plan shall project time intervals at which sequential partial closure, if applicable, is to be implemented and identify closure cost estimates and projected fund withdrawal intervals for the associated closure costs from the approved financial assurance instrument required by Rule R315-309.

(d) The closure plan may be amended if conditions and circumstances justify such amendment. If it is determined that amendment of a facility closure plan is required, the Executive Secretary may direct facility closure activities, in part or whole, to cease until the closure plan amendment has been reviewed and approved by the Executive Secretary.

(e) Each owner and operator shall close the facility or unit in accordance with the approved closure plan and all approved amendments.

(4) Closure Procedures.

(a) Each owner and operator shall notify the Executive Secretary of the intent to implement the closure plan in whole or part, 60 days prior to the projected final receipt of waste at the unit or facility unless otherwise specified in the approved closure plan.

(b) The owner or operator shall commence implementation of the closure plan, in part or whole, within 30 days after receipt of the final volume of waste, or for landfills, when the final elevation is attained in part or all of the facility cell or unit as identified in the approved facility closure plan unless otherwise specified in the approved closure plan. Closure activities shall be completed within 180 days from their starting time. Extensions of the closure period may be granted by the Executive Secretary if justification for the extension is documented by the owner or operator.

(c) When facility closure is completed, each owner and operator shall, within 90 days or as required by the Executive Secretary, submit to the Executive Secretary:

(i) facility or unit closure plan sheets, except for Class IV Landfills, signed by a professional engineer registered in the state of Utah, and modified as necessary to represent as-built changes to final closure construction as approved in the closure plan; and

(ii) certification by the owner or operator, and, except for Class IV Landfills, a professional engineer registered in the state of Utah, that the site or unit has been closed in accordance with the approved closure plan.

(5) Post-Closure Performance Standard. Each owner or operator shall provide post-closure activities for continued facility maintenance and monitoring of gases, land, and water for 30 years or as long as the Executive Secretary determines is necessary for the facility or unit to become stabilized and to protect human health and the environment.

(6) Post-Closure Plan and Amendment.

(a) For any disposal facility, except an energy recovery or incinerator facility, post-closure care may include:

(i) ground water and surface water monitoring;

(ii) leachate collection and treatment;

(iii) gas monitoring;

(iv) maintenance of the facility, the facility structures that remain after closure, and monitoring systems for their intended use as required by the approved permit;

(v) a description of the planned use of the property; and

(vi) any other activity required by the Executive Secretary to protect human health and the environment for a period of 30

years or a period established by the Executive Secretary.

(b) Each owner or operator shall develop, keep on file, and abide by a post-closure plan as required by Subsection R315-302-2(2)(l) and as approved by the Executive Secretary as part of the permit. The post-closure plan shall address facility or unit maintenance and monitoring activities until the site becomes stabilized (i.e., little or no settlement, gas production or leachate generation) and monitoring and maintenance activities can be safely discontinued.

(c) The post-closure plan shall project time intervals at which post-closure activities are to be implemented and identify post-closure cost estimates and projected fund withdrawal intervals from the selected financial assurance instrument, where applicable, for the associated post-closure costs.

(d) The post-closure plan may be amended if conditions and circumstances justify such amendment. If it is determined that amendment of a facility or unit post-closure plan is required, the Executive Secretary may direct facility post-closure activities, in part or whole, to cease until the post-closure plan amendment has been reviewed and approved.

(7) Post-Closure Procedures.

(a) Each owner or operator shall commence post-closure activities after closure activities have been completed. The Executive Secretary may direct that post-closure activities cease until the owner or operator receives a notice from the Executive Secretary to proceed with post-closure activities.

(b) When post-closure activities are complete, as determined by the Executive Secretary, the owner or operator shall submit a certification to the Executive Secretary, signed by the owner or operator, and, except for Class IV Landfills, a professional engineer registered in the state of Utah stating why post-closure activities are no longer necessary (i.e., little or no settlement, gas production, or leachate generation).

(c) If the Executive Secretary finds that post-closure monitoring has established that the facility or unit is stabilized (i.e., little or no settlement, gas production, or leachate generation) the Executive Secretary may authorize the owner or operator to discontinue any portion or all of the post-closure maintenance and monitoring activities.

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-303. Landfilling Standards.
R315-303-1. Applicability.

(1) These standards apply to:

(a) Class I, II, and V Landfills;

(b) Class III Landfills as specified in Rule R315-304; and

(c) Class IV Landfills as specified in Rule R315-305.

(2) An owner or operator of an existing landfill unit shall not be required to install liners or leachate collection systems in that unit.

R315-303-2. Standards for Performance.

(1) Ground Water. An owner or operator of a disposal facility shall not contaminate the ground water underlying the facility beyond the ground water quality standard set in Section R315-308-4 or, for constituents not set in Section R315-308-4, as established by the Executive Secretary based on health risk standards.

(2) Air Quality and Explosive Gas Emissions.

(a) An owner or operator of a disposal facility shall not allow concentrations of explosive gases generated by the facility to exceed:

(i) twenty-five percent of the lower explosive limit for explosive gases in facility structures, excluding gas control or recovery system components; and

(ii) the lower explosive limit for explosive gases at the property boundary or beyond.

(b) An owner or operator of a disposal facility shall not cause a violation of any ambient air quality standard at the property boundary or emission standard from any emission of landfill gases, combustion or any other emission associated with the facility.

(3) Surface Waters. An owner or operator of a disposal facility:

(a) shall not cause a violation of any Utah Pollution Discharge Elimination System permit or standard from discharges of surface run-off, leachate or any liquid associated with the facility; and

(b) shall be in compliance under the Clean Water Act for any discharge as well as in compliance with any area-wide or state-wide plan under Section 208 or 319 of the Clean Water Act.

R315-303-3. Standards for Design.

(1) Minimizing Liquids. An owner or operator of a landfill shall minimize liquids admitted to active areas by:

(a) covering according to Subsection R315-303-4(4);

(b) prohibiting the disposal of containerized liquids larger than household size, noncontainerized liquids, sludge containing free liquids, or any waste containing free liquids in containers larger than household size;

(c) designing the landfill to prevent run-on of all surface waters resulting from a maximum flow of a 25-year storm into the active area of the landfill; and

(d) designing the landfill to collect and treat the run-off of surface waters and other liquids resulting from a 25-year storm from the active area of the landfill.

(2) Leachate Collection Systems.

(a) An owner or operator of a landfill required to install liners shall:

(i) install a leachate collection system sized according to water balance calculations or using other accepted engineering methods either of which shall be approved by the Executive Secretary;

(ii) install a leachate collection system so as to prevent no more than one foot depth of leachate developing at any point in the bottom of the landfill unit; and

(iii) install a leachate treatment system or a pretreatment system, if necessary, in the case of discharge to a municipal water treatment plant.

(b) The returning of leachate to the landfill or the recirculation of leachate in the landfill may be done only in landfills that have a composite liner system or an approved equivalent liner system.

(3) Liner Designs. An owner or operator of a new landfill or a landfill seeking lateral expansion shall use liners of one of the following designs:

(a) Standard Design. The design shall have a composite liner system consisting of two liners and the associated liner protection layers and a drainage system for leachate collection:

(i) an upper liner made of synthetic material with a thickness of a least 60 mils; and

(ii) a lower liner of at least two feet thickness of recompacted clay or other soil material with a permeability of no more than 1×10^{-7} cm/sec having the bottom liner sloped no less than 2% and the side liners sloped no more than 33%, except where construction and operational integrity can be demonstrated at steeper slopes, with the synthetic liner installed in direct and uniform contact with the compacted soil component; or

(b) Alternative Design.

(i) The Executive Secretary may approve an alternative liner design, on a site specific basis, if it can be documented that, under the conditions of location and hydrogeology, the performance standard of Subsection R315-303-2(1) can be met. When approving an alternative liner design, the Executive Secretary shall consider the following factors:

(A) the hydrogeologic characteristics of the facility and surrounding land;

(B) the climatic factors of the area; and

(C) the volume and physical and chemical characteristics of the leachate.

(ii) The liner shall be constructed of at least a three feet thick layer of recompacted clay or other material with a permeability of no greater than 1×10^{-7} cm/sec having the bottom liner sloped no less than 2% and the side liners sloped no more than 33%, except where construction and operational integrity can be demonstrated at steeper slopes; or

(c) Equivalent Design.

(i) The owner or operator may use, as approved by the Executive Secretary, alternative design, operating practices, and location characteristics which will minimize the migration of solid waste constituents or leachate into the ground or surface water which are at least as effective as the liners of Subsections R315-303-3(3)(a) or (b).

(ii) The owner or operator must demonstrate that the standard of Subsection R315-303-2(1) can be met. The demonstration must be approved by the Executive Secretary,

and must be based upon:

(A) the hydrogeologic characteristics of the facility and the surrounding land;

(B) the climatic factors of the area;

(C) the volume and physical and chemical characteristics of the leachate;

(D) predictions of contaminate fate and transport in the subsurface that maximize contaminant migration and consider impacts on human health and the environment; or

(d) Stringent Design. When conditions of location, hydrogeology, or waste stream justify, the Executive Secretary may require that the liner of a landfill be constructed to meet standards more stringent than the liner designs of Subsection R315-303-3(3)(a).

(e) Small Landfill Design. Subject to the location standards of Section R315-302-1 and the performance standards of Section R315-303-2, a Class II Landfill may be exempt from the liner, leachate collection system, and ground water monitoring requirements of Rule R315-303.

(i) A Class II Landfill will be approved only if:

(A) there is no evidence of existing ground water contamination; and

(B) the landfill serves a community that has no practicable waste management alternative as determined by the Executive Secretary; and

(C) the landfill is located in an area which receives less than 25 inches of annual precipitation.

(ii) A Class II Landfill may lose the exemption of the small landfill design if at anytime the landfill receives more than 20 tons of solid waste per day, based on an annual average, or has caused ground water contamination.

(f) Design of a Landfill that Accepts No Municipal Waste. Subject to the performance standards of Section R315-303-2:

(i) a landfill that accepts no municipal waste, no conditionally exempt small quantity generator hazardous waste as defined by Section R315-2-5, or no other hazardous waste that is exempt from Section R315-2-4, may be exempt from the liner, leachate collection system, ground water monitoring, and closure requirements of Rule R315-303; or

(ii) a landfill that accepts no municipal waste but accepts conditionally exempt small quantity generator hazardous waste or other exempt hazardous waste, may be exempt from the liner and the leachate collection system requirements of Rule R315-303.

(4) Closure. An owner or operator shall design the landfill so, that at closure, the final cover shall be:

(a) a layer to minimize infiltration, consisting of at least 18 inches of compacted soil, or equivalent with a permeability of 1 x 10^{-5} cm/sec or less, or equivalent, shall be placed upon the final lifts:

(i) synthetic liners may cover the compacted soil layer, provided that a minimum of either 20 mils reinforced or 40 mils non-reinforced thickness is used;

(ii) in no case shall the cover of the final lifts be more permeable than the bottom liner system or natural subsoils present in the unit; and

(iii) the grade of surface slopes shall not be less than 2%, nor the grade of side slopes more than 33%, except where construction integrity and the integrity of erosion control can be demonstrated at steeper slopes; and

(b) a layer to minimize erosion, consisting of:

(i) at least 6 inches of soil capable of sustaining vegetative growth placed over the compacted soil cover or the artificial liner and seeded with grass, other shallow rooted vegetation or other native vegetation; or

(ii) other suitable material, approved by the Executive Secretary.

(c) The Executive Secretary may approve an alternative final cover design, on a site specific basis, if it can be documented that:

(i) the infiltration layer achieves an equivalent reduction in infiltration as the infiltration layer specified in Subsection R315-303-3(4)(a): and

(ii) the erosion layer provides equivalent protection from wind and water erosion as the erosion layer specified in Subsection R315-303-3(4)(b).

(5) Gas Control.

(a) An owner or operator shall design each landfill so that explosive gases are monitored quarterly.

(b) If the concentration of these gases ever exceed the standard set in Subsection R315-303-2(2)(a), the owner or operator must:

(i) immediately take all necessary steps to ensure protection of human health and notify the Executive Secretary;

(ii) within seven days of detection, place in the operating record the explosive gas levels detected and a description of the steps taken to protect human health; and

(iii) within 60 days of detection, implement a remediation plan, that has been approved by the Executive Secretary, for the explosive gas release, place a copy of the plan in the operating record, and notify the Executive Secretary that the plan has been implemented.

(c) Collection and handling of explosive gases shall not be required if it can be shown that the explosive gases will not support combustion.

(d) The Executive Secretary may, on a site specific basis, waive the requirement of monitoring explosive gases at a Class II Landfill. The wavier may be granted after:

(i) considering the characteristics of the landfill and the waste stream accepted;

(ii) taking into account climatic and hydrogeologic conditions of the site; and

(iii) completing a public comment period as specified by Section R315-311-3.

(iv) The Executive Secretary may revoke any waiver from the requirement of monitoring explosive gases if the lack of monitoring explosive gases at the landfill presents a threat to human health or the environment.

(v) The requirement to monitor explosive gases inside buildings at a landfill may not be waived.

(6) Other Requirements. An owner or operator shall design each landfill to provide for:

(a) fencing at the property or unit boundary or the use of other artificial or natural barriers to impede entry by the public and large animals. A lockable gate shall be required at the entry to the landfill;

(b) monitoring ground water according to Rule R315-308 using a design approved by the Executive Secretary. The

Executive Secretary may also require monitoring of:

(i) surface waters, including run-off;

(ii) leachate; and

(iii) subsurface landfill gas movement and ambient air;

(c) weighing all incoming waste on scales for a landfill that receives, on an average annual basis, more than 8,000 tons per year or provide an equivalent method of measuring waste tonnage capable of estimating total annual solid waste tonnage to within plus or minus 5%;

(d) erecting a sign at the facility entrance that identifies at least the name of the facility, the hours during which the facility is open for public use, unacceptable materials, and an emergency telephone number. Other pertinent information may also be included;

(e) adequate fire protection to control any fires that may occur at the facility. This may be accomplished by on-site equipment or by arrangement made with the nearest fire department;

(f) preventing potential harborage in buildings, facilities, and active areas of rat and other vectors, such as insects, birds, and burrowing animals;

(g) minimizing the size of the unloading area and working face as much as possible, consistent with good traffic patterns and safe operation;

(h) approach and exit roads of all-weather construction, with traffic separation and traffic control on-site and at the site entrance; and

(i) communication, such as telephone or radio, between employees working at the landfill and management offices on-site and off-site to handle emergencies.

R315-303-4. Standards for Maintenance and Operation.

(1) Plan of Operation. An owner or operator of a landfill shall maintain and operate the facility to conform to the approved plan of operation.

(2) Operating Details. An owner or operator of a landfill shall operate the facility to:

(a) control fugitive dust generated from roads, construction, general operations, and covering the waste;

(b) allow no open burning;

(c) collect scattered litter as necessary to avoid a fire hazard or an aesthetic nuisance;

(d) prohibit scavenging;

(e) conduct on-site reclamation in an orderly sanitary manner and in a way that does not interfere with the disposal site operation;

(f) ensure that landfill personnel are on-site when the site is open to the public;

(i) at least one person on-site for landfills that receive, on an average annual basis, less than 15,000 tons per year; and

(ii) at least two persons on-site, with one person at the active face, for each landfill that receives, on an average annual basis, more than 15,000 tons per year.

(g) control insects, rodents, and other vectors; and

(h) ensure that reserve operational equipment will be available to maintain and meet these standards.

(3) Boundary Posts. An owner or operator of a landfill shall clearly mark the active area boundaries authorized in the permit with permanent posts or using an equivalent method clearly visible for inspection purposes.

(4) Daily Cover.

(a) An owner or operator of a landfill shall, at the close of each day of operation, completely cover the waste with at least six inches of soil or other suitable material approved by the Executive Secretary that will control vectors, fires, odor, blowing litter, and scavenging without presenting a threat to human health or the environment.

(b) The Executive Secretary may, on a site specific basis, waive the requirement for daily cover of the waste at a landfill, including a Class III Landfill, that accepts no municipal waste if the owner or operator demonstrates that an alternative schedule for covering the waste does not present a threat to human health or the environment. The demonstration from the owner or operator of the landfill must include at least the following:

(i) certification that the landfill accepts no municipal waste;

(ii) a detailed list of the waste types accepted by the landfill;

(iii) the alternative schedule on which the waste will be covered; and

(iv) any other operational practices that may reduce the threat to human health or the environment if an alternative schedule for covering the waste is followed.

(v) In granting any wavier from the daily cover requirement, the Executive Secretary may place conditions on the owner or operator of the landfill as to the frequency of covering, depth of the cover, or type of material used as cover that will minimize the threat to human health or the environment.

(vi) The Executive Secretary may revoke any waiver from the daily cover requirement if any condition is not met or if the alternative schedule for covering the waste presents a threat to human health or the environment.

(5) Monitoring Systems. An owner or operator of a landfill shall maintain the monitoring systems required in Subsection R315-303-3(6)(b).

(6) Recycling Required.

(a) An owner or operator of a landfill at which the general public delivers household solid waste shall provide containers in which the general public may place recyclable materials for which a market exists that are brought to the site:

(i) during the normal hours of operation; and

(ii) at a location convenient to the public, i.e., near the entrance gate.

(b) An owner or operator may demonstrate alternative means to providing an opportunity for the general public to recycle household solid waste.

(7) Disposal of Hazardous Waste Prohibited.

(a) An owner or operator of a landfill shall not knowingly dispose, treat, store, or otherwise handle hazardous waste or waste containing PCBs.

(b) An owner or operator of a landfill shall include and implement as part of the plan of operation a plan that will inspect loads or take other steps as approved by the Executive Secretary that will prevent the disposal of hazardous waste or waste containing PCBs, including:

(i) inspection frequency and inspection of loads suspected

of containing hazardous waste or waste containing PCBs;

(ii) inspection in a designated area or at a designated point in the disposal process;

(iii) a training program for the facility employees in identification of hazardous waste and waste containing PCBs; and

(iv) maintaining written records of all inspections, signed by the inspector.

(c) If the receipt of hazardous waste or waste containing PCBs is discovered, the owner or operator of the landfill shall:

(i) notify the Executive Secretary, the hauler, and the generator within 24 hours;

(ii) restrict the inspection area from public access and from facility personnel; and

(iii) assure proper cleanup, transport, and disposal of the waste.

(d) A landfill that is permitted to accept waste containing PCBs under the Toxic Substances Control Act may receive waste containing PCBs but shall exclude hazardous waste.

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-305. Class IV Landfill Requirements.
R315-305-1. Applicability.

(1) These standards apply to each facility that landfills only:

(a) inert waste, construction/demolition waste, yard waste, dead animals; or

(b) upon meeting the requirements of Section 26-32a-103.5 and Subsections R315-320-3(1) or (2), waste tires and material derived from waste tires.

(2) Inert wastes and inert demolition waste used as road building materials and fill material are excluded from Rule R315-305.

(3) The location, design, and operation standards of Rule R315-305 become effective January 1, 1998 on each Class IV Landfill.

(4) The ground water monitoring standards of Rule R315-305 become effective July 1, 1998 on each Class IV Landfill that is required to monitor the ground water.

R315-305-2. Class IV Landfill Standards for Performance.

Each Class IV Landfill shall meet the landfill standards for performance as specified in Section R315-303-2.

R315-305-3. Definitions.

Terms used in Rule R315-305 are defined in Section R315-301-2. In addition, for the purpose of Rule R315-305, the following definitions apply.

(1) "Class IVa Landfill" means a Class IV Landfill that receives, based on an annual average, over 20 tons of waste per day and may receive, as a component of construction/demolition waste, conditionally exempt small quantity generator hazardous waste as defined by Section R315-2-5.

(2) "Class IVb Landfill" means a Class IV Landfill that receives, based on an annual average, 20 tons, or less, of waste per day or demonstrates that no conditionally exempt small quantity generator hazardous waste is accepted.

(3) "Existing Class IV Landfill" means a Class IV Landfill that was receiving waste on or before January 1, 1998.

(4) "New Class IV Landfill" means a Class IV Landfill that begins receiving waste after January 1, 1998.

R315-305-4. General Requirements.

(1) Location Standards.

(a) A new Class IV Landfill or a lateral expansion of an existing Class IV Landfill shall be subject to the following location standards:

(i) the standards with respect to floodplains as specified in Subsection R315-302-1(2)(c)(ii);

(ii) the standards with respect to wetlands as specified in Subsection R315-302-1(2)(d); and

(iii) the landfill shall be located so that the lowest level of waste is at least five feet above the historical high level of ground water.

(b) An existing Class IV Landfill shall not be subject to the location standards of Subsection R315-305-4(1)(a).

(2) An owner or operator of a Class IV Landfill shall obtain a permit, as set forth in Rule R315-310.

(3) An owner or operator of a Class IV Landfill shall design and operate the landfill to:

(a) prevent the run-on of all surface waters resulting from a maximum flow of a 25-year storm into the active area of the landfill; and

(b) collect and treat, if necessary, the run-off of surface waters and other liquids resulting from a 25-year storm from the active area of the landfill.

(4) An owner or operator of a Class IVa Landfill shall monitor the ground water beneath the landfill as specified in Rule R315-308.

(5) An owner or operator of a Class IV Landfill shall erect a sign at the facility entrance as specified in Subsection R315-303-3(6)(d).

(6) An owner or operator of a Class IV Landfill shall maintain the applicable records as specified in Subsection R315-302-2(3).

(7) An owner or operator of a Class IV Landfill shall meet the requirements of Subsection R315-302-2(6) and make the required recording with the county recorder.

R315-305-5. Requirements for Operation.

(1) An owner or operator of a Class IV Landfill shall not accept any other form of waste except construction/demolition waste, yard waste, inert waste, dead animals, or upon meeting the requirements of Section 26-32a-103.5 and Subsections R315-320-3(1) or (2), waste tires and material derived from waste tires.

(2) An owner or operator of a Class IV Landfill shall prevent the disposal of unauthorized waste by ensuring that at least one person is on site during hours of operation and shall prevent unauthorized disposal during off-hours by controlling entry, i.e., lockable gate or barrier, when the facility is not open.

(3) An owner or operator of a Class IV Landfill shall employ measures to prevent emission of fugitive dusts, when weather conditions or climate indicate that transport of dust off-site is liable to create a nuisance. Preventative measures include watering of roads and covering the waste with soil.

(4) Timbers, wood, and other combustible waste shall be covered with a minimum of six inches of soil, or equivalent, as needed to avoid a fire hazard.

(5) An owner or operator of a Class IV Landfill shall close the facility by:

(a) leveling the waste to the extent practicable;

(b) covering the waste with a minimum of two feet of soil, including six inches of topsoil;

(c) contouring the cover as specified in Subsection R315-303-3(4)(a)(iii); and

(d) seeding the cover with grass, other shallow rooted vegetation, or other native vegetation or covering in another manner approved by the Executive Secretary to minimize erosion.

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-306. Energy Recovery and Incinerator Standards.
R315-306-1. Applicability.

(1) These standards apply to any energy recovery and incinerator facility as specified in Subsections R315-306-2(1) and R315-306-3(1).

(2) These standards do not apply to:

(a) an incineration facility which is required to obtain a state or federal hazardous waste plan approval;

(b) a facility burning only untreated woodwaste;

(c) the flaring of gases recovered at a landfill; or

(d) industrial solid waste facilities.

R315-306-2. Requirements for Energy Recovery Facilities and Incinerators.

(1) These standards apply to any energy recovery and incinerator facility designed to incinerate more than ten tons of solid waste per day.

(2) An energy recovery and incinerator facility shall be subject to the location standards of Section R315-302-1 with the exception of the following Subsections: R315-302-1(2)(a)(iv) and (v), R315-302-1(2)(e), and R315-302-1(3).

(3) Each owner or operator of an energy recovery facility or incinerator facility shall comply with Section R315-302-2. The submitted plan of operation shall also address alternative storage, or disposal plans for all breakdowns that would result in overfilling the storage facility.

(4) The submitted plan of operation shall also contain a written waste identification plan which shall include identification of the specific waste streams to be handled by the facility, generator waste analysis requirements and procedures, waste verification procedures at the facility, generator certification of wastes shipped as being non-hazardous, and record keeping procedures, including a detailed operating record.

(5) Each energy recovery or incinerator facility shall be surrounded by a fence, trees, shrubbery, or natural features so as to control access and be screened from the view of immediately adjacent neighbors, unless the tipping floor is fully enclosed by a building. Each site shall also have an adequate buffer zone of at least 50 feet from the operating area to the nearest property line in areas zoned residential to minimize noise and dust nuisances.

(6) Solid waste shall be stored temporarily in storage compartments, containers or areas specifically designed to store wastes. Storage of wastes other than in specifically designed compartments, containers or areas is prohibited. Equipment and space shall be provided in the storage and charging areas, and elsewhere as needed, to allow periodic cleaning as may be required to maintain the plant in a sanitary and clean condition.

(7) A composite sample of the ash and residues from each energy recovery or incinerator facility shall be taken according to a sampling plan approved by the Executive Secretary.

(a) The sample shall be analyzed by the U.S. EPA Test Method 1311 as provided in 40 CFR Part 261, Appendix II, 1991 ed., Toxic Characteristics Leaching Procedure (TCLP) to determine if it is hazardous.

(b) If the ash and residues are found to be nonhazardous, they shall be disposed at a permitted landfill.

(c) If the ash and residues are found to be hazardous, they shall be disposed in a permitted hazardous waste disposal site.

(8) Each energy recovery facility or incinerator must be located, designed, constructed and operated in a manner to comply with appropriate state and local air pollution control authority emission and operating requirements.

(9) An energy recovery facility or incinerator must collect and treat all run-off from the active areas of the site that may result from a 25-year storm event, and divert all run-on for the maximum flow of a 25-year storm around the site.

(10) All-weather roads shall be provided from the public highways or roads, to and within the disposal site and shall be designed and maintained to prevent traffic congestion hazards, dust, and noise pollution.

(11) Access to the energy recovery or incinerator site shall be controlled by means of a complete perimeter fence or other features and gates which shall be locked when an attendant is not at the gate to prevent unauthorized entry of persons or livestock to the facility.

(12) The plan of operation shall include a training program for new employees and annual review training for all employees to ensure safe handling of waste and proper operation of the equipment.

(13) Each owner or operator shall post signs at the facility which indicate the name, hours of operation, necessary safety precautions, types of wastes that are prohibited, and any other pertinent information.

(14) Each owner or operator of an energy recovery or incinerator facility shall be required to provide recycling facilities in a manner equivalent to those specified for landfills in Subsection R315-303-4(6).

(15) Each owner or operator of an energy recovery or incinerator facility shall implement a plan that will inspect loads or take other steps as approved by the Executive Secretary to prevent the disposal of hazardous waste or waste containing PCB's in a manner equivalent to those specified for landfills in Subsection R315-303-4(7).

(16) Each owner or operator shall close its energy recovery facility or incinerator by removing all ash, solid waste and other residues to a permitted facility.

R315-306-3. Requirements for Small Incinerators.

(1) Applicability.

(a) These requirements apply to any incinerator designed to incinerate less than ten tons of solid waste per day and incinerator facilities that incinerate solid waste only from on-site sources.

(b) If an incinerator processes 250 pounds or less of solid waste per week, the requirements of this section do not apply and a permit from the Executive Secretary is not required but the facility may be regulated by local, state, or federal air quality requirements.

(2) Requirements.

(a) Each owner and operator of an incinerator facility shall comply with Section R315-302-2.

(b) Solid waste shall be stored temporarily only in storage compartments, containers, or areas specifically designed to store wastes. Equipment and space shall be provided in the storage and charging areas, and elsewhere as needed, to allow periodic

cleaning as necessary to maintain the plant in a sanitary and clean condition.

(c) Incinerator ash and residues from any incinerator shall be sampled, analyzed, and disposed as specified in Subsection R315-306-2(7).

(d) The owner or operator of the incinerator shall prevent the disposal of hazardous waste or waste containing PCB's as specified in Subsection R315-306-2(15).

(e) The incinerator must be designed, constructed and operated in a manner to comply with appropriate state and local air pollution control authority emission and operating requirements.

(f) The plan of operation shall include a training program for new employees and annual review training for all applicable employees to ensure safe handling of waste and proper operation of the equipment.

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-307. Landtreatment Disposal Standards.
R315-307-1. Applicability.

(1) These standards apply to any facility that engages in landtreatment, landfarming, or landspreading disposal of solid waste.

(2) These standards do not apply to:

(a) a facility that uses sewage sludge, woodwaste or other primarily organic sludge in recycling operations as specified in Section R315-312-4.

(b) agricultural solid wastes resulting from the operation of a farm, including farm animal manure and agricultural residues;

(c) inert waste or demolition waste; or

(d) industrial solid waste facilities.

(3) The owner or operator of a landtreatment disposal facility shall meet the standards for performance specified in Subsection R315-303-2.

(4) The owner or operator of a landtreatment disposal facility shall meet the location standards of Section R315-302-1.

R315-307-2. Standards for Design.

(1) The owner or operator of a landtreatment disposal facility shall design the facility to provide interim waste storage areas that meet the requirements for piles, as specified in Rule R315-314.

(2) The facility shall have systems to collect and treat all run-off from a 25 year storm, and divert all run-on for the maximum flow of a 25 year storm around the active area.

(3) The facility shall be designed to avoid standing water anywhere on the active area.

(4) The facility shall be designed to avoid slopes and other features that will lead to soil and waste erosion, unless contour plowing or other measures are taken to avoid erosion.

(5) The owner or operator shall monitor ground water according to Rule R315-308.

(6) The owner or operator shall control access to the facility by fencing or other means and erect a sign as specified in Subsection R315-303-3(6)(d).

R315-307-3. Standards for Maintenance and Operation.

The owner or operator of a landtreatment disposal facility shall maintain and operate the facility to:

(1) avoid the disposal of garbage or infectious waste;

(2) avoid applying wastes at rates greater than ten times agronomic rates using the proposed cover crop, or depths greater than would allow for disking the soil by tracked vehicles;

(3) provide disking of soils during the growing season and after each application of waste to maintain aerobic soil conditions, minimize odors and lessen run-off;

(4) avoid applying waste to any active area having standing water;

(5) conform to the approved plan of operation and all other applicable requirements of Section R315-302-2;

(6) provide for a written contract between landowners, waste generators, waste haulers, and waste operators requiring compliance with rules as a condition of the contract; and

(7) avoid food-chain crops during the active life of the facility and until demonstrated to be safe, after closure, according to the closure and post-closure plans filed with the plan of operation. Specific approval in writing from the Executive Secretary is required for any landspreading disposal facility that is used to raise food-chain crops after closure.

R315-307-4. Standards for Closure.

(1) The owner or operator of a landtreatment disposal facility shall:

(a) close in a manner to comply with Section R315-302-3; and

(b) meet the financial assurance requirements of Rule R315-309.

(3) Upon closure of a landtreatment disposal facility, the owner or operator shall record with the county recorder as part of the record of title the fact that the property has been used as a landtreatment disposal facility pursuant to Subsection R315-302-2(6).

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-308. Ground Water Monitoring Requirements.
R315-308-1. Applicability.

(1) Each existing landfill, pile, or landtreatment disposal facility that is required to perform ground water monitoring shall comply with the ground water monitoring requirements according to the compliance schedule as established by the Executive Secretary during the permitting or the permit renewal process.

(2) Each new landfill, pile, or landtreatment disposal facility that is required to perform ground water monitoring shall have the ground water monitoring system complete and operational before waste may be accepted at the facility.

(3) Ground water monitoring requirements may be suspended by the Executive Secretary if the owner or operator of a solid waste disposal facility can demonstrate that there is no potential for migration of hazardous constituents from the facility to the ground water during the active life of the facility and the post-closure care period. This demonstration must be certified by a qualified ground-water scientist and approved by the Executive Secretary, and must be based upon:

(a) site-specific field collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport; and

(b) contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and the environment.

(4) Once a ground water monitoring system and program has been established at a disposal facility, ground water monitoring shall continue to be conducted throughout the active life, closure, and post-closure care periods as specified by the Executive Secretary.

(5) The ground water monitoring requirements of Rule R315-308 apply to industrial solid waste facilities as specified in Rule R315-304.

R315-308-2. Ground Water Monitoring Requirements.

(1) The ground water monitoring system must consist of at least one background or upgradient well and two downgradient wells, installed at appropriate locations and depths to yield ground water samples from the uppermost aquifer and all hydraulically connected aquifers below the facility, cell, or unit. The downgradient wells shall be designated as the point of compliance and must be installed at the closest practicable distance hydraulically down gradient from the unit boundary not to exceed 150 meters (500 feet) and must also be on the property of the owner or operator:

(a) the upgradient well must represent the quality of background water that has not been affected by leakage from the active area; and

(b) the downgradient wells must represent the quality of ground water passing the point of compliance. Additional wells may be required by the Executive Secretary in complicated hydrogeological settings or to define the extent of contamination detected.

(2) All monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing must allow collection of representative ground water samples. Wells must be constructed in such a manner as to prevent contamination of the samples, the sampled strata, and between aquifers and water bearing strata. All monitoring wells and all other devices and equipment used in the monitoring program must be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

(3) The ground water monitoring program must include at a minimum, procedures and techniques for:

(a) well construction and completion;

(b) decontamination of drilling and sampling equipment;

(c) sample collection;

(d) sample preservation and shipment;

(e) analytical procedures and quality assurance;

(f) chain of custody control; and

(g) procedures to ensure employee health and safety during well installation and monitoring.

(4) Each facility shall have a state certified laboratory complete tests, using methods with appropriate detection levels, as specified in the approved ground water monitoring plan, on samples for the following:

(a) during the first year of facility operation after wells are installed, a minimum of eight independent samples from the upgradient and four independent samples from each downgradient well for all parameters listed in Section R315-308-4 to establish background concentrations;

(b) after background levels have been established, a minimum of one sample, semiannually, from each well, background and downgradient, for all parameters listed in Section R315-308-4 as a detection monitoring program;

(i) In the detection monitoring program, the owner or operator must determine ground water quality at each monitoring well on a semiannual basis during the life of an active area, including the closure period, and the post-closure care period.

(ii) The owner or operator must express the ground water quality at each monitoring well in a form appropriate for the determination of statistically significant changes;

(c) field measured pH, water temperature, and water conductivity must accompany each sample collected;

(d) analysis for the heavy metals and the organic constituents from Section R315-308-4 shall be completed on unfiltered samples; and

(e) the Executive Secretary may specify additional or fewer constituents depending upon the nature of the ground water or the waste on a site specific basis considering:

(i) the types, quantities, and concentrations of constituents in wastes managed at the landfill;

(ii) the mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the landfill;

(iii) the detectability of indicator parameters, waste constituents, and reaction products in the ground water; and

(iv) the background concentration or values and coefficients of variation of monitoring parameters or constituents in the ground water.

(5) After background constituent levels have been established, a ground water quality protection standard shall be set by the Executive Secretary which shall become part of the permit.

(a) For constituents with background levels below the standards listed in Section R315-308-4, the ground water quality standards of Section R315-308-4 shall be the ground water quality protection standard.

(b) If a constituent is detected and a background level is established but the ground water quality standard for the constituent is not included in Section R315-308-4 or the constituent has a background level that is higher than the value listed in Section R315-308-4 for that constituent, the ground water quality protection standard for that constituent shall be set according to health risk standards.

(6) The ground water monitoring program must include a determination of the ground water surface elevation each time ground water is sampled.

(7) The owner or operator shall use a statistical method for determining whether a significant change has occurred as compared to background. The Executive Secretary will approve such a method as part of the permit. Possible statistical methods include:

(a) a parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent;

(b) an analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent;

(c) a tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit;

(d) a control chart approach that gives control limits for each constituent; or

(e) another statistical test method approved by the Executive Secretary.

(8) The Executive Secretary may specify additional or fewer sampling and analysis events, no less than annually, depending upon the nature of the ground water or the waste on a site specific basis considering:

(a) lithology of the aquifer and unsaturated zone;

(b) hydraulic conductivity of the aquifer and unsaturated zone;

(c) ground water flow rates;

(d) minimum distance between upgradient edge of the landfill unit and downgradient monitoring well screen (minimum distance of travel); and

(e) resource value of the aquifer.

(9) The owner or operator must determine and report the ground water flow rate and direction in the upper most aquifer each time the ground water is sampled.

(10) If the owner or operator determines that there is a statistically significant change in any parameter or constituent at any monitoring well at the compliance point, the owner or operator must:

(a) within 14 days of receipt of the sample analysis results, enter the information in the operating record and notify the Executive Secretary of this finding in writing. The notification must indicate what parameters or constituents have shown statistically significant changes; and

(b) immediately resample the ground water in all monitoring wells, both background and downgradient, or in a subset of wells specified by the Executive Secretary, and determine:

(i) the concentration of all constituents listed in Section R315-308-4, including additional constituents that may have been identified in the approved ground water monitoring plan;

(ii) if there is a statistically significant change such that the established ground water quality protection level has been exceeded; and

(iii) notify the Executive Secretary in writing within seven days of receipt of the sample analysis results.

(c) The owner or operator may demonstrate that a source other than the solid waste disposal facility caused the contamination or that the statistically significant change resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist and approved by the Executive Secretary and entered in the operating record. If a successful demonstration is made and documented, the owner or operator may continue monitoring as specified in Subsection R315-308-2(4)(b).

(11) If, after 90 days, a successful demonstration as stipulated in Subsection R315-308-2(10)(c) is not made, the owner or operator must initiate the assessment monitoring program required as follows:

(a) take one sample from each downgradient well and analyze for all constituents listed as Appendix II in 40 CFR Part 258, 1991 ed., which is adopted and incorporated by reference.

(b) for any constituent detected from Appendix II, 40 CFR Part 258, in the downgradient wells a minimum of eight independent samples from the upgradient and four independent samples from each downgradient well must be collected and analyzed to establish background concentration levels for the constituents; and

(c) within 14 days of the receipt of the results of the analysis of the samples, place a notice in the operation record and notify the Executive Secretary in writing identifying the Appendix II, 40 CFR Part 258, constituents and their concentrations that have been detected as well as background levels. The Executive Secretary shall establish a ground water quality protection standard pursuant to Subsection R315-308-2(5) for any Appendix II, 40 CFR Part 258, constituent detected in the downgradient wells.

(d) The owner or operator shall thereafter resample:

(i) all wells on a quarterly basis for all constituents in Section R315-308-4, or the alternative list that may have been approved as part of the permit, and for those constituents detected from Appendix II, 40 CFR Part 258; and

(ii) the downgradient wells on an annual basis for all constituents in Appendix II, 40 CFR Part 258.

(e) If after two consecutive sampling events, the concentrations of all constituents being analyzed in Subsection R315-308-2(11)(d)(i) are shown to be at or below established

background values, the owner or operator must notify the Executive Secretary of this finding and may, upon the approval of the Executive Secretary, return to the monitoring schedule and constituents as specified in Subsection R315-308-2(4)(b).

(12) If one or more constituents from Section R315-308-4 or the approved alternative list, or from those detected from Appendix II, 40 CFR Part 258, are detected at statistically significant levels above the ground water quality protection standard as established pursuant to Subsection R315-308-2(5) in any sampling event, the owner or operator must:

(a) within 14 days of the receipt of this finding, place a notice in the operating record identifying the constituents and concentrations that have exceeded the ground water quality standard. Within the same time period, the owner or operator must also notify the Executive Secretary and all appropriate local governmental and local health officials that the ground water quality standard has been exceeded;

(b) characterize the nature and extent of the release by installing additional monitoring wells as necessary;

(c) install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well and analyze the sample for the constituents in Section R315-308-4 or the approved alternative list and the detected constituents from Appendix II, 40 CFR Part 258; and

(d) notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site as indicated by sampling of wells in accordance with Subsections R315-308-2(12)(b) and (12)(c).

(e) The owner or operator may demonstrate that a source other than the solid waste disposal facility caused the contamination or that the statistically significant change resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist and approved by the Executive Secretary and entered in the operating record. If a successful demonstration is made, documented and approved, the owner or operator may continue monitoring as specified in Subsection R315-308-2(11)(d) or Subsection R315-308-2(11)(e) when applicable.

R315-308-3. Corrective Action Program.

(1) If, within 90 days, a successful demonstration as stated in Subsection R315-308-2(12)(e) is not made, the owner or operator must:

(a) continue to monitor as required in Subsection R315-308-2(11)(d).

(b) take any interim measures as required by the Executive Secretary or as necessary to ensure the protection of human health and the environment; and

(c) assess possible corrective action measures for the current conditions and circumstances of the disposal facility, addressing at least the following:

(i) the performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control exposure to any residual contamination;

(ii) time required to begin and complete the remedy;

(iii) the costs of remedy implementation;

(iv) public health or environmental requirements that may substantially affect implementation of the remedy; and

(v) prior to the selection of a remedy, discuss the results of the corrective measures assessment in a public meeting with interested and affected parties.

(d) Based on the results of the corrective measures assessment conducted and the comments received in the public meeting, the owner or operator must select a remedy which shall be submitted to the Executive Secretary.

(i) The corrective action remedy must:

(A) be protective of human health and the environment;

(B) use permanent solutions that are within the capability of best available technology;

(C) attain the established ground water quality standard;

(D) control the sources of release so as to reduce or eliminate, to the maximum extent practicable, further releases of contaminants into the environment that may pose a threat to human health or the environment; and

(E) be approved by the Executive Secretary.

(ii) Within 14 days after the selection of the remedy the owner or operator must:

(A) amend the corrective action program required by Subsection R315-302-2(2)(e) if necessary and send a report to the Executive Secretary for approval describing the selected remedy and amendments, along with a schedule of implementation and estimated time of completion; and

(B) put in place the financial assurance mechanism as required by Rule R315-309 for corrective action and notify the Executive Secretary of the financial assurance mechanism and its effective date.

(2) Upon approval of the selected corrective action remedy, the Executive Secretary will notify the owner or operator of such approval and will require that the corrective action plan proceed according to the approved schedule.

(a) The Executive Secretary may also require facility closure if the ground water quality standard is exceeded and, in addition, may revoke any permit and require reapplication.

(b) The Executive Secretary or the owner or operator may determine, based on information developed after implementation of the corrective action plan, that compliance with the requirements of Subsection R315-308-3(1)(d)(i) of this section are not being achieved through the remedy selected. In such cases, the owner or operator must implement other methods or techniques, upon approval by the Executive Secretary, that could practicably achieve compliance with the requirements.

(c) Upon completion of the remedy, the owner or operator must notify the Executive Secretary. The notification must contain certification signed by the owner or operator and a qualified ground-water scientist that the concentration of contaminant constituents have been reduced to levels below the specified limits of the ground water quality standard for a period of three years or an alternative length of time specified by the Executive Secretary. Upon approval of the Executive secretary the owner or operator shall:

(i) terminate corrective action measures;

(ii) continue detection monitoring as required in Subsection R315-308-2(4)(b); and

(iii) be released from the requirements of financial

assurance for corrective action.

R315-308-4. Constituents for Detection Monitoring.

(1) The table lists the constituents for detection monitoring, the CAS number for the constituents, and the ground water quality standard for the constituents for any facility that is required to monitor ground water under Rule R315-308.

TABLE

Constituents for Detection Monitoring

Inorganic Constituents	CAS	Ground Water Protection Standard (mg/l)
Ammonia (as N)	7664-41-7	
Carbonate/Bicarbonate		
Calcium		
Chemical Oxygen Demand (COD)		
Chloride		
Iron	7439-89-6	
Magnesium		
Manganese	7439-96-5	
Nitrate (as N		
pH		
Potassium		
Sodium		
Sulfate		
Total Dissolved Solids (TDS)		
Total Organic Carbon (TOC)		
Heavy Metals		
Antimony	7440-36-0	0.006
Arsenic	7440-38-2	0.05
Barium	7440-39-3	2
Beryllium	7440-41-7	0.004
Cadmium	7440-43-9	0.005
Chromium		0.1
Cobalt	7440-48-4	0.4
Copper	7440-50-8	1.3
Lead		0.015
Mercury	7439-97-6	0.002
Nickel	7440-02-0	0.1
Selenium	7782-49-2	0.05
Silver	7440-22-4	0.1
Thallium		0.002
Vanadium	7440-62-2	0.05
Zinc	7440-66-6	5
Organic Constituents		
Acetone	67-64-1	0.7
Acrylonitrile	107-13-1	0.1
Benzene	71-43-2	0.005
Bromochloromethane	74-97-5	0.01
Bromodichloromethane[1]	75-27-4	0.1
Bromoform[1]	75-25-2	0.1
Carbon disulfide	75-15-0	0.7
Carbon tetrachloride	56-23-5	0.005
Chlorobenzene	108-90-7	0.1
Chloroethane	75-00-3	0.3
Chloroform[1]	67-66-3	0.1
Dibromochloromethane[1]	124-48-1	0.1
1,2-Dibromo-3-chloropropane	96-12-8	0.0002
1,2-Dibromoethane	106-93-4	0.00005
1,2-Dichlorobenzene (ortho)	95-50-1	0.6
1,4-Dichlorobenzene (para)	106-46-7	0.075
trans-1,4-Dichloro-2-butene	110-57-6	
1,1-Dichloroethane	75-34-3	0.7
1,2-Dichloroethane	107-06-2	0.005
1,1-Dichloroethylene	75-35-4	0.007
cis-1,2-Dichloroethylene	156-59-2	0.07
trans-1,2-Dichloroethylene	156-60-5	0.1
1,2-Dichloropropane	78-87-5	0.005
cis-1,3-Dichloropropene	10061-01-5	0.002
trans-1,3-Dichloropropene	10061-02-6	0.002
Ethylbenzene	100-41-4	0.7
2-Hexanone	591-78-6	
Methyl bromide	74-83-9	0.01
Methyl chloride	74-87-3	0.003
Methylene bromide	74-95-3	0.07
Methylene chloride	75-09-2	0.005
Methyl ethyl ketone	78-93-3	0.17
Methyl iodide	74-88-4	
4-Methyl-2-pentanone	108-10-1	0.6
Styrene	100-42-5	0.1
1,1,1,2-Tetrachloroethane	630-20-6	0.07
1,1,2,2-Tetrachloroethane	79-34-5	0.0058
Tetrachloroethylene	127-18-4	0.005
Toluene	108-88-3	1
1,1,1-Trichloroethane	71-55-6	0.2
1,1,2-Trichloroethane	79-00-5	0.005
Trichloroethylene	79-01-6	0.005
Trichlorofluoromethane	75-69-4	2
1,2,3-Trichloropropane	96-18-4	0.04
Vinyl acetate	108-05-4	7
Vinyl Chloride	75-01-4	0.002
Xylenes	1330-20-7	10

[1] The ground water protection standard of 0.1 mg/l is for the total of Bromodichloromethane, Bromoform, Chloroform, and Dibromochloromethane.

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-309. Financial Assurance.
R315-309-1. Applicability.

(1) The owner or operator of any solid waste disposal facility requiring a permit shall establish financial assurance sufficient to assure adequate closure, post-closure care, and corrective action, if required, of the facility by compliance with one or more financial assurance mechanisms acceptable to and approved by the Executive Secretary.

(2) Financial assurance is not required for a solid waste disposal facility that is owned or operated by the State of Utah or the Federal government.

(3) Existing Disposal Facilities.

(a) An existing disposal facility shall have the financial assurance mechanism in place and effective according to the compliance schedule as established for the facility by the Executive Secretary.

(b) In the case of corrective action, the financial assurance mechanism shall be in place and effective no later than 120 days after the corrective action remedy has been selected.

(4) A new disposal facility or an existing disposal facility seeking lateral expansion shall have the financial assurance mechanism in place and effective before the initial receipt of waste at the facility or the lateral expansion.

(5) The requirements of this rule apply to industrial solid waste facilities as specified in Rule R315-304.

R315-309-2. General Requirements.

(1) A financial assurance plan, including the assurance mechanism proposed for use, shall be submitted:

(a) for new facilities, upon initial permit application; and

(b) for existing facilities, to meet the effective dates specified in Subsection R315-309-1(3).

(2) The financial assurance shall be updated each year as part of the annual report required by Subsection R315-302-2(4) to adjust for inflation or facility modification that would affect closure or post-closure care costs. The annual update of the financial assurance shall be reviewed and must be approved by the Executive Secretary prior to implementation.

(3) Financial assurance cost estimates shall be based on a third party performing closure or post-closure care.

(a) The closure cost estimate shall be based on the most expensive cost to close the largest area of the disposal facility ever requiring a final cover at any time during the active life in accordance with the closure plan and at a minimum must contain the following elements if applicable:

(i) the cost of obtaining, moving, and placing the cover material;

(ii) the cost of final grading of the cover material;

(iii) the cost of moving and placing topsoil on the final cover; and

(iv) the cost of fertilizing, seeding, and mulching or other approved method.

(b) The post-closure care cost estimate shall be based on the most expensive cost of completing the post-closure care reasonably expected during the post-closure care period and must contain the following elements:

(i) ground water monitoring, if required, including number of monitor wells, parameters to be monitored, frequency of sampling, and cost per sampling;

(ii) leachate monitoring and treatment if necessary;

(iii) gas monitoring and control if required; and

(iv) cover stabilization which will include an estimate of the area and cost for expected annual work to repair residual settlement, control erosion, or reseed.

(4) Financial assurance for corrective action shall be required only in cases of known releases of contaminants from a facility and shall be a current cost estimate for corrective action based on the most expensive cost of a third party performing the corrective action that may be required.

R315-309-3. Financial Assurance Mechanisms.

(1) Any financial assurance mechanism in place for a solid waste disposal facility must:

(a) be legally valid, binding, and enforceable under state and Federal law; and

(b) ensure that funds will be available in a timely fashion when needed.

(2) The owner or operator of a solid waste disposal facility that is required to provide financial assurance shall establish financial assurance by one of the following mechanisms which must be approved by the Executive Secretary as part of the permit.

(3) Trust Fund.

(a) The trustee must be an entity which has the authority to act as a trustee and whose operations are regulated and examined by a Federal or state agency.

(b) A copy of the trust agreement must be placed in the operating record.

(c) Payments into the trust fund must be made annually by the owner or operator according to the following schedule:

(i) for a trust fund for closure and post-closure care, annual payments that will ensure the availability of sufficient funds within five years of permit approval for the cost estimates required in Subsection R315-309-2(3). The initial payment into the trust fund must be made, for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste and for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3)(a); or

(ii) for a trust fund for corrective action, annual payments that will ensure the availability of sufficient funds within one-half of the estimated length in years of the corrective action program for the cost estimate required by Subsection R315-309-2(4). The first payment shall be at least equal to one-half of the current cost estimate for the corrective action divided by one-half the estimated length of the corrective action program. The initial payment into the trust fund shall be made in accordance with the schedule specified in Subsection R315-309-1(3)(b).

(d) The owner or operator, or other person authorized to conduct closure, post-closure, or corrective action may request reimbursement from the trustee for closure, post-closure, or corrective action costs.

(i) Prior to the release of funds by the trustee, the request for reimbursement must be approved by the Executive Secretary. The Executive Secretary shall act upon the reimbursement request within 30 days of receiving the request.

(ii) After receiving approval from the Executive Secretary, the request for reimbursement may be granted by the trustee

only if sufficient funds are remaining to cover the remaining costs and if justification and documentation of the costs is placed in the operating record.

(iii) The owner or operator shall notify the Executive Secretary that documentation for the reimbursement has been placed in the operating record and that the reimbursement has been received.

(4) Surety Bond Guaranteeing Payment or Performance.

(a) The bond must be effective, for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste or, for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3).

(b) The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury and the owner or operator must notify the Executive Secretary that a copy of the bond has been placed in the operating record.

(c) The penal sum of the bond must be in an amount at least equal to the closure, post-closure, or corrective action cost estimates of Subsection R315-309-2(3) or Subsection R315-309-2(4), whichever is applicable.

(d) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(e) The owner or operator must establish a standby trust fund.

(i) The standby trust fund must meet the requirements of Subsections R315-309-3(3)(a), (b), and (d).

(ii) Payment made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the Executive Secretary and the trustee.

(5) Insurance.

(a) The insurance must be effective, for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste or, for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3).

(b) At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and the owner or operator must notify the Executive Secretary that a copy of the insurance policy has been placed in the operating record.

(c) The insurance policy must guarantee that funds will be available to close the facility or unit and provide post-closure care or provide corrective action, if applicable. The policy must also guarantee that the insurer will be responsible for paying out funds to the owner or operator or other person authorized to conduct closure, post-closure, or corrective action, if applicable, up to an amount equal to the face amount of the policy.

(d) The insurance policy must be issued for a face amount at least equal to the closure, post-closure, or corrective action cost estimates required by Subsection R315-309-2(3) or Subsection R315-309-2(4), whichever is applicable.

(e) An owner or operator, or other authorized person may receive reimbursements for closure, post-closure, or corrective action, if applicable, if the remaining value of the policy is sufficient to cover the remaining costs of the work required and if justification and documentation of the cost is placed in the operating record. The owner or operator must notify the Executive Secretary that the documentation and justification for the reimbursement has been placed in the operating record and that the reimbursement has been received.

(f) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator.

(g) The insurance policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and the Executive Secretary 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator must obtain alternate financial assurance.

(6) Letter of Credit.

(a) The letter of credit must be irrevocable and issued for a period of at least one year in the amount at least equal to the current cost estimate as required by Subsection R315-309-2(3) for closure and post-closure care or the cost estimate as required by Subsection R315-309-2(4) for corrective action, if necessary.

(b) The institution issuing the letter of credit must be an entity which has the authority to issue a letter of credit and whose operations are regulated and examined by a Federal or state agency.

(c) The letter of credit must be effective for closure and post-closure care:

(i) for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste;

(ii) for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3)(a); and

(iii) for corrective action, in accordance with the schedule specified in Subsection R315-309-1(3)(b).

(d) The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has elected not to extend the letter of credit by sending notice by certified mail to the owner or operator and the Executive Secretary 120 days in advance of the expiration.

(e) If the letter of credit is not extended by the issuing institution, the owner or operator shall obtain alternate financial assurance which will become effective on or before the expiration date.

(7) Local Government Financial Test.

(a) The following terms used in Subsection R315-309-3(7) are defined as follows.

(i) "Total revenues" means the revenues from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenue form funds managed by local government on behalf of a specific third party.

(ii) "Total expenditures" means all expenditures excluding capital outlays and debt repayments.

(iii) "Cash plus marketable securities" means all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.

(iv) "Debt service" means the amount of principal and interest due on a loan in a given time period, typically the

current year.

(b) A local government owner or operator of a solid waste disposal facility may demonstrate financial assurance up to the current cost estimate as required by Subsection R315-309-2(3) for closure and post-closure care and the cost estimate as required by Subsection R315-309-2(4) for corrective action, if required, or up to the amount specified in Subsection R315-309-3(7)(f), which ever is less, by meeting the following requirements.

(i) If the local government has outstanding, rated general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or other guarantee, it must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's or AAA, AA, A, or BBB, as issued by Standard and Poor's on such general obligation bonds.

(ii) If the local government has no outstanding general obligation bonds, the local government shall satisfy each of the following financial ratios based on the local government's most recent audited annual financial statement:

(A) a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and

(B) a ratio of annual debt service to total expenditures less than or equal to 0.20.

(iii) The local government must prepare its financial statements in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant.

(iv) The local government must place a reference to the closure and post-closure care costs assured through the financial test into the next comprehensive annual financial report and in every subsequent comprehensive annual financial report during the time in which closure and post-closure care costs are assured through the financial test. A reference to corrective action costs must be placed in the comprehensive annual financial report not later than 120 days after the corrective action remedy has been selected. The reference to the closure and post-closure care costs shall contain:

(A) the nature and source of the closure and post-closure care requirements;

(B) the reported liability at the balance sheet date;

(C) the estimated total closure and post-closure care costs remaining to be recognized;

(D) the percentage of landfill capacity used to date; and

(E) the estimated landfill life in years.

(c) A local government is not eligible to assure closure, post-closure care, or corrective action costs at its solid waste disposal facility through the financial test if it:

(i) is currently in default on any outstanding general obligation bonds, or

(ii) has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; or

(iii) has operated at a deficit equal to 5%, or more, of the total annual revenue in each of the past two fiscal years; or

(iv) receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant, or appropriate state agency auditing its financial statement. The Executive Secretary may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Executive Secretary deems the qualification insufficient to warrant disallowance of use of the test.

(d) The local government owner or operator must submit the following items to the Executive Secretary and place a copy of these items in the operating record of the facility:

(i) a letter signed by the local government's chief financial officer that:

(A) lists all current cost estimates covered by a financial test; and

(B) provides evidence and certifies that the local government meets the requirements of Subsections R315-309-3(7)(b) and R315-309-3(7)(f);

(ii) the local government's independently audited year-end financial statements for the latest fiscal year including the unqualified opinion of the auditor, who must be an independent certified public accountant;

(iii) a report to the local government from the local government's independent certified public accountant stating the procedures performed and the findings relative to:

(A) the requirements of Subsections R315-309-3(7)(b)(iii) and R315-309-3(7)(c)(iii) and (iv); and

(B) the financial ratios required by Subsection R315-309-3(7)(b)(ii), if applicable; and

(iv) a copy of the comprehensive annual financial report used to comply with Subsection R315-309-3(7)(b)(iv).

(v) The items required by Subsection R315-309-3(7)(d) are to be submitted to the Executive Secretary and copies placed in the facility's operating record as follows:

(A) in the case of closure and post-closure care, for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste;

(B) in the case of closure and post-closure care, for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3)(a); and

(C) in the case of corrective action, in accordance with the schedule specified in Subsection R315-309-1(3)(b).

(e) A local government must satisfy the requirements of the financial test at the close of each fiscal year.

(i) An up-date of the items required in Subsection R315-309-3(7)(d) shall be submitted as part of the facility's annual report required by Subsection R315-302-2(4).

(ii) If the local government no longer meets the requirements of the local government financial test it shall, within 210 days following the close of the local government's fiscal year:

(A) obtain alternative financial assurance that meets the requirements of R315-309-1(1); and

(B) submit documentation of the alternative financial assurance to the Executive Secretary and place copies of the documentation in the facility's operating record.

(iii) The Executive Secretary, based on a reasonable belief that the local government may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the Executive Secretary finds that the local government no longer meets the requirements of the local government financial test, the local government shall be required to provide alternative financial assurance on a schedule established by the

Executive Secretary.

(f) The portion of the closure, post-closure, and corrective action costs for which a local government owner or operator may assume under the local government financial test is determined as follows:

(i) If the local government does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to 43% of the local government's total annual revenue.

(ii) If the local government assures any other environmental obligation through a financial test, it must add those costs to the closure, post-closure, and corrective action costs it seeks to assure by local government financial test. The total that may be assured must not exceed 43% of the local government's total annual revenue.

(iii) The local government shall obtain an alternate financial assurance mechanism for those costs that exceed 43% of the local government's total annual revenue.

(8) Local Government Guarantee.

(a) An owner or operator of a solid waste disposal facility may demonstrate financial assurance for closure, post-closure, and corrective action by obtaining a written guarantee provided by a local government. The local government shall meet the requirements of the local government financial test in Subsection R315-309-3(7) and shall comply with the terms of the written guarantee as specified in Subsections R315-309-3(8)(b) and (c).

(b) The guarantee must be effective for closure and post-closure care:

(i) for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste;

(ii) for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3)(a); and

(iii) for corrective action, in accordance with the schedule specified in Subsection R315-309-1(3)(b).

(c) The guarantee shall provide that if the owner or operator fails to perform closure, post-closure care, or corrective action of a facility covered by the guarantee, the guarantor will:

(i) perform, or pay a third party to perform, closure, post-closure, or corrective action as required; or

(ii) establish a fully funded trust fund as specified in Subsection R315-309-3(3) in the name of the owner or operator.

(d) The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Executive Secretary. Cancellation may not occur until 120 days after the date the notice is received by the Executive Secretary.

(e) If the guarantee is canceled, the owner or operator shall, within 90 days following the receipt of the cancellation notice:

(i) obtain alternate financial assurance that meets the requirements of Subsection R315-309-1(1);

(ii) submit documentation of the alternate financial assurance to the Executive Secretary; and

(iii) place copies of the documentation of the alternate financial assurance in the facility's operating record.

(iv) If the owner or operator fails to provide alternate financial assurance within the 90 day period, the guarantor must provide the alternate financial assurance within 120 days following the guarantor's notice of cancellation, submit documentation of the alternate financial assurance to the Executive Secretary for review and approval, and place copies of the documentation in the facility's operating record.

(9) The owner or operator may establish financial assurance by other mechanisms that meet the requirements of Subsection R315-309-1(1) as approved by the Executive Secretary.

(10) The owner or operator may establish financial assurance by a combination of mechanisms that together meet the requirements of Subsection R315-309-1(1) as approved by the Executive Secretary. Except for the conditions specified in Subsection R315-309-3(7)(f)(iii), financial assurance mechanisms guaranteeing performance, rather than payment, may not be combined with other instruments.

(11) Discounting.

(a) The Executive Secretary may allow discounting of closure, post-closure care, or corrective action costs up to the rate of return for essentially risk free investments, net inflation.

(b) Discounting may be allowed under the following conditions:

(i) the Executive Secretary determines that cost estimates are complete and accurate and the owner or operator has submitted a statement from a professional engineer registered in the state of Utah so stating;

(ii) the Executive Secretary finds the facility in compliance with all applicable Utah Solid Waste Permitting and Management Rules and in compliance with all conditions of the facility's permit issued under the rules;

(iii) the executive Secretary determines that the closure date is certain and the owner or operator certifies that there are no foreseeable factors that will change the estimate of the facility life; and

(iv) discounted cost estimates must be adjusted annually to reflect inflation and years of remaining facility life.

(12) The owner or operator of a solid waste disposal facility may terminate or cancel an active financial assurance mechanism under the following conditions:

(a) if the owner or operator establishes alternate financial assurance as approved by the Executive Secretary; or

(b) if the owner or operator is released from the financial assurance requirements by the Executive Secretary after meeting the conditions and requirements of Subsections R315-302-3(7)(b) and (c) or Subsection R315-308-3(2)(c), whichever is applicable.

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-310. Permit Requirements for Solid Waste Facilities.
R315-310-1. Applicability.

(1) The following solid waste facilities require a permit:

(a) Class I, II, IV, and V landfills;

(b) except those facilities specified by Subsection R315-304-1(3), Class III Landfills;

(c) energy recovery and incinerator facilities that are regulated by Rule R315-306; and

(d) landtreatment disposal facilities that are regulated by Rule R315-307.

(2) Permits are not required for corrective actions at solid waste handling facilities performed by the state or in conjunction with the United States Environmental Protection Agency or in conjunction with actions to implement the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), or corrective actions taken by others to comply with a state or federal cleanup order.

(3) The permit requirements of Rule R315-310 apply to each existing solid waste facility, for which a permit is required.

(a) The Executive Secretary may incorporate a compliance schedule for each existing facility to ensure that each existing facility meet the requirements of Rule R315-310.

(b) Each new disposal facility or lateral expansion at an existing disposal facility, for which a permit is required, shall:

(i) apply for a permit according to the requirements of Rule R315-310; and

(ii) not begin construction of the facility, lateral expansion, or unit until a permit has been granted.

R315-310-2. Procedures for Permits.

(1) Prospective applicants may request the Executive Secretary to schedule a pre-application conference to discuss the proposed solid waste facility and application contents before the application is filed.

(2) Any owner or operator who intends to operate a facility subject to the permit requirements must apply for a permit with the Executive Secretary. Two copies of the application, signed by the owner or operator and received by the Executive Secretary are required before permit review can begin.

(3) Applications for a permit must be completed in the form required by the Executive Secretary.

(4) Filing Fee and Permit Review Fee.

(a) A filing fee, as required by the Annual Appropriations Act, shall accompany the filing of an application for a permit. The review of the application will not begin until the filing fee is received.

(b) A review fee, as established by the Annual Appropriations Act, shall be charged at an hourly rate for the review of an application. The review fee shall be billed quarterly and shall be due and payable quarterly.

(5) All contents and materials submitted as a permit application shall become part of the approved permit and shall be part of the operating record of the solid waste disposal facility.

(6) The owner or operator of a facility shall apply for renewal of the facility's permit every five years.

R315-310-3. General Contents of a Permit Application for a New Facility or a Facility Seeking Expansion.

(1) Each permit application shall contain the following:

(a) the name and address of the applicant, property owner, and responsible party for the site operation;

(b) a general description of the facility accompanied by facility plans and drawings and, except for Class II, IIIb, and IV Landfills, unless required by the Executive Secretary, the facility plans and drawings shall be signed and sealed by a professional engineer registered in the State of Utah;

(c) a legal description and proof of ownership, lease agreement, or other mechanism approved by the Executive Secretary of the proposed site, latitude and longitude map coordinates of the facility's front gate, and maps of the proposed facility site including land use and zoning of the surrounding area;

(d) the types of waste to be handled at the facility and area served by the facility;

(e) the plan of operation required by Subsection R315-302-2(2);

(f) the form used to record weights or volumes of wastes received required by Subsection R315-302-2(3)(a)(i);

(g) an inspection schedule and inspection log required by Subsection R315-302-2(5)(a);

(h) the closure and post-closure plans required by Section R315-302-3;

(i) documentation to show that any waste water treatment facility, such as a run-off or a leachate treatment system, is being reviewed or has been reviewed by the Division of Water Quality; and

(j) a financial assurance plan as set forth in Rule R315-309.

(2) Special Requirements for Any Commercial Solid Waste Disposal Facility.

(a) The Executive Secretary will require and review the information set forth in Subsections 19-6-108(9) and 19-6-108(10) as part of the permitting process.

(b) Subsection 19-6-108(3)(c) requires that after receiving a permit from the Executive Secretary, commercial solid waste disposal facilities must be approved by the local government, the governor, and the Legislature.

(c) Commercial solid waste disposal facilities solely under contract with a local government within the state to dispose of nonhazardous solid waste generated within the boundaries of the local government are not subject to Subsections R315-310-3(2)(a) and (b).

R315-310-4. Contents of a Permit Application for a New or Expanded Class I, II, III, IV, and V Landfill Facility as Specified.

(1) Each application for a new or expanded landfill shall contain the information required by Section R315-310-3.

(2) Each application shall also contain:

(a) the following maps shall be included in a permit application for a Class I, II, III, IV, and V Landfill:

(i) topographic map of the landfill unit drawn to a scale of 200 feet to the inch containing five foot contour intervals where the relief exceeds 20 feet and two foot contour intervals where the relief is less than 20 feet, showing the boundaries of the landfill unit, ground water monitoring wells, landfill gas

monitoring points, and borrow and fill areas; and

(ii) the most recent full size U.S. Geological Survey topographic map, 7-1/2 minute series, if printed, or other recent topographic survey of equivalent detail of the area, showing the waste facility boundary, the property boundary, surface drainage channels, existing utilities, and structures within one-fourth mile of the facility site, and the direction of the prevailing winds.

(b) a permit application for a Class I, II, IIIa, IVa, and V Landfill shall contain a geohydrological assessment of the facility that addresses:

(i) local and regional geology and hydrology, including faults, unstable slopes and subsidence areas on site;

(ii) evaluation of bedrock and soil types and properties, including permeability rates;

(iii) depths to ground water or aquifers;

(iv) direction and flow rate of ground water;

(v) quantity, location, and construction of any private and public wells on the site and within 2,000 feet of the facility boundary;

(vi) tabulation of all water rights for ground water and surface water on the site and within 2,000 feet of the facility boundary;

(vii) identification and description of all surface waters on the site and within one mile of the facility boundary;

(viii) background ground and surface water quality assessment and identification of impacts of the existing facility upon ground and surface waters from landfill leachate discharges;

(ix) calculation of a site water balance; and

(x) conceptual design of a ground water and surface water monitoring system, including proposed installation methods for these devices and where applicable, a vadose zone monitoring plan;

(c) a permit application for a Class I, II, IIIa, IVa, and V Landfill shall contain an engineering report, plans, specifications, and calculations that address:

(i) how the facility will meet the location standards pursuant to Section R315-302-1 including documentation of any demonstration made with respect to any location standard;

(ii) the basis for calculating the facility's life;

(iii) cell design to include liner design, cover design, fill methods, elevation of final cover and bottom liner, and equipment requirements and availability;

(iv) identification of borrow sources for daily and final cover, and for soil liners;

(v) interim and final leachate collection, treatment, and disposal;

(vi) ground water monitoring well location, design, and construction;

(vii) landfill gas control and monitoring;

(viii) design and location of run-on and run-off control systems; and

(ix) closure and post-closure design, construction, maintenance, and land use.

(d) a permit application for a Class I, II, III, IV, and V Landfill shall contain a closure plan to address:

(i) closure schedule;

(ii) capacity of site in volume and tonnage;

(iii) final inspection by regulatory agencies; and

(iv) identification of closure costs including cost calculations and the funding mechanism.

(e) a permit application for a Class I, II, III, IV, and V Landfill shall contain a post-closure plan to address:

(i) site monitoring of landfill gas, ground water, and surface water;

(ii) changes to record of title, land use, and zoning restrictions;

(iii) maintenance activities to maintain cover and run-on and run-off systems;

(iv) identification of post-closure costs including cost calculations and the funding mechanism; and

(v) list the name, address, and telephone number of the person or office to contact about the facility during the post-closure period.

R315-310-5. Contents of a Permit Application for a New or Expanded Class IV Landfill.

(1) Each application for a Class IV Landfill permit shall contain the information required in Section R315-310-3.

(2) Each application shall also contain an engineering report, plans, specifications, and calculations that address:

(a) the information and maps required by Subsections R315-310-4(2)(a)(i) and (ii);

(b) the design and location of the run-on and run-off control systems;

(c) the information required by Subsections R315-310-4(2)(d) and (e);

(d) the proposed facility's zoning status;

(e) the area to be served by the facility; and

(f) how the facility will meet the requirements of Rule R315-305.

(3) Each application for a Class IVa Landfill permit shall also contain the applicable information required in Subsections R315-310-4(2)(b)and (c).

R315-310-6. Contents of a Permit Application for a New or Expanding Landtreatment Disposal Facility.

(1) Each application for a landtreatment disposal facility permit shall contain the information required in Section R315-310-3.

(2) Each application for a permit shall also contain:

(a) a geohydrological assessment of the facility site that addresses all of the factors of Subsection R315-310-4(2)(b);

(b) engineering report, plans, specifications, and calculations that address:

(i) how the proposed facility will meet the location standards pursuant to Section R315-302-1;

(ii) how the proposed facility will meet the standards of Rule R315-307;

(iii) the basis for calculating the facility's life;

(iv) waste analyses and methods to periodically sample and analyze solid waste;

(v) design of interim waste storage facilities;

(vi) design of run-on and run-off control systems;

(vii) a contour map of the active area showing contours to the nearest foot;

(viii) a ground water and surface water monitoring program; and

(ix) access barriers such as fences, gate, and warning signs.

(c) a plan of operation that in addition to the requirements of Section R315-302-2 addresses:

(i) operation and maintenance of run-on and run-off control systems;

(ii) methods of taking ground water samples and for maintaining ground water monitoring systems; and

(iii) methods of applying wastes to meet the requirements of Section R315-307-3.

(d) closure plan to address:

(i) closure schedule;

(ii) capacity of site in volume and tonnage; and

(iii) final inspection by regulatory agencies.

(e) post-closure plan to address:

(i) estimated time period for post-closure activities;

(ii) site monitoring of ground water;

(iii) changes in record of title, land use, and zoning restrictions;

(iv) maintenance activities to maintain cover and run-off system;

(v) plans for food-chain crops, if any, being grown on the active areas, after closure; and

(vi) identification of final closure costs including cost calculations and the funding mechanism.

R315-310-7. Contents of a Permit Application for a New or Expanding Energy Recovery or Incinerator Facility.

(1) Each application for a new or expanding energy recovery or incinerator facility permit shall contain the information required in Section R315-310-3.

(2) Each application for a permit shall also contain:

(a) engineering report, plans, specifications, and calculations that address:

(i) the zoning status of the proposed facility;

(ii) the design of the storage and handling facilities on-site for incoming waste as well as fly ash, bottom ash, and any other wastes produced by air or water pollution controls; and

(iii) the design of the incinerator or thermal treater, including charging or feeding systems, combustion air systems, combustion or reaction chambers, including heat recovery systems, ash handling systems, and air pollution and water pollution control systems. Instrumentation and monitoring systems design shall also be included.

(b) an operational plan that, in addition to the requirements of Section R315-302-2, addresses:

(i) cleaning of storage areas as required by Subsection R315-306-2(5);

(ii) alternative storage plans for breakdowns as required in Subsection R315-306-2(3);

(iii) inspections to insure compliance with state and local air pollution laws and to comply with Subsection R315-302-2(5)(a). The inspection log or summary must be submitted with the application;

(iv) how and where the fly ash, bottom ash, and other solid waste will be disposed; and

(v) a program for excluding the receipt of hazardous waste equivalent to requirements specified in Subsection R315-303-4(7).

(c) documentation to show that air pollution and water pollution control systems are being reviewed or have been reviewed by the Division of Air Quality and the Division of Water Quality.

(d) a closure plan to address:

(i) closure schedule and closure cost;

(ii) methods of closure and methods of removing wastes, equipment, and location of final disposal; and

(iii) final inspection by regulator agencies.

R315-310-8. Contents of a Permit Application for an Existing Facility or a Permit Renewal.

The owner or operator of each existing facility shall apply for a permit or renew their permit by submitting the applicable information and application specified in Sections R315-310-3, -4, -5, -6, or -7. Previous information submitted to the Executive Secretary may be referred to in the application. Changes in operating methods or other changes must be noted in the application in order to be authorized by permit.

R315-310-9. Permit Transfer.

(1) A permit may not be transferred without approval from the Executive Secretary, nor shall a permit be transferred from one property to another.

(2) Application for transfer of a permit shall be made at least 60 days prior to the change of permittee.

(3) The new permittee shall:

(a) assume permit requirements, all financial responsibility, disclosure statement, and public notice and hearing requirements;

(b) provide adequate documentation that the operator has or shall have ownership or control of the facility for which the transfer of permit has been requested;

(c) demonstrate adequate knowledge and ability to operate the facility in accordance with the permit conditions; and

(d) demonstrate adequate financial assurance as required in the permit for the operation of the facility.

(4) An application for permit transfer may be denied if the Executive Secretary finds that the applicant has:

(a) knowingly misrepresented a material fact in the application;

(b) refused or failed to disclose any information requested by the Executive Secretary;

(c) exhibited a history of willful disregard of any state or federal environmental law; or

(d) had any permit revoked or permanently suspended for cause under any state or federal environmental law.

KEY: solid waste management, waste disposal

November 15, 1997	**19-6-105**
Notice of Continuation April 20, 1998	**19-6-108**
	19-6-109

R315. Environmental Quality, Solid and Hazardous Waste.
R315-311. Permit Approval For Solid Waste Disposal, Energy Recovery, And Incinerator Facilities.
R315-311-1. General Requirements.

(1) Upon submittal of the complete plan of operation and supporting information required by Rule R315-310, as determined by the Executive Secretary, a draft permit will be prepared and the owner or operator of the proposed facility will be notified in writing by the Executive Secretary.

(a) After meeting the requirements of the public comment period and public hearing as stipulated in Section R315-311-3, the owner or operator may be issued a permit which will include appropriate conditions and limitations on operation and types of waste to be accepted at the facility.

(b) Construction shall not begin prior to the receipt of the permit.

(c) An application that has been initiated by an owner or operator but left inactive by the applicant for more than one year shall be cancelled.

(2) Solid waste disposal facility plan approval and permit issuance will depend upon:

(a) the adequacy of the facility in meeting the location standards in Section R315-302-1;

(b) the hydrology and geology of the area; and

(c) the adequacy of the plan of operation, facility design, and monitoring programs in meeting the requirements of the applicable rules.

(3) A permit can be granted for up to five years by the Executive Secretary. Each facility must apply for a permit renewal, as required by Section R315-310-8, 180 days before the expiration date of the current permit.

R315-311-2. Permit Modification, Renewal, or Termination.

(1) A permit may be considered for modification, renewal, or termination at the request of any interested person, including the permittee, or upon the Executive Secretary's initiative as a result of new information or changes in statutes or rules. Requests for modification, reissuance, or termination shall be submitted in writing to the Executive Secretary and shall contain facts or reasons supporting the request. Requests for permit modification, renewal, or termination shall become effective only upon approval by the Executive Secretary.

(a) Minor modifications of a permit or plan of operation shall not be subject to the 30 day public comment period as required by Section R315-311-3. A permit modification shall be considered minor if:

(i) typographical errors are corrected;

(ii) the name, address, or phone number of persons or agencies identified in the permit are changed;

(iii) administrative or informational changes are made;

(iv) procedures for maintaining the operating record are changed;

(v) changes are made to provide for more frequent monitoring, reporting, sampling, or maintenance;

(vi) a compliance date extension request is for a date not to exceed 120 days after the date specified in the approved permit;

(vii) changes are made in the expiration date of the permit to allow an earlier permit termination;

(viii) changes are made in the closure schedule for a unit, in the final closure schedule for the facility, or the closure period is extended;

(ix) the Executive Secretary determines, in the case of a permit transfer application, that no change in the permit other than the change in the name of the owner or operator is necessary;

(x) equipment is upgraded or replaced with functionally equivalent components;

(xi) changes are made in sampling or analysis methods, procedures, or schedules;

(xii) changes are made in quality control/quality assurance plans which will better certify that the specifications for construction, closure, sampling, or analysis will be met;

(xiii) changes are made in the facility plan of operation which conform to guidance or rules approved by the Board or provide more efficient waste handling or more effective waste screening;

(xiv) an existing monitoring well is replaced with a new well without changing the location;

(xv) changes are made in the design or depth of a monitoring well that provides more effective monitoring; or

(xvi) changes are made in the statistical method used to statistically analyze the ground water quality data.

(xvii) Other permit modifications shall be considered to be major modifications.

(xviii) The Executive Secretary may subject any minor modification request to the 30 day public comment period if justified by conditions and circumstances.

(b) If the Executive Secretary determines that major modifications to a permit or plan of operation are justified, a new operational plan incorporating the approved modifications shall be prepared. The modifications shall be subject to the public comment period as specified in Section R315-311-3.

(2) An application for permit renewal shall consist of the information required by Section R315-310-8. Upon receipt of the application, the Executive Secretary will review the application and will notify the applicant as to what information or change of operational practice is required of the applicant, if any, to receive a permit renewal. The current permit shall remain in effect until issuance or denial of a new permit. Each permit renewal shall be subject to the public comment requirements of Section R315-311-3.

(3) The Executive Secretary shall notify, in writing, the owner or operator of any facility of intent to terminate a permit. A permit may be terminated for:

(a) noncompliance with any condition of the permit;

(b) noncompliance with any applicable rule;

(c) failure in the application or during the approval or renewal process to disclose fully all relevant facts;

(d) misrepresentation by the owner or operator of any relevant facts at any time; or

(e) a determination that the solid waste activity or facility endangers human health or the environment.

(4) The owner or operator of a facility may appeal any action associated with modification, renewal, or termination in accordance with Section R315-317-3, Title 63 Chapter 46b, and Rule R315-12.

R315-311-3. Public Comment Period.

(1) All solid waste disposal, energy recovery and incinerator facility draft permits, permit renewals, or major modifications of a permit shall be subject to a 30 day public comment period.

(2) A public hearing may be held if a request for public hearing is submitted to the Executive Secretary in writing:

(a) by a local government, a state agency, ten interested persons, or an interested association having not fewer than ten members; and

(b) the request is received by the Executive Secretary not more than 15 days after the publication of the public notice.

(3) After due consideration of all comments received, final determination on draft permits or major modification of permits will be made available by public notice.

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November 15, 1997 **19-6-104**
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19-6-108

R315. Environmental Quality, Solid and Hazardous Waste.
R315-312. Recycling and Composting Facility Standards.
R315-312-1. Applicability.

(1) These standards apply to any facility engaged in recycling or utilization of solid waste on the land including:

(a) composting;

(b) utilization of sewage sludge, septage and other organic wastes on land for beneficial use; and

(c) accumulation of wastes in piles for recycling or utilization.

(2) These standards do not apply to:

(a) single family residences and single family farms engaged in composting of their own solid waste;

(b) other composting operations in which waste from on-site is composted and the finished compost is used on-site;

(c) hazardous waste; or

(d) manufacturing and industrial facilities.

(3) These standards do not apply to any facility that recycles or utilizes solid wastes soley in containers, tanks, vessels, or in any enclosed building, including buy-back recycling centers.

(4) Effective dates. Any existing facility recycling or composting solid waste shall be placed upon a compliance schedule to assure compliance within twelve months of the effective date of this rule.

R315-312-2. Recycling and Composting Requirements.

(1) Any recycling or composting facility shall meet the requirements of Section R315-302-2, and shall submit a general plan of operation and such other information as requested by the Executive Secretary prior to the commencement of any recycling operation.

(2) Each applicable recycling or composting facility shall submit a certification that the facility has, during the past year, operated according to the submitted plan of operation to the Executive Secretary by March 1 of each year.

(3) Any facility storing materials in outdoor piles for the purpose of recycling shall be considered to be disposing of solid waste if:

(a) at least 50% of the material on hand at the beginning of a year at the facility has not been shown to have been recycled by the end of that year and any material has been on-site more than two years unless a longer period is approved by the Executive Secretary; or

(b) ground water or surface water, air, or land contamination has occurred or is likely to occur under current conditions of storage.

(c) Upon a determination by the Executive Secretary or his authorized representative that the limits of Subsection R315-312-2(3)(a) or (b) have been exceeded, the Executive Secretary may require a permit application and issuance of a permit as a solid waste disposal facility.

(4) Any recycling or composting facility may be required to provide financial assurance for clean-up and closure of the site as determined by the Executive Secretary.

(5) Tires stored in piles for the purpose of recycling at a tire recycling facility shall be subject to the requirements of Section R315-314-3.

(6) Any recycling or composting facility regulated under this rule shall not conflict with the county comprehensive solid waste management plan.

(7) Any recycling or composting facility shall comply with applicable local and state laws and rules, including environmental regulations and zoning laws.

R315-312-3. Composting Requirements.

(1) No new composting facility shall be located in the following areas:

(a) wetlands, watercourses, or floodplains; or

(b) within 500 feet of any permanent residence, school, hospital, institution, office building, restaurant, or church.

(2) Each owner or operator of a composting facility, in addition to the operational plan required in Subsection R315-312-2(1), shall develop, keep on file, and abide by a plan that addresses:

(a) detailed plans and specifications for the entire composting facility including manufacturer's performance data for equipment;

(b) methods of measuring, grinding or shredding, mixing, and proportioning input materials;

(c) a description and location of temperature and other types of monitoring equipment and the frequency of monitoring;

(d) a description of any additive material, including its origin, quantity, quality, and frequency of use;

(e) special precautions or procedures for operation during wind, heavy rain, snow, and freezing conditions;

(f) estimated composting time duration, which is the time period from initiation of the composting process to completion;

(g) for windrow systems, the windrow construction, including width, length, and height;

(h) the method of aeration, including turning frequency or mechanical aeration equipment and aeration capacity; and

(i) a description of the ultimate use for the finished compost, the method for removal from the site, and a plan for the disposal of the finished compost that can not be used in the expected manner due to poor quality or change in market conditions.

(3) Composting Facility Operation Requirements.

(a) Operational records must be maintained during the life of the facility and during the post-closure care period, which include, at a minimum, temperature data and quantity and types of material processed.

(b) All waste materials collected for the purpose of processing must be processed within two years or as provided in the plan of operation.

(c) All materials not destined for processing must be properly disposed.

(d) Turning frequency of the compost must be sufficient to maintain aerobic conditions and to produce a compost product in the desired time frame.

(e) During the composting process, the compost must maintain a temperature between 140 and 160 degrees Fahrenheit (60 and 71 degrees Celsius) for a period of not less than seven days.

(f) Hazardous waste or waste containing PCBs shall not be accepted for composting. Any facility utilizing municipal sewage treatment sludge, water treatment sludge, or septage shall require the generator to characterize the sludge and certify

that any sludge used is nonhazardous.

(g) If the composting operation will be utilizing sludge or septage or is likely to produce leachate:

(i) compost piles or windrows shall be placed upon a surface such as sealed concrete, asphalt, clay, or an artificial liner underlying the pile or windrow, to prevent subsurface soil and potential ground water contamination and to allow collection of run-off and leachate. The liner shall be designed of sufficient thickness and strength to withstand stresses imposed by compost handling vehicles and the compost itself;

(ii) run-off systems shall be designed, installed and maintained to control and collect the run-off from a 25-year storm event;

(iii) the collected leachate shall be treated in a manner approved by the Executive Secretary; and

(iv) run-on prevention systems shall be designed, constructed, and maintained to divert the maximum flow from a 25-year storm event.

(h) The finished compost must contain no sharp inorganic objects and must be sufficiently stable that it can be stored or applied to land without creating a nuisance, environmental threat, or a hazard to health.

(4) Composting Facility Closure and Post-closure Requirements.

(a) Within 30 days of closure, a composting facility shall:

(i) remove all piles, windrows, and any other compost material on the composting facility's property;

(ii) remove or revegetate compacted compost material that may be left on the land;

(iii) drain ponds or leachate collection system if any, back-fill, and assure removed contents are properly disposed;

(iv) cover if necessary; and

(v) record with the county recorder as part of the record of title, a plat and statement of fact that the property has been used as a composting facility.

(b) The post-closure care and monitoring shall be for five years and shall consist of:

(i) the maintenance of any monitoring equipment and sampling and testing schedules as required by the Executive Secretary; and

(ii) inspection and maintenance of any cover material.

R315-312-4. Requirements for Use on Land of Sewage Sludge, Woodwaste, and Other Organic Sludge.

(1) Any facility using sewage sludge, untreated woodwaste, and other organic sludge including septage on land shall comply with the recycling standards of Section R315-312-2.

(2) Only agricultural or silvicultural sites where sludge is demonstrated to have soil conditioning or fertilizer value shall be acceptable for use under this subsection, provided that the sludge or woodwaste is applied as a soil conditioner or fertilizer in accordance with accepted agricultural and silvicultural practice.

(3) A facility using organic sludge or woodwaste on the land in a manner not consistent with the requirements of this rule must meet the standards of Rule R315-307.

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-313. Transfer Stations and Drop Box Facilities.
R315-313-1. Applicability.

Any transfer station or drop box facility receiving solid waste from off-site shall meet the requirements of this rule.

R315-313-2. Transfer Station Standards.

(1) Each transfer station shall meet the requirements of Section R315-302-2 and shall submit a plan of operation and such other information as requested by the Executive Secretary for approval prior to construction and operation.

(2) Each transfer station shall be designed, constructed, and operated to:

(a) be surrounded by a fence, trees, shrubbery, or natural features so as to control access and to screen the station from the view of immediately adjacent neighbors, unless the tipping floor is fully enclosed by a building;

(b) be sturdy and constructed of easily cleanable materials;

(c) be free of potential rat harborage, and provide effective means to control rodents, insects, birds, and other vermin;

(d) be adequately screened to prevent blowing of litter and to provide effective means to control litter;

(e) provide protection of the tipping floor from wind, rain, or snow;

(f) have an adequate buffer zone around the active area to minimize noise and dust nuisances, and a buffer zone of 50 feet from the active area to the nearest property line in areas zoned residential;

(g) comply with local zoning and building codes including approved local variances and waivers;

(h) provide pollution control measures to protect surface and ground waters by the construction of:

(i) a run-off collection and treatment system, if required, must be designed and operated to collect and treat a 25-year storm and equipment cleaning and washdown water; and

(ii) a run-on prevention system to divert a 25-year storm event;

(i) provide all-weather access in all vehicular areas;

(j) provide pollution control measures to protect air quality including a prohibition against all burning and the development of odor and dust control plans to be made part of the plan of operation;

(k) prohibit scavenging;

(l) provide attendants on-site during hours of operation;

(m) have a sign that identifies the facility and shows at least the name of the site, hours during which the site is open for public use, materials not accepted at the facility, and other necessary information posted at the site entrance;

(n) have communication capabilities, if available in the facility area, to immediately summon fire, police, or emergency service personnel in the event of an emergency; and

(o) remove all wastes at final closure from the facility to another permitted facility.

R315-313-3. Drop Box Facility Standards.

(1) Each drop box facility shall be constructed of durable watertight materials with a lid or screen on top that prevents both the loss of materials during transport and access by rats and other vermin.

(2) Each drop box facility shall be located in an easily identifiable place accessible by all-weather roads.

(3) Each drop box facility shall be designed and serviced as often as necessary to ensure adequate storage capacity at all times. Storage of solid waste outside the drop boxes is prohibited.

(4) Each drop box facility shall have a sign at the entrance that complies with Subsection R315-313-2(2)(m).

(5) The owner or operator of each drop box facility shall remove all remaining wastes at final closure, to a permitted facility and remove the drop box.

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-314. Facility Standards for Piles Used for Storage and Treatment.
R315-314-1. Applicability.

(1) This section is applicable to solid waste stored or treated in piles where the solid waste, other than garbage, is in place for more than 90 days and garbage is in place for more than seven days. These standards are also applicable to storing of garbage and sludge in piles, to material derived from waste tires stored in piles, and to tire piles where more than 1000 tires are stored at one facility. The standards for waste tire piles do not apply to permitted waste disposal facilities or municipal landfills that have tire piles.

(2) Other solid wastes stored or treated in piles prior to waste recycling including compost piles of vegetative waste and wood waste are not subject to these standards.

(3) Waste piles stored in fully enclosed buildings are not subject to these standards, provided that no liquids or sludge with free liquids are added to the pile.

(4) Inert waste and construction/demolition waste are not subject to these standards.

(5) The standards of this rule do not apply to industrial solid waste facilities.

R315-314-2. Requirements.

(1) Each owner and operator shall:

(a) comply with the applicable requirements of Section R315-302-2; and

(b) remove all solid waste from the pile at closure to another permitted facility.

(2) Requirements for Solid Waste Likely to Produce Leachate.

(a) Waste piles shall be placed upon a surface such as sealed concrete, asphalt, clay, or an artificial liner underlying the pile to prevent subsurface soil and potential ground water contamination and to allow collection of run-off and leachate. The liner shall be designed of sufficient thickness and strength to withstand stresses imposed by pile handling vehicles and the pile itself.

(b) A run-off collection and treatment system shall be designed, installed and maintained to collect and treat a 25-year storm event.

(c) Waste piles having a capacity of greater than 10,000 cubic yards shall have either:

(i) a ground water monitoring system that complies with Rule R315-308; or

(ii) a leachate detection, collection and treatment system.

(iii) For purposes of this subsection, capacity refers to the total capacity of all leachate-generating piles at one facility, e.g., two, 5,000 cubic yard piles will subject the facility to the requirements of this subsection.

(d) A run-on prevention system shall be designed and maintained to divert the maximum flow from a 25-year storm event.

(e) The Executive Secretary may require that the entire base or liner shall be inspected for wear and integrity and repaired or replaced by removing stored wastes or otherwise providing inspection access to the base or liner; the request shall be in writing and cite the reasons including valid ground water monitoring or leachate detection data leading to request such an inspection, repair or replacement.

(3) The length of time that solid waste may be stored in piles shall not exceed 1 year unless the Executive Secretary determines that the solid waste may be stored in piles for a longer time period without becoming a threat to human health or the environment.

R315-314-3. Requirements for Waste Tire Piles.

(1) The definitions of Section R315-320-2 are applicable to the requirements for waste tire piles.

(2) The owner or operator of a tire pile facility shall:

(a) submit the following for approval by the Executive Secretary:

(i) a plan of operation as required by Subsection R315-302-2;

(ii) a plot plan of the storage site showing:

(A) the arrangement and size of the tire piles on the site;

(B) the width of the fire lanes and the type and location of the fire control equipment; and

(C) the location of any on-site buildings and the type of fencing to surround the site;

(iii) a financial assurance plan including the date that the financial assurance mechanism becomes effective; and

(iv) a vector control plan;

(b) accumulate tires only in designated areas;

(c) control access to the tire pile site by fencing;

(d) limit individual tire piles to a maximum of 5,000 square feet of continuous area in size at the base of the pile;

(e) limit the individual tire piles to 50,000 cubic feet in volume or 10 feet in height;

(f) insure that piles be at least 40 feet from the perimeter of the property and 50 feet from any building;

(g) provide for a 40 foot fire lane between tire piles;

(h) effect a vector control program, if necessary, to minimize mosquito breeding and the harborage of other vectors such as rats or other animals;

(i) provide on-site fire control equipment that is maintained in good working order;

(j) display an emergency procedures plan and inspection approval by the local fire department and require all employees to be familiar with the plan;

(k) obtain an approval or permit from the local fire department, if required, and be in compliance with all applicable environmental and zoning requirements; and

(l) establish financial assurance for clean-up and closure of the site.

(i) Financial assurance may include insurance, surety bond, trust fund, other mechanism, or combination of mechanisms as approved by the Executive Secretary.

(ii) The amount of financial assurance shall be $150 per ton of tires stored at the storage site.

(iii) Financial assurance shall be approved by the Executive Secretary and administered by the local health department in which the tire pile is located.

(3) Each tire recycler, as defined by Subsection 26-32a-103(12), that stores tires in piles prior to recycling shall comply with the following requirements:

(a) the owner or operator shall submit the information

required in Subsection R315-314-3(2)(a);

(b) the tire pile site shall be in compliance with the requirements of Subsections R315-314-3(2)(b) through (l);

(c) tires stored for recycling inside a building are not required to comply with the requirements of Subsections R315-314-3(2)(d) through (g);

(d) the amount of financial assurance required by Subsection R315-314-3(2)(l) shall be $150 per ton of tires held as the average inventory during the preceding year of operation; and

(e) recycle and move from the site at lease 75% of the tires entering the site during the calendar or fiscal year. An owner or operator not meeting this requirement will no longer be considered to be operating a storage site for recycling, and compliance with all requirements for tire piles will be required.

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-315. Special Waste Requirements.
R315-315-1. General Requirements.

(1) If special wastes are accepted at the facility, proper provisions shall be made for handling and disposal. These provisions shall include, where required and approved by the Executive Secretary, a separate area for disposal of the wastes, designated by appropriate signs.

(2) The requirements of this rule do not apply to industrial solid waste facilities.

R315-315-2. Asbestos Waste.

(1) Asbestos waste shall be handled, transported, and disposed in a manner that will not permit the release of asbestos fibers into the air and must otherwise comply with Sections R307-1-4.12 and R307-1-8 and 40 CFR Part 61, Subpart M, 1995 ed.

(2) No transporter or disposal facility shall accept friable asbestos waste unless the waste has been adequately wetted and containerized.

(a) Asbestos waste is adequately wetted when its moisture content prevents fiber release.

(b) Asbestos waste is properly containerized when it is placed in double plastic bags of 6-mil or thicker, sealed in such a way to be leak-proof and air-tight, and the amount of void space or air in the bags is minimized. Asbestos waste slurries must be packaged in leak-proof and air-tight rigid containers if such slurries are too heavy for the plastic bag containers. The Executive Secretary may authorize other proper methods of containment which may include double bagging, plastic-lined cardboard containers, plastic-lined metal containers, or the use of vacuum trucks for the transport of slurry.

(c) All asbestos containers shall be labeled with the name of the waste generator, the location where the waste was generated, and tagged with a warning label indicating that the containers hold asbestos.

(3) Disposal of Asbestos Waste.

(a) Upon entering the disposal site, the transporter of the asbestos waste shall notify the landfill operator that the load contains asbestos by presenting the waste shipment record. The landfill operator will verify quantities received, sign off on the waste shipment record, and send a copy of the waste shipment record to the generator within 30 days.

(b) Upon the receipt of the asbestos waste, the landfill operator shall require that the vehicles that have transported asbestos waste be marked with warning signs as specified in 40 CFR Part 61.149(d)(1)(iii), 1995 ed., which is adopted and incorporated by reference. The operator shall also inspect the loads to verify that the asbestos waste is properly contained in leak-proof containers and labeled appropriately. The operator shall notify the local health department and the Executive Secretary if the operator believes that the asbestos waste is in a condition that may cause significant fiber release during disposal. If the wastes are not properly containerized, and the landfill operator accepts the load, the operator shall thoroughly soak the asbestos with a water spray prior to unloading, rinse out the truck, and immediately cover the wastes with non-waste material which prevents fiber release prior to compacting the waste in the landfill.

(c) During waste deposition and covering, the operator:

(i) may prepare a separate trench or separate area of the landfill to receive only asbestos waste, or may dispose of asbestos at the working face of the landfill;

(ii) shall place asbestos containers into the trench, separate area, or at the bottom of the landfill working face with sufficient care to avoid breaking the containers;

(iii) within 18 hours, shall completely cover the containerized waste with sufficient care to avoid breaking the containers with a minimum of six inches of material containing no asbestos. If the waste is improperly containerized, it must be completely covered immediately with six inches of material containing no asbestos; and

(iv) shall not compact asbestos containing material until completely covered with a minimum of six inches of material containing no asbestos.

(d) The operator shall provide barriers adequate to control public access. At a minimum, the operator shall:

(i) limit access to the asbestos management site to no more than two entrances by gates that can be locked when left unattended and by fencing adequate to restrict access by the general public; and

(ii) place warning signs at the entrances and at intervals no greater than 200 feet along the perimeter of the sections where asbestos waste is deposited that comply with the requirements of 40 CFR Part 61.154(b), 1995 ed., which is adopted and incorporated by reference; and

(e) close the separate trenches, if constructed, according to the requirements of Subsection R315-303-3(4) with the required signs in place.

R315-315-3. Ash.

(1) Preferred ash management is in a permitted Class III ash monofill, but ash may be disposed in a permitted Class I, II, III, or V landfill.

(2) Ash shall be transported in such a manner to prevent leakage or the release of fugitive dust.

(3) The landfill operator shall:

(a) unload the transport vehicles at the bottom of the working face and keep the ash wetted, if necessary, to prevent fugitive emissions prior to covering; and

(b) within 24 hours, completely cover the ash with a minimum of six inches of other non-ash landfill waste or a minimum of six inches of material containing no waste or use other methods or materials, if necessary, to control fugitive dust.

R315-315-4. Bulky Waste.

Bulky waste such as automobile bodies, furniture, and appliances shall be crushed and then pushed onto the working face near the bottom of the cell or into a separate disposal area.

R315-315-5. Sludge Requirements.

(1) No water treatment plant sludge, digested waste water treatment plant sludge, or septage containing free liquids may be disposed in any landfill with other solid waste.

(2) Water treatment plant sludge, digested waste water treatment plant sludge, or septage containing no free liquids may be placed at or near the bottom of the landfill working face and covered with other solid waste or other suitable cover

material.

(3) Disposal of sludge in a landfill must meet the requirements of Subsection R315-303-3(1).

R315-315-6. Dead Animals.

Dead animals received at the facility shall be deposited onto the working face at or near the bottom of the cell with other solid waste, or into a separate disposal trench provided they are covered daily with a minimum of six inches of earth to prevent odors and the propagation and harborage of rodents and insects.

KEY: solid waste management, waste disposal
November 15, 1995 19-6-105
Notice of Continuation April 28, 1998

R315. Environmental Quality, Solid and Hazardous Waste.
R315-316. Infectious Waste Requirements.
R315-316-1. Applicability.

(1) The standards of this rule apply to:

(a) any health facility as defined by Subsection 19-6-102(10) that generates infectious waste as defined by Subsection 19-6-102(11); and

(b) any infectious waste transporter or storage, treatment, or disposal facility.

(2) The standards of this rule do not apply to a health facility that generates 200 pounds or less of infectious waste per month.

(3) All material that has been rendered non-infectious may be handled as non-infectious waste, provided it is not an otherwise regulated hazardous or radioactive waste and is not subject to the requirements of this rule.

R315-316-2. General Operational Requirements.

(1) Every facility that generates, transports, stores, treats, or disposes of infectious waste must prepare and maintain on file a management plan for the waste that identifies the:

(a) type and estimated quantity of waste generated or handled;

(b) segregation, packaging, and labeling procedures;

(c) collection, storage, and transportation procedures, including the name of the transporter, to be implemented;

(d) treatment or disposal methods that will be used, and disposal facility that will be used; and

(e) person responsible for the management of the infectious waste.

(2) All infectious waste generators and handlers shall report any delivery of unauthorized waste to the local health department immediately upon recognition.

(3) Infectious waste consisting of recognizable human anatomical remains including human fetal remains shall be disposed by incineration or interment.

R315-316-3. Storage and Containment Requirements.

(1) Containment shall be in a manner and location which affords protection from animal intrusion, does not provide a breeding place or a food source for insects and rodents, and minimizes exposure to the public.

(2) Unless all waste is considered infectious and labeled as such, infectious waste shall be segregated by separate containment from other waste at the point of origin.

(3) Except for sharps, infectious waste shall be contained in plastic bags or inside rigid containers. The bags shall be securely tied and the containers shall be securely sealed to prevent leakage or expulsion of solid or liquid wastes during storage, handling, or transport.

(4) Sharps shall be contained for storage, transportation, treatment, and disposal in leak-proof, rigid, puncture-resistant containers which are taped closed or tightly lidded to preclude loss of contents.

(5) All containers used for containment of any infectious waste shall be red or orange, or if containers are not red or orange, shall be clearly identified with the international biohazard sign and one of the following labels: "INFECTIOUS WASTE", "BIOMEDICAL WASTE", or "BIOHAZARD".

(6) If other waste is placed in the same container as regulated infectious waste, then the generator must package, label, and mark the container and its entire contents as infectious waste.

(7) A rigid infectious waste container may be reused for infectious or non-infectious waste if it is thoroughly washed and decontaminated each time it is emptied or if the surfaces of the container have been completely protected from contamination by disposable, unpunctured, or undamaged liners, bags, or other devices that are removed with the infectious waste, and the surface of the liner has not been damaged or punctured.

(8) Storage and containment areas must protect infectious waste from the elements, be ventilated to the outside, be only accessible to authorized persons, and be marked with prominent warning signs on, or adjacent to, the exterior doors or gates. The warning signs shall contain the international biohazard sign and shall state: "CAUTION -- INFECTIOUS WASTE STORAGE AREA -- UNAUTHORIZED PERSONS KEEP OUT" and must be easily read during daylight from a distance of 25 feet.

(9) If infectious waste is stored longer than seven days, it shall be stored at 40 degrees Fahrenheit (5 degrees Celsius).

(10) Compactors, grinders, or similar devices shall not be used to reduce the volume of infectious waste before the waste has been rendered non-infectious unless the device is contained sufficiently to prevent contamination of the surrounding area.

R315-316-4. Infectious Waste Transportation Requirements.

(1) Infectious waste shall not be transported in the same vehicle with other waste unless the infectious waste is contained in a separate, fully enclosed leak-proof container within the vehicle compartment or unless all of the waste is to be treated as infectious waste in accordance with this section.

(2) Persons manually loading or unloading containers of infectious waste onto or from transport vehicles shall:

(a) be trained in the proper use of protective equipment;

(b) have available and easily accessible at all times puncture resistant gloves and shoes, shatterproof glasses, and coveralls; and

(c) have face shields and respirators available as deemed necessary by the transporter.

(d) Protective gear that becomes soiled shall be decontaminated or disposed as infectious waste.

(3) Surfaces of transport vehicles that have contacted spilled or leaked infectious waste shall be decontaminated by procedures approved by the Executive Secretary.

(4) Transport vehicles transporting infectious waste shall meet all warning requirements of the Department of Transportation.

(5) Each truck, trailer, or semitrailer, or container used for transporting infectious waste shall be so designed and constructed, and its contents limited so that under conditions normally incident to transportation, there shall be no releases of infectious waste to the environment.

(6) Any truck, trailer, semitrailer, or container used for transporting infectious waste shall be free from leaks, and all discharge openings shall be securely closed during transportation.

(7) No person shall transport infectious waste into the state for treatment, storage, or disposal unless the waste is packaged, contained, labeled and transported in the manner required by this section.

(8) All transporter vehicles shall carry a spill containment and cleanup kit and the transport workers shall be trained in spill containment and cleanup procedures.

R315-316-5. Infectious Waste Treatment and Disposal Requirements.

(1) Infectious waste shall be treated or disposed as soon as possible but not to exceed 30 days after collection from a generator, and shall be treated or disposed at a facility with a permit or other form of approval allowing the facility to treat or dispose infectious waste.

(2) Infectious waste may be incinerated in an incinerator.

(a) The incinerator shall comply with the requirements of Rule R315-306 and provide complete combustion of the waste to carbonized or mineralized ash.

(b) A composite sample of the ash and residues from the incinerator shall be taken at least once each year. The sample shall be analyzed by the U.S. EPA Test Method 1311 as provided in 40 CFR Part 261, Appendix II, 1991 ed., Toxic Characteristics Leaching Procedure (TCLP) on parameters determined by the Executive Secretary to determine if it is a hazardous waste. If hazardous, it shall be managed by applicable state regulations.

(3) Infectious waste may be sterilized by heating in a steam sterilizer to render the waste non-infectious.

(a) The operator shall have available and shall certify in writing that he understands written operating procedures for each steam sterilizer, including time, temperature, pressure, type of waste, type of container, closure on container, pattern of loading, water content, and maximum load quantity.

(b) Infectious waste shall be subjected to sufficient temperature, pressure and time to kill Bacillus stearothermophilus spores in the center of the waste load being decontaminated.

(c) Unless a steam sterilizer is equipped to continuously monitor and record temperature and pressure during the entire length of each sterilization cycle, each package of infectious waste to be sterilized shall have a temperature sensitive tape or equivalent test material, such as chemical indicators, attached that will indicate if the sterilization temperature and pressure have been reached. Waste shall not be considered sterilized if the tape or equivalent indicator fails to indicate that a temperature of at least 250 degrees Fahrenheit (121 degrees Celsius) was reached during the process.

(d) Each sterilization unit shall be evaluated for effectiveness with spores of B. stearothermophilus at least once each 40 hours of operation or each week, whichever is less.

(e) A written log for each load shall be maintained for each sterilization unit which shall contain at a minimum:

(i) the time of day, date, and operator's name;

(ii) the amount and type of infectious waste placed in the sterilizer; and

(iii) the temperature and duration of treatment.

(4) Infectious waste may be discharged to a sewage treatment system that provides secondary treatment of waste but only if the waste is liquid or semi-solid and if approved by the operator of the sewage treatment system.

(5) Infectious waste may be disposed in a permitted Class I, II, or V Landfill. Upon entering the landfill, the transporter of infectious waste shall notify the landfill operator that the load contains infectious waste. The landfill operator shall abide by the following procedures in the disposition and covering of infectious waste:

(a) place the infectious waste containers at the bottom of the working face with sufficient care to avoid breaking them;

(b) completely cover the infectious waste immediately with a minimum of 12 inches of earth or waste material containing no infectious waste; and

(c) not compact the infectious waste until completely covered with 12 inches of earth or waste material containing no infectious waste.

(6) Other treatment or disposal methods may be used for infectious waste upon approval by the Executive Secretary.

KEY: solid waste management, waste disposal
1993 19-6-105
Notice of Continuation April 28, 1998

R315. Environmental Quality, Solid and Hazardous Waste. **19-6-109**
R315-317. Other Processes, Variances, and Violations. **19-6-111**
R315-317-1. Other Processes, Methods, and Equipment. **19-6-112**

Processes, methods, and equipment other than those specifically addressed in this rule will be considered on an individual basis by the Executive Secretary upon submission of evidence of adequacy to meet the minimum standards of performance to protect human health and the environment as required in Section R315-303-2.

R315-317-2. Variances.

(1) Variances will be granted by the Board only to the extent allowed under Federal law.

(2) Any owner or operator of a solid waste facility may apply to the Board for a variance from any portion of this rule except as specified in Subsection R315-317-2(1). The application shall be accompanied by such information as the Executive Secretary may require. All applications for a variance shall be subject to the public comment requirements of Subsection R315-311-3. The Board may grant such variance, if it finds that:

(a) the solid waste handling practices or location do not endanger public health, safety, or the environment; and

(b) the application of, or compliance with, any requirement of this rule would cause undue or unreasonable hardship to any person; and

(c) circumstances of the solid waste disposal site location, operating procedures, or other conditions indicate that the purpose and intent of this rule as well as other state and federal regulations can be achieved without strict adherence to all of the requirements.

(3) If a variance is granted by the Board under this section for a period longer than one year, the variance shall contain a timetable for coming into compliance and shall be conditioned on adherence to that timetable.

R315-317-3. Violations, Orders, and Hearings.

(1) Whenever the Executive Secretary or his duly appointed representative determines that any person is in violation of any applicable approved solid waste operation plan or permit or the requirements of this rule, the Executive Secretary may cause written notice of violation to be served upon the alleged violators. The notice shall specify the provisions of the plan, permit, or rules alleged to have been violated and the facts alleged to constitute the violation. The Executive Secretary may issue an order that necessary corrective action be taken within a reasonable time or may request the attorney general or the county attorney in the county in which the violation takes place to bring a civil action for injunctive relief and enforcement of the permit requirements or this rule.

(2) Any order issued pursuant to Subsection R315-317-3(1) shall become final unless, within 30 days after the order is served, the persons specified therein request a hearing. Title 63, Chapter 46b and Rule R315-12 shall govern the conduct of hearings before the Board.

KEY: solid waste management, waste disposal
1993 **19-6-105**
Notice of Continuation April 28, 1998 **19-6-108**

R315. Environmental Quality, Solid and Hazardous Waste.
R315-318. Permit by Rule.
R315-318-1. General Requirements.

(1) Any facility that disposes of solid waste and is regulated by Federal or state agencies which have regulations or rules as stringent as or more stringent than Rules R315-301 through R315-317 may be permitted by rule.

(2) Any facility permitted by rule is not required to obtain a permit or comply with any other provisions of Rules R315-301 through R315-317 except where operation of the facility may endanger human health or the environment or otherwise violate the provisions of the Solid and Hazardous Waste Act:

R315-318-2. Facilities Permitted by Rule.

The following facilities are permitted by rule:

(1) solid waste disposal and incineration facilities which are required to operate under the conditions of a state or Federal hazardous waste permit or plan approval;

(2) disposal operations or activities which are required to operate under the conditions of a Utah Division of Oil, Gas, and Mining permit or plan approval;

(3) non-commercial underground injection facilities regulated by the Utah Division of Water Quality; and

(4) disposal operations or activities which accept only radioactive waste and are required to operate under the conditions of a Utah Division of Radiation Control permit or plan approval.

KEY: solid waste management, waste disposal

1993	**19-6-104**
Notice of Continuation April 28, 1998	**19-6-105**
	19-6-108

R428. Health, Health Data Analysis.
R428-13. Health Data Authority. Audit and Reporting of HMO Performance Measures.
R428-13-1. Legal Authority.

This rule is promulgated under authority granted by Title 26, Chapter 33a, Utah Code, and in accordance with the Utah Health Care Performance Measurement Plan.

R428-13-2. Purpose.

This rule establishes a performance measurement data collection and reporting system for health maintenance organizations (HMOs) licensed in the State of Utah and certain health plans.

R428-13-3. Definitions.

These definitions apply to rule R428-13:

(1) "Office" as defined in R428-2-3A.

(2) "Health Maintenance Organization (HMO)" means any person or entity operating in Utah which is licensed under Title 31A, Chapter 8, Utah Code.

(3) "Health plan" means any insurer under a contract with the Utah Department of Health to serve Medicaid clients under Title XIX and Title XXI of the Social Security Act.

(4) "Utah Health Care Performance Measurement Plan" means the plan for data collection and public reporting of health-related measures, adopted by the Utah Health Data Committee to establish a statewide health performance reporting system.

(5) "NCQA" means the National Committee for Quality Assurance, a not-for-profit organization committed to evaluating and reporting on the quality of managed care plans.

(6) "Performance Measure" means the quantitative, numerical measure of an aspect of the HMO or health plan, or its membership in part or in its entirety, or qualitative, descriptive information on the HMO in its entirety as described in HEDIS.

(7) "HEDIS" means the Health Plan Employer Data and Information Set, a set of standardized performance measures developed by the NCQA.

(8) "HEDIS data" means the complete set of HEDIS measures calculated by HMOs and health plans according to NCQA specifications.

(9) "Audited HEDIS data" means HEDIS data verified by an NCQA certified audit agency.

(10) "Committee" means Utah Health Data Committee established under the Utah Health Data Authority Act, Title 26, Chapter 33a, Utah Code.

(11) "Covered period" means the calendar year on which the data used for calculation of HEDIS measures are based.

(12) "Submission year" means the year immediately following the covered period.

R428-13-4. Submission of performance measures.

(1) Each HMO and health plan shall compile and submit HEDIS data to the Office according to this rule.

(2) By August 1 of 1998 and every August 1 thereafter, all HMOs and health plans shall submit to the Office audited HEDIS data for the preceeding calendar year.

(3) Each HMO and health plan shall contract with an independent audit agency certified by the NCQA to verify the HEDIS data prior to the HMO's or health plan's submitting it to the Office.

(4) By June 1 of each submission year, each HMO and health plan shall submit to the Office a letter identifying the independent audit agency it contracts with to verify its HEDIS data.

(5) The auditor shall follow the guidelines and procedures contained in NCQA's "HEDIS Compliance Audit Standards and Guidelines" in effect on November 15 of the covered period.

(6) Each HMO and health plan shall cause its contracted audit agency to submit a copy of the audit agency's report by August 1 of the submission year to the Office.

(7) Each HMO and health plan shall cause its contracted audit agency to submit a copy of the audit agency's final report by October 15 of the submission year to the Office. The final report shall incorporate the HMO's or health plan's comments.

R428-13-5. Release of Performance Measures.

(1) The Health Data Committee shall follow NCQA's "HEDIS Compliance Audit Standards and Guidelines" to determine the HEDIS Data Set that the Office may include in reports for public release for public use.

(2) The Office shall give HMOs and health plans 35 days to review any report which identifies it by name. The identified HMO or health plan may submit comments and alternative interpretations to the Office.

R428-13-6. Exemptions.

(1) An HMO or health plan that cannot meet the reporting requirements of this rule may request an exemption by June 1 of each submission year by submitting to the Office a written request for an exemption, accompanied by all documentation necessary to establish the HMO's or health plan's inability to report. The exemption request shall be signed by the chief executive officer of the HMO or health plan who shall certify that all information contained in the request is true and correct. An HMO or health plan may request an exemption if the HMO or health plan did not operate in Utah for the reporting year, if the number of covered lives is too low for HEDIS standards, or for other similarly prohibitive circumstances beyond the HMO's or health plan's control.

(2) The Office may request additional information from the HMO and health plan relevant to the exemption or extension request. If the committee denies the exemption, the HMO or health plan may resubmit the request to the Office if it has additional information or analysis bearing on the request.

R428-13-7. Penalties.

Any person who violates any provision of this rule may be assessed a penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation, and for any subsequent similar violation within two years for violation of a class A misdemeanor.

KEY: health, health planning, health policy
April 5, 1998 **26-33a**

R527. Human Services, Recovery Services.
R527-56. In-Kind Support.
R527-56-1. In-Kind Support.

1. Definitions.

a. "In-kind support" is support provided by the obligor to the obligee in lieu of payment of a cash support amount.

b. "Office" means the Office of Recovery Services.

2. In cases where the obligee is receiving financial public assistance, the Office of Recovery Services shall give credit to obligors for in-kind support payments when cash support is court-ordered and there is an in-kind support agreement between the obligee and obligor meeting the following criteria:

a. Both the obligor and the obligee shall have agreed to the in-kind support.

b. The agreement shall be in writing.

c. The agreement pre-dates the obligee receiving financial public assistance.

d. The agreement shall have been filed with the court.

e. The value of the in-kind support is undisputed.

f. The in-kind support is easily valued.

g. The value of the in-kind support provided in a month equals or exceeds the monthly amount of cash support ordered by the court.

h. The Department of Workforce Services shall have received written notice of the agreement and registered no objection to the agreement when the obligee applied for public assistance.

3. If the criteria listed above are met, the office shall give the obligor credit for the monthly court-ordered amount for each month that the agreement was in effect and the in-kind support was provided.

4. The office may take whatever action is necessary to require prospective payment of the court-ordered cash support during the time period that the obligee receives financial public assistance.

5. If the obligee signed a referral from the Department of Workforce Services which specified that upon receipt of financial public assistance by the obligee the Office of Recovery Services requires prospective payment of cash support as ordered by the court, and the obligor and obligee continue to act in accordance with the in-kind support agreement, the obligee is considered to be retaining support in violation of the assignment of support rights, and the office may recover the amount of in-kind support from the obligee.

6. If the obligee did not sign a referral as described in (4.), but otherwise received written notice from the office that upon receipt of financial public assistance by the obligee the office requires prospective payment of cash support as ordered by the court, and the obligor and obligee continue to act in accordance with the in-kind support agreement, the obligee is considered to be retaining support in violation of the assignment of support rights, and the office may recover the amount of in-kind support from the obligee.

7. Once an obligor receives written notice that an assignment of support rights is in effect and that the office requires payment of cash support as ordered by the court, the obligor may be held responsible to pay directly to the office any prospective support payments which are due under a support order, in the manner provided in the support order.

KEY: child support
1993 **62A-11-104(1)**
Notice of Continuation April 13, 1998 **62A-11-307.2**

R590. Insurance, Administration.
R590-79. Life Insurance Disclosure Rule.
R590-79-1. Authority.

This rule is adopted and promulgated pursuant to Section 31A-2-201, which empowers the Commissioner of Insurance to make reasonable rules necessary for, or as an aid to, the effectuation of any provision of the Insurance Code.

R590-79-2. Purpose.

The purpose of this rule is to require insurers to deliver to purchasers of life insurance, information which will improve the purchaser's ability to select a plan of life insurance most appropriate for the purchaser's needs, improve the purchaser's understanding of the basic features of the policy being purchased or under consideration for purchase, and to improve the ability of the purchaser to evaluate the relative costs of similar plans of life insurance.

This rule does not prohibit the use of additional material which is not in violation of this rule or any other statute or rule.

R590-79-3. Scope.

Except as hereinafter exempted, this rule shall apply to any solicitation, negotiation or procurement of life insurance occurring within this state. This rule shall apply to any issuer of life insurance contracts including fraternal benefit societies.

Unless otherwise specifically included, this rule shall not apply to:

A. Annuities.

B. Credit life insurance.

C. Group life insurance (except for disclosures relating to non-term group life insurance and preneed funeral contracts or prearrangements as provided herein. These disclosure requirements shall extend to the issuance or delivery of certificates as well as to the master policy).

D. Life insurance policies issued in connection with pension and welfare plans as defined by and which are subject to the federal Employee Retirement Income Security Act of 1974 (ERISA), as amended.

E. Variable life insurance under which the amount and duration of the death benefits and cash values vary according to the investment experience of a separate account, and which is subject to regulation by the Securities and Exchange Commission.

F. The provisions of this rule will take effect January 1, 1997.

R590-79-4. Definitions.

For the purposes of this rule, the following definitions shall apply:

A. Buyer's Guide. A Buyer's Guide is a document which contains, and is limited to, the language contained in the "1997 Life Insurance Buyer's Guide," as published by, and available from the National Association of Insurance Commissioners, 1997 edition, which is incorporated in this rule by reference.

B. Guaranteed Rate Schedule. The Guaranteed Rate Schedule is a schedule showing the maximum premiums that will be charged or the minimum cash values or death or other benefits that will be available, if there is no change in the basis of these items as guaranteed in the policy at the time of issue.

C. Equivalent Level Death Benefit. The Equivalent Level Death Benefit of a policy or term life insurance rider is an amount calculated as follows:

1. Accumulate the amount payable upon death, regardless of the cause of death, at the beginning of each policy year for ten and 20 years at 5% interest compounded annually to the end of the tenth and twentieth policy years respectively.

2. Divide each accumulation of Step 1 by an interest factor that converts it into one equivalent level annual amount that, if paid at the beginning of each year, would accrue to the value in Step 1 over the respective periods stipulated in Step 1. If the period is ten years, the factor is 13.207 and if the period is 20 years, the factor is 34.719.

D. Generic Name. Generic Name means a short title which is descriptive of the premium and benefit patterns of a policy or a rider.

E. Cost Comparison Indexes.

1. Surrender Cost Comparison Index - Guaranteed Basis. The Surrender Cost Comparison Index - Guaranteed Basis - is calculated by applying the following steps, assuming that the company charges the maximum premiums and provides the minimum cash values and, provides the minimum death benefits allowed by the policy, and, if the policy is participating, pays no dividends.

a. Determine the cash surrender value, if any, available at the end of the tenth and twentieth policy years, based on the company's Guaranteed Rate Schedule.

b. Divide the result of Step a by an interest factor that converts it into an equivalent level annual amount that, if paid at the beginning of each year, would accrue to the value in Step a over the respective periods stipulated in Step a. If the period is ten years, the factor is 13.207 and if the period is 20 years, the factor is 34.719.

c. Determine the equivalent level premium by accumulating each annual premium payable for the basic policy or rider, based on the company's Guaranteed Rate Schedule, at 5% interest compounded annually to the end of the period stipulated in Step a and dividing the result by the respective factors stated in Step b. (This amount is the annual premium payable for a level premium plan.)

d. Subtract the result of Step b from Step c.

e. Divide the result of Step d by the number of thousands of the Equivalent Level Death Benefit, using the company's Guaranteed Rate Schedule to determine the amount payable upon death, to arrive at the Surrender Cost Comparison Index - Guaranteed Basis.

(2) Net payment Cost Comparison Index - Guaranteed Basis. The Net Payment Cost Comparison Index - Guaranteed Basis is calculated in the same manner as the comparable Surrender Cost Comparison Index - Guaranteed Basis, except that the cash surrender value and any terminal dividend are set at zero.

F. Policy Summary.

(1) For the purposes of this rule, Policy Summary means a written statement describing only the guaranteed elements of the policy. If an illustration subject to the requirements of R590-177, Life Insurance Illustrations Rule, is used in the sale of a policy, a policy summary does not have to be provided. A policy summary must include the following information:

(a) A prominently placed title as follows: STATEMENT OF POLICY COST AND BENEFIT INFORMATION.

(b) The name and address of the insurance agent, or, if no agent is involved, a statement of the procedure to be followed in order to receive responses to inquiries regarding the policy summary.

(c) The full name and home office or administrative office address of the company in which the life insurance policy is to be or has been written.

(d) The Generic Name of the basic policy and each rider.

(e) The following amounts, where applicable, for the first five policy years and representative policy years thereafter sufficient to clearly illustrate the premium and benefit patterns, including, but not necessarily limited to, the tenth and twentieth policy years, and at least one age from 60 through 65 or maturity, which ever is earlier.

(i) The annual premium for the basic policy.

(ii) The annual premium for each optional rider.

(iii) Guaranteed amount payable upon death, at the beginning of the policy year regardless of the cause of death other than suicide, or other specifically enumerated exclusions, which is provided by the basic policy and each optional rider, with benefits provided under the basic policy and each rider shown separately.

(iv) Total guaranteed cash surrender values at the end of the year with values shown separately for the basic policy and each rider.

(v) Guaranteed endowment amounts payable under the policy which are not included under guaranteed cash surrender values above.

(f) The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether this rate is applied in advance or in arrears. If the policy loan interest rate is adjustable, the policy summary shall indicate the maximum annual percentage rate, and shall also indicate that the annual percentage rate will be determined by the company in accordance with the provisions of the policy and the applicable law.

(g) The Cost Comparison Indexes for ten and 20 years but in no case beyond the premium paying period. Indexes shall be shown on the Guaranteed Basis. Separate indexes shall be displayed for the basic policy and for each optional term life insurance rider. Such indexes need not be included for optional riders which are limited to benefits such as accidental death benefits, disability waiver of premium, preliminary term life insurance coverage of less than 12 months and guaranteed insurability benefits nor for the basic policies or optional riders covering more than one life.

(h) A statement in close proximity to the Cost Comparison Indexes that an explanation of the intended use of the indexes is provided in the Life Insurance Buyer's Guide.

(i) The date on which the policy summary is prepared.

(2) The policy summary must consist of a separate document. All information required to be disclosed must be set out in such a manner as not to minimize or render any portion thereof obscure. Any amounts which remain level for two or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in item F.(1)(e) of this section shall be listed in total, not on a per thousand nor per unit basis. If more than one insured is covered under one policy or rider, death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class. Zero amounts shall be displayed as zero and may not be displayed as a blank space.

G. Preneed Funeral Contract or Prearrangement. An agreement by or for an individual before that individual's death relating to the purchase or provisions of specific funeral or cemetery merchandise or services.

R590-79-5. Disclosure Requirements.

A. The insurer shall provide, to all prospective purchasers, a Buyer's Guide and either a policy summary or a life illustration, that is in compliance with Rule R590-177, Life Insurance Illustrations Rule, when the policy is delivered or prior to delivery of the policy if so requested.

B. The insurer shall provide a Buyer's Guide and a policy summary to any prospective purchaser upon request.

C. Flexible Premium and Benefit Policies. For policies commonly called "universal life insurance policies," which:

(1) Permit the policy owner to vary, independently of each other, the amount or timing of premium payments, or the amount payable on death; and

(2) Provide for a cash value that is based on separately identified interest credits and mortality and expense charges made to the policy.

All indexes and other data shall be displayed assuming specific schedules of anticipated premiums and death benefits at issue.

In addition to all other information required by this rule, the policy summary shall indicate when the policy will expire based on the interest rates and mortality rates and other charges guaranteed in the policy and the anticipated or assumed annual premiums shown in the policy summary.

D. Preneed Funeral Contracts or Prearrangements. The following information shall be adequately disclosed at the time an application is made prior to accepting the applicant's initial premium or deposit, for a preneed funeral contract or prearrangement as defined in Section 4(G) above which is funded or to be funded by a life insurance policy:

(1) The fact that a life insurance policy is involved or being used to fund a prearrangement;

(2) The nature of the relationship among the soliciting agent or agents, the provider of the funeral or cemetery merchandise or services, the administrator and any other person;

(3) The relationship of the life insurance policy to the funding of the prearrangement and the nature and existence of any guarantees relating to the prearrangement;

(4) The impact on the prearrangement

(a) of any changes in the life insurance policy including but not limited to changes in the assignment, beneficiary designation or use of the proceeds;

(b) of any penalties to be incurred by the policyholder as a result of failure to make premium payments;

(c) of any penalties to be incurred or monies to be received as a result of cancellation or surrender of the life insurance policy;

(5) A list of the merchandise and services which are

applied or contracted for in the prearrangement and all relevant information concerning the price of the funeral services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need;

(6) All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy and the amount actually needed to fund the prearrangement;

(7) Any penalties or restrictions, including but not limited to geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services or the prearrangement guarantee;

(8) The fact that a sales commission or other form of compensation is being paid and if so, the identity of such individuals or entities to whom it is paid.

R590-79-6. General Requirements.

A. Each insurer shall maintain at its home office or principal office, a complete file containing one copy of each document authorized by the insurer for use pursuant to this rule, and also to include the agent sales kit and all other sales promotion and marketing material. Such file shall contain one copy of each authorized form for a period of three years following the date of its last authorized use.

B. An agent shall inform the prospective purchaser, prior to commencing a life insurance sales presentation, that he or she is acting as a life insurance agent and inform the prospective purchaser of the full name of the insurance company which the agent is representing to the buyer. In sales situations in which an agent is not involved, the insurer shall identify its full name. A presentation commences with an initial contact with a prospective purchaser in person by telephone or by way of printed materials, particularly where rates or values are quoted or when policy or contract representations are made.

C. Terms such as financial planner, investment advisor, financial consultant, or financial counseling shall not be used unless properly licensed if required or in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case and represented by way of required disclosure.

D. A statement regarding the use of the Cost Comparison Indexes shall include an explanation to the effect that the indexes are useful only for the comparison of the relative costs of two or more similar policies.

E. A system or presentation which does not recognize the time value of money through the use of appropriate interest adjustments shall not be used for comparing the cost of two or more life insurance policies. Such a system may be used for the purpose of demonstrating the cash-flow pattern of a policy if such presentation is accompanied by a statement disclosing that the presentation does not recognize that, because of interest, a dollar in the future has less value than a dollar today.

F. For life insurance policies with a death benefit not exceeding $10,000, the insurer shall provide disclosure of the following:

(1) limited death benefits whenever a policy limits death benefits during a period following the inception date of coverage;

(2) the possibility that premiums paid over several years may exceed the death benefit whenever that possibility exists.

The disclosure shall be provided to the applicant no later than delivery of the policy or certificate.

G. The policy summary, the life illustration that is subject to the requirements of R590-177, Life Insurance Illustrations Rule, and all other sales materials must be complete and not misleading. If asterisks are used to reference footnotes, the asterisk must be clear and easily seen.

H. For the purposes of this rule, the annual premium for a basic policy or rider, for which the company reserves the right to change the premium, shall be the maximum annual premium.

R590-79-7. Failure to Comply.

Failure of an insurer to provide or deliver a Buyer's Guide and either a policy summary or life illustration subject to the requirements of R590-177, Life Insurance Illustrations Rule, as provided in this rule shall constitute an omission which misrepresents the benefits, advantages, conditions or terms of an insurance policy.

R590-79-8. Severability.

If any provision of this rule or application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of this provision to other persons or circumstances may not be affected.

KEY: insurance law
May 1, 1998 **31A-2-201**
Notice of Continuation 1994

R590. Insurance, Administration.
R590-141. Individual and Agency License Lapse and Reinstatement Rule.
R590-141-1. Authority.

This rule is promulgated pursuant to Subsections 31A-23-216(3) and 31A-26-213(3), that authorize the commissioner to write a rule prescribing license renewal and reinstatement procedures for licensees under Chapters 23 and 26.

R590-141-2. Scope.

This rule applies to all individuals and agencies previously licensed under this chapter who did not renew their license on or prior to the license expiration date.

R590-141-3. Rule.

A. The individual and agency license renewal process is as follows:

(1) Renewal notices are mailed to the licensee's business address as shown on the records of the Insurance Department. Licensees who fail to notify the department when their business address changes may face administrative penalties.

(2) Licenses are lapsed if they are not renewed on or prior to the license expiration date.

(3) Individuals and agencies with lapsed licenses may not engage in the business of insurance during any period between the date of expiration of the license and the date of reinstatement of that license.

(4) Lapsed licenses can be reinstated subject to the provisions outlined below.

B. Reinstatement of Lapsed Individual Licenses.

(1) Reinstatement within first month following the license expiration date:

(a) complete all continuing education requirements;

(b) pay all current and past due fees - renewal, continuing education, etc; - and

(c) pay a penalty fee equal to the renewal fee.

(d) No agency designations or appointments are canceled nor are agencies and insurers notified of non-renewal during this one month period.

(2) Reinstatement between one and six months following the license expiration date:

(a) complete all continuing education requirements;

(b) pay all current and past due fees - renewal, continuing education, etc; - and

(c) pay a penalty fee equal to the renewal fee.

(d) New producer contracts, new agency designations and new insurer appointments must be completed before the reinstated licensee can resume doing business because the licensee's agencies and insurers will have been notified that the licensee's license lapsed.

(3) Reinstatement between seven months and 12 months following the license expiration date:

(a) complete all continuing education requirements;

(b) pay all current and past due fees - renewal, continuing education, etc; - and

(c) pay a penalty fee equal to the renewal fee plus $50.

(d) New producer contracts, new agency designations and new insurer appointments must be completed before the reinstated licensee can resume doing business because the licensee's agencies and insurers will have been notified that the licensee's license lapsed.

(4) Reinstatement between 13 months and 24 months following the license expiration date:

(a) complete all continuing education requirements;

(b) pay all current and past due fees - renewal, continuing education, etc; - and

(c) take and successfully pass the proper agent licensing examination; and

(d) pay a penalty fee equal to the renewal fee. If exempt from licensing examination, pay a penalty fee equal to the renewal fee plus $75;

(e) New producer contracts, new agency designations and new insurer appointments must be completed before the reinstated licensee can resume doing business because the licensee's agencies and insurers will have been notified that the licensee's license lapsed.

(5) A license that has not been reinstated within 24 months following its expiration date cannot be reinstated. An application for a new license must be made and the applicant must comply with all the requirements applicable to a new license.

C. Reinstatement of Lapsed Agency Licenses.

(1) Reinstatement within first month following the license expiration date:

(a) pay all current and past due fees - renewal, etc; - and

(b) pay a penalty fee equal to the renewal fee.

(c) No agency designations or insurer appointments are canceled nor are agency designees and insurers notified of non-renewal during this one month period.

(2) Reinstatement between one and 24 months following the license expiration date:

(a) pay all current and past due fees - renewal, etc; - and

(b) pay a penalty fee equal to the renewal fee plus $50.

(c) New contracts and appointments with insurers and new designations for agents representing the agency must be completed before the reinstated licensee can resume doing business because the licensee's designees and insurers will have been notified that the licensee's license lapsed.

(3) A license that has not been reinstated within 24 months following its expiration date cannot be reinstated. An application for a new license must be made and the applicant must comply with all the requirements applicable to a new license.

(4) In the event an agency fails to renew or reinstate its license within the prescribed time, the name of the agency is not available for use for a period of three years from the date the license lapsed.

R590-141-4. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance
May 1, 1998 **31A-2-201**

Notice of Continuation December 3, 1997 **31A-23-216**
31A-23-213

R641. Natural Resources; Oil, Gas and Mining Board.
R641-100. General Provisions.
R641-100-100. Scope of Rules.

These rules will be known as "Rules of Practice and Procedure Before the Board of Oil, Gas and Mining" and will govern all proceedings before the Board of Oil, Gas and Mining or any hearing examiner designated by the Board. These rules provide the procedures for formal adjudicative proceedings. The rules for informal adjudicative proceedings are in the Coal Program Rules, the Oil and Gas Conservation Rules and the Mineral Rules.

R641-100-200. Definitions.

For the purpose of these rules, the following definitions shall apply:

"Adjudicative proceeding" means a Board action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all Board actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and judicial review of all such actions. Those matters not governed by Title 63, Chapter 46b, Administrative Procedures Act, of the Utah Code Annotated (1953, as amended) shall not be included within this definition.

"Board" means the Utah Board of Oil, Gas and Mining. The Board shall hear all appeals of adjudicative proceedings which commenced before the Division as well as all adjudicative proceedings and other proceedings which commence before the Board. The Board may appoint a hearing examiner for its hearings in accordance with these rules. Unless the context of these rules requires otherwise, references to the Board shall be deemed to refer to the hearing examiner when so appointed.

"Division" means the Utah Division of Oil, Gas and Mining.

"Intervenor" means a person permitted to intervene in a proceeding before the Board.

"Legally Protected Interest" means the interest of any "owner" or "producer" as defined in Section 40-6-2 Utah Code Annotated (1953, as amended), or as defined by the rules of the Board.

"Party" means the Board, Division or other person commencing a proceeding, all respondents, all persons permitted by the Board to intervene in the proceeding, and all persons authorized by statute or agency rule to participate as parties in a proceeding.

"Person" means an individual, group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or other agency.

"Petitioner" means a person who requests the initiation of any proceeding (Request for Agency Action).

"Proceeding" means an adjudicative proceeding or other proceeding.

"Respondent" means any person against whom a proceeding is initiated or whose property interests may be affected by a proceeding initiated by the Board or any other person.

"Staff" means the Division staff. The Staff will have the same rights as other parties to the proceedings.

R641-100-300. Liberal Construction.

These rules will be liberally construed to secure just, speedy, and economical determination of all issues presented to the Board.

R641-100-400. Deviation from Rules.

When good cause appears, the Board may permit a deviation from these rules insofar as it may find compliance therewith to be impractical or unnecessary or in the furtherance of justice or the statutory purposes of the Board. Notwithstanding this, in no event may the Board permit a deviation from a rule when such rule is mandated by law.

R641-100-500. Utah Administrative Procedures Act.

All rights, powers and authority described in Title 63, Chapter 46b, "Utah Administrative Procedures Act," of the Utah Code Annotated (1953, as amended), are hereby reserved to the Board. These rules shall be construed to be in compliance with the Utah Administrative Procedures Act.

KEY: administrative procedure
1988 **40-6-1 et seq.**
Notice of Continuation May 1, 1998

R641. Natural Resources; Oil, Gas and Mining Board.
R641-101. Parties.
R641-101-100. Division as a Party.

The Division will be considered a party to a proceeding before the Board or its designated hearing examiner.

R641-101-200. Rights of Parties.

Subject to such limitations as the Board will impose in the interests of conducting orderly and efficient proceedings, each party to a proceeding will be entitled to introduce evidence, examine and cross-examine witnesses, make arguments, and generally participate in the proceeding.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation May 1, 1998

R641. Natural Resources; Oil, Gas and Mining Board.
R641-102. Appearances and Representations.
R641-102-100. Natural Persons.

A natural person may appear on his or her own behalf and represent himself or herself at hearings before the Board.

R641-102-200. Attorneys.

Except as provided in R641-102-100, representation at hearings before the Board will be by attorneys licensed to practice law in the state of Utah or attorneys licensed to practice law in another jurisdiction which meet the rules of the Utah State Bar for practicing law before the courts of the State of Utah.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation May 1, 1998

R641. Natural Resources; Oil, Gas and Mining Board.
R641-103. Intervention.
R641-103-100. Order Granting Leave to Intervene Required.

Any person, not a party, desiring to intervene in a formal proceeding will obtain an order from the Board granting leave to intervene before being allowed to participate. The hearing examiner shall not have the authority to grant a leave to intervene. Such order will be requested by means of a signed, written petition to intervene which shall be filed with the Board by the Response Date and copy promptly mailed to each party by the petitioner. Any petition to intervene or materials filed after the date a response is due under R641-105-200 may be considered at the Board's next regularly scheduled meeting only upon separate motion of the intervenor made at or before the hearing for good cause shown.

110. Content of Petition. Petitions for leave to intervene must identify the proceeding by title and by docket and cause number, to the extent determinable. The petition must contain a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceedings, or that the petitioner qualifies as an intervenor under any provision of law. Additionally, the petition shall include a statement of the relief, including the basis thereof, that the petitioner seeks from the Board.

120. Response to Petition. Any party to a proceeding in which intervention is sought may make an oral or written response to the petition for intervention. Such response will state the basis for opposition to intervention and may suggest limitations to be placed upon the intervenor if intervention is granted. The response must be presented or filed at or before the hearing.

130. Granting of Petition. The Board shall grant a petition for intervention if it determines that:

131. The petitioner's legal interests may be substantially affected by the formal adjudicative proceedings, and

132. The interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

140. Order Requirements.

141. Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

142. An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.

143. The Board may impose conditions at any time after the intervention.

144. If it appears during the course of the proceeding that an intervenor has no direct or substantial interest in the proceeding and that the public interest does not require the intervenor's participation therein, the Board may dismiss the intervenor from the proceeding.

145. In the interest of expediting a hearing, the Board may limit the extent of participation from an intervenor. Where two or more intervenors have substantially like interests and positions, the Board may at any time during the hearing limit the number of intervenors who will be permitted to testify, cross-examine witnesses or make and argue motions and objections.

KEY: administrative procedure
1988 **40-6-1 et seq.**
Notice of Continuation May 1, 1998

R641. Natural Resources; Oil, Gas and Mining Board.
R641-104. Pleadings.
R641-104-100. Pleadings Enumerated.

Pleadings before the Board will consist of a Notice of Agency Action, a Request for Agency Action (also referred to herein as a "petition"), responses, and motions, together with affidavits, briefs and memoranda of law and fact in support thereof.

120. Initiation. Except as otherwise permitted by R641-109-400 regarding emergency orders, all adjudicative proceedings shall be commenced by either:

121. A Notice of Agency Action, if proceedings are commenced by the Board or Division; or

122. A Request for Agency Action, if proceedings are commenced by persons other than the Board or Division.

130. Notice of or Request for Agency Action. A Notice of Agency Action and a Request for Agency Action shall be filed and served according to the following requirements:

131. Notice of Agency Action. A Notice of Agency Action shall be in writing and shall be signed on behalf of the Board if the proceedings are commenced by the Board; or by or on behalf of the Division Director if the proceedings are commenced by the Division. A Notice shall include:

131.100 The names and mailing addresses of all respondents and other persons to whom notice is being given by the Board or Division, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the Board or Division;

131.200 The name of the proceeding and the file number or other reference number;

131.300 The date that the Notice of Agency Action was mailed;

131.400 A statement that such proceeding is to be conducted formally according to the provisions of these rules and Sections 63-46b-6 to 63-46b-11 of the Utah Code Annotated (1953, as amended), if applicable;

131.500 If a response is required, a statement that a written response must be filed within 20 days of the mailing date of the Notice of Agency Action;

131.600 A statement of the time and place of the hearing, a statement of the purpose for which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default;

131.700 A statement of the legal authority and jurisdiction under which the proceeding is to be maintained;

131.800 The name, title, mailing address, and telephone number of the Board and the Division; and

131.900 A statement of the purpose of the adjudicative proceeding and, to the extent known by the Board or Division, the questions to be decided.

132. Unless Waived, the Division shall:

132.100 Mail the Notice of Agency Action to each party; and

132.200 Publish the Notice of Agency Action if required by statute or rule.

133. Persons other than the Board or Division may petition for Board action. Such request may be for rulemaking, an appeal of a Division determination in an adjudicative proceeding before the Division, a right, permit, approval, license, authority or other affirmative relief from the Board. That petitioner's Request for Agency Action shall be in writing and signed by the person invoking the jurisdiction of the Board, or by his or her attorney, and shall include:

133.100 The names and addresses of all persons to whom a copy of the Request for Agency Action is being sent;

133.200 A space for the Board's file number or other reference number;

133.300 The name of the proceeding, if known;

133.400 Certificate of mailing of the Request for Agency Action;

133.500 A statement of the legal authority and jurisdiction under which Board action is requested;

133.600 A statement of the relief sought from the Board; and

133.700 A statement of the facts and reasons forming the basis for relief.

134. Two or more grounds of complaint concerning the same subject matter may be included in one Request for Agency Action (petition) but should be numbered and stated separately. Two or more petitioners may join in one request if their respective complaints are against the same person and deal substantially with the same violation of law, rule, regulation or order of the Board.

135. A Request for Agency Action and other pleadings shall be in the form prescribed in R641-104-200. The person requesting agency action shall file the request with the Division and shall, unless waived, send a copy by mail to each person known to have a direct interest in the requested agency action.

136. After receiving a Request for Agency Action, the Division shall, unless waived, insure that notice by mail has been given to all parties. The Division shall also provide notice by publication if required by below. The written notice shall:

136.100 Give the Board's file number or other reference number;

136.200 Give the name of the proceeding;

136.300 Designate that the proceeding is to be conducted formally according to these rules and the provisions of Sections 63-46b-6 to 63-46b-11 of the Utah Code Annotated (1953, as amended), if applicable;

136.400 If a response is required, state that a written response must be filed within twenty (20) days of the mailing or publication date of the Request for Agency Action;

136.500 State the time and place of the hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in the hearing may be held in default; and

136.600 Give the name, title, mailing address, and telephone number of the Board and Division.

137. If the purpose of the adjudicative proceeding is to award a license or other privilege as to which there are multiple competing applicants, the Board may, by rule or order, conduct a single adjudicative proceeding to determine the award of that license or privilege.

140. Responses.

141. In all formal adjudicative proceedings, the respondent shall file and serve a written response signed by the respondent or his/her representative with twenty (20) days of the mailing date of the Notice of Agency Action or the Request for Agency

Action that shall include:

141.100 The Board's file number or other reference number;

141.200 The name of the adjudicative proceeding;

141.300 A statement of the relief that the respondent seeks;

150. Default.

151. The Board may enter an order of default against a party if:

151.100 A party fails to attend or participate in a hearing; or

151.200 A respondent fails to file a response under R641-140 above.

152. The order shall include a statement of the ground for default and shall be mailed to all parties.

153. A defaulted party may seek to have the Board set aside the default order according to procedures outlined in the Utah Rules of Civil Procedure.

154. After issuing the order of default, the Board shall conduct any further proceedings necessary to complete the proceeding without the participation of the party in default and shall determine all issues in the proceeding, including those affecting the defaulting party.

160. Motions. Motions may be submitted for the Board's decision on either written or oral argument and the filing of affidavits in support or contravention thereof may be permitted. Any written motion will be accompanied by a supporting memorandum of fact and law.

170. Exhibits. Exhibits will be clearly marked to show the docket and cause numbers, the party proffering the exhibit, and the number of the exhibit.

R641-104-200. Form.

210. Request for Agency Action (petition) will contain a title which will be substantially in the following form:

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                    TABLE

     BEFORE THE BOARD OF OIL, GAS, AND MINING
         DEPARTMENT OF NATURAL RESOURCES
                 STATE OF UTAH

In the Matter of the              Docket No.
Request for Agency
Action of John Doe,
Petitioner for                    Cause No.
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or

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                    TABLE

     BEFORE THE BOARD OF OIL, GAS, AND MINING
         DEPARTMENT OF NATURAL RESOURCES
                 STATE OF UTAH

John Doe,         Petitioner,       Request for
                                    Agency Action
v.                                  Docket No.
Richard Doe,      Respondent.       Cause No.
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220. Docket and Cause Number. Upon the filing of a Request for Agency Action (petition), the secretary of the Board will assign a docket and a cause number to the matter. The secretary will enter the docket and cause numbers for the matter, together with the date of filing, on a separate docket provided for that purpose. Thereafter, all pleadings offered in the same proceeding will bear the docket and cause numbers assigned and will be noted with the filing date upon the docket page assigned.

230. Content and Size of Pleadings. Pleadings should be double-spaced and typed on plain, white, 8-1/2" x 11" paper. They must identify the proceeding by title and by docket and cause number, if known. All pleadings will contain a clear and concise statement of the matter relied upon as a basis for the pleading, together with an appropriate prayer for relief when relief is sought.

240. Amendments to Pleadings. The Board may, upon motion of the responsible party made at or before the hearing, allow any pleadings to be amended or corrected. Defects which do not substantially prejudice any of the parties will be disregarded.

250. Signing of Pleadings. Pleadings will be signed by the party or the party's attorney and will show the signer's address and telephone number. The signature will be deemed to be a certification by the signer that he or she has read the pleading and that, he or she has taken reasonable measures to assure its truth.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation May 1, 1998

R641. Natural Resources; Oil, Gas and Mining Board.
R641-105. Filing and Service.
R641-105-100. Requests for Agency Action (Petitions).

All Requests for Agency Action filed by the 10th day of each calendar month may be considered by the Board for inclusion in the schedule of matters to be heard at its regularly scheduled meeting during the following calendar month. At the time the request is filed, petitioner will also file any motions, affidavits, briefs, or memoranda intended to be offered by petitioner in support of said petition or motion. Petitioner will file with the petition a list of the names and last known addresses of all persons required by statute to be served or whose legally protected interest may be affected thereby. This rule will apply to all matters initiated by the Board on its own motion as well as to statements, briefs, or memoranda in support thereof prepared by the Division or by the Staff. Any petition or other materials filed after the 10th day of any calendar month may be considered by the Board at its regularly scheduled meeting during the following month only upon separate motion of petitioner made at or before the hearing for good cause shown.

R641-105-200. Responses.

210. All responses to petitions, responses to motions by petitioner, and motions by respondent, together with all affidavits, briefs, or memoranda in support thereof, filed by the 10th day of the month or two weeks before the scheduled hearing, whichever is earlier, in the month in which the hearing on the matter is scheduled (the "Response Date") may be considered by the Board at its regularly scheduled meeting during that month. This rule will apply to all statements, briefs, or memoranda prepared by the Division or by the Staff in response to any petition or motion by petitioner. Any responses or other materials filed after the Response Date may be considered at the Board's regularly scheduled meeting for that month only upon separate motion of respondent made at or before the hearing for good cause shown.

R641-105-300. Motions.

All motions or responses to motions available to a petitioner or respondent at the time his or her Request for Agency Action or response is filed will be filed and served with the petition or response as provided in R641-105-100 and R641-105-200. Subsequent written motions, other than motions for exceptions to the filing requirements of these rules, must be filed by the time the response is due under R641-105-200. Oral responses and written responses to motions may be presented or filed at or before the hearing. Oral motions and responses to oral motions may be presented at the hearing.

R641-105-500. Exhibits.

Any exhibits intended to be offered by petitioners, respondents, and intervenors in support of matters set forth in their respective pleadings will be filed with the secretary of the Board on or before the time the response is due under R641-105-200. Any exhibits filed by any party after the Response Date, but prior to the close of business two days before the hearing, may be considered by the Board at the hearing, but in such event the Staff will have the right to request a continuance of the proceedings until the next regularly scheduled meeting of the Board or hearing date of the hearings examiner. Any exhibits filed by any party after the close of business two days prior to the hearing, but before the hearing, may be considered by the Board at the hearing only upon separate motion of the party offering the exhibit made at the hearing for good cause shown. Any exhibits intended to be offered by the parties in rebuttal of evidence presented at the hearing will be presented at the hearing. The Board, on its own motion, may order the continuance of any proceeding until the next regularly scheduled meeting of the Board in order to allow adequate time for the Staff to evaluate any evidence presented during the hearing.

R641-105-600. Place of Filing.

An original and 12 copies of all pleadings, affidavits, briefs, memoranda and exhibits will be filed with the secretary of the Board. The Board may direct any party to provide additional copies as needed.

R641-105-700. Temporary Procedural Rulings.

The Chairman or designated Acting Chairman of the Board may issue temporary rulings on procedural motions that arise between Board hearings dates. These rulings will be reviewed and decided upon by the Board at its next regularly scheduled meeting.

R641-105-800. Computation of Time.

In computing any period of time prescribed or allowed by these rules, or by the Board, the day of the act, event, or default from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, intervening Saturdays, Sundays, or legal holidays will be excluded in the computation.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation May 1, 1998

R641. Natural Resources; Oil, Gas and Mining Board.
R641-106. Notice and Service.
R641-106-100. Notice.

Except as otherwise provided by law, before any rule, regulation, or order, or amendment thereof, will be made by the Board, notice of a hearing thereon will be given by publication in a newspaper of general circulation in the city of Salt Lake and county of Salt Lake, Utah, and in any newspapers of general circulation published in the county where the land affected or some part thereof is situated. Such notice will be issued in the name of the state and will be signed by the Board or its secretary. The notice will specify the title and docket and cause numbers of the proceeding, the time and place of hearing and whether the case is set for hearing before the Board or its designated hearing examiner. The notice will briefly state the purpose of the proceeding and general nature of the order, rule, or regulation to be promulgated or effected. The notice will also state the name(s) of the petitioner and respondent, if any, and, unless the order, rule, or regulation is intended to apply to and affect the entire state, the notice will specify the land or resource affected by such order, rule, or regulation. In addition to published notice, the Board will give notice by mail to all parties. Such notice will be given by the 1st day of the month in which the hearing is held, but in no event less than fifteen days before the hearing.

R641-106-200. Personal Service of Request (Petition) and Related Pleadings.

210. In addition to the notice required by R641-106-100, wherever personal service is required by applicable law, the petitioner, or the Board in any proceeding initiated by the Board, will personally serve a copy of the petition and all pleadings filed with the secretary of the Board at the same time as the petition, other than exhibits, on any person required by statute to be served and on any respondent. The Board, on its own motion, may at any time also require petitioner to effect personal service on any other person whose legally protected interests may, in the opinion of the Board, be affected by the proceedings. In such event the Board will prescribe the schedule for service of the request and any response thereto.

220. Personal service under this rule will be accomplished no later than the 15th day of the month preceding the month in which the first hearing in the matter is held.

230. Personal service may be made by any person authorized by law to serve summons in the same manner and extent as is provided by the Utah Rules of Civil Procedure for the service of summons in civil actions in the district courts in this state. Proof of service will be in the form required by law with respect to service of process in civil actions. Persons otherwise entitled to personal service under these rules may be served by publication or mail in accordance with Rule 4(f) of the Utah Rules of Civil Procedure. In such a case, any member of the Board may consider ex parte and rule upon the verified motion of any person seeking to accomplish service by publication or mail.

R641-106-300. Service of Other Pleadings.

A copy of all pleadings filed subsequent to the Request for Agency Action or Notice of Agency Action, which are not required to be personally served pursuant to R641-106-200, will be served by mailing a copy thereof, postage prepaid, to all parties at the same time such pleadings are filed with the secretary of the Board. Exhibits need not be served on all parties, but may be examined by any party during the normal business hours of the Division by arrangement with the secretary of the Board.

R641-106-400. Service on Attorney or Representative.

When any party has appeared by attorney or other authorized representative, service upon such attorney or representative constitutes service upon the party he or she represents.

R641-106-500. Proof of Service.

There will appear on all documents required to be served a certificate of service in substantially the following form:

I hereby certify that I have this day served the foregoing instrument upon all parties of record in this proceeding (by delivering a copy thereof in person to) (by mailing a copy thereof, properly addressed, with postage prepaid, to).

Dated at , this day of , 19 .

Signature

or

I hereby certify that I have this day served the foregoing document by publication of a notice thereof in the (name of newspaper), a newspaper of general circulation in Salt Lake City and County and in (name of newspaper(s)), (a) newspaper(s) of general circulation in the County of . Copies of the notices are attached to this certification.

Dated at , this day of , 19 .

Signature

R641-106-600. Additional Notices Upon Request.

Any person desiring notification by mail from the Board or the Division of all matters before the Board will request the same in writing by filing with the Board or Division his or her name and address and designating the area or areas in which he or she has an interest and in which he or she desires to receive such notice. The Division may designate an annual fee, payable in advance, for such notice.

R641-106-700. Continuance of Hearing Without New Service.

Any hearing before the Board held after due notice may be continued by the person presiding at such hearing to a specified time and place without the necessity of notice of the same being again served or published. In the event of any continuance, a statement thereof will be made in the record of the hearing which is continued. If a hearing (not the deliberation or decision) is continued indefinitely, the Board will provide new notice in accordance with these rules before hearing the matter.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation May 1, 1998

R641. Natural Resources; Oil, Gas and Mining Board.
R641-107. Prehearing Conference.
R641-107-100. Conference.

The Board, may in its discretion, on its own motion or motion of one of the parties made on or before the date the response is due, direct the parties or their representatives to appear at a specified time and place for a prehearing conference. At the conference, consideration will be given to:

110. Simplification or formulation of the issues;

120. The possibility of obtaining stipulations, admissions of facts, and agreements to the introduction of documents;

130. Limitation of the number of expert witnesses;

140. Arranging for the exchange of proposed exhibits or prepared expert testimony; and

150. Any other matters which may expedite the proceeding.

R641-107-200. Order.

The Board will issue an order based upon its own findings or upon the recommendation of its designated hearing examiner, which recites the action taken at the conference and the agreements made as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements. Such order will control the subsequent course of the proceeding before the Board unless modified by subsequent order for good cause shown.

KEY: administrative procedure
1988 **40-6-1 et seq.**
Notice of Continuation May 1, 1998

R641. Natural Resources; Oil, Gas and Mining Board.
R641-108. Conduct of Hearings.
R641-108-1. Conduct of Hearings.

Except as may otherwise be provided by law, hearings before the Board will be conducted as follows:

R641-108-100. Public Hearings.

All hearings before the Board will be open to the public, unless otherwise ordered by the Board for good cause shown. All hearings shall be open to all parties.

101. Full Disclosure. The Board shall regulate the course of the hearing to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions.

R641-108-200. Rules of Evidence.

The Board shall use as appropriate guides the Utah Rules of Evidence insofar as the same may be applicable and not inconsistent with these rules. Notwithstanding this, on its own motion or upon objections of a party, the Board:

201. May exclude evidence that is irrelevant, immaterial, or unduly repetitious.

202. Shall exclude evidence privileged in the courts of Utah.

203. May receive documentary evidence in the form of a copy of excerpt if the copy or excerpt contains all pertinent portions of the original document.

204. May take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record or other proceedings before the Board, and of technical or scientific facts within the Board's specialized knowledge.

R641-108-300. Testimony.

Testimony presented to the Board in a hearing will be sworn testimony under oath or affirmation.

R641-108-400. Failure to Appear.

When a party to a proceeding fails to appear at a hearing after due notice has been given, the Board may dismiss or continue the matter or decide the matter against the interest of the party who fails to appear.

R641-108-500. Order of Presentation of Evidence.

Unless otherwise directed by the Board at the hearing, the order of procedure and presentation of evidence will be as follows:

510. Hearings upon Petition:
511. Petitioner
512. Respondent, if any
513. Staff
514. Intervenors
515. Rebuttal by Petitioner
520. Hearings upon motion of the Board:
521. Staff
522. Respondent
523. Rebuttal by Staff

R641-108-600. Oral Argument and Briefs.

Upon the conclusion of the taking of evidence, the Board may, in its discretion, permit the parties to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the Board.

R641-108-700. Record of Hearing.

The Board will cause an official record of the proceedings to be made in all hearings as follows:

710. The record may be made by means of a certified shorthand reporter employed by the Board or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the Board chooses not to employ the reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing will be filed with the Board. Parties desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.

720. The record of the proceedings may also be made by means of a tape recorder or other recording device if the Board determines that it is unnecessary or impracticable to employ a certified shorthand reporter and the parties do not desire to employ a certified shorthand reporter.

730. If the Board deems it unnecessary, it will not have the record of a hearing transcribed unless requested to do so by a party. Whenever a transcript or tape recording of a hearing is made, it will be available at the office of the Board for the use of the parties, but may not be withdrawn therefrom.

R641-108-800. Summons and Fees.

810. Summons. The Board may issue summons on its own motion or upon request of a party for the attendance of witnesses and the production of any pertinent paper, book, record, document, or other evidence.

820. Witness Fees. Each witness who appears before the Board will be entitled to receive the same fees and mileage allowed by law to witnesses in a district court, which amount will be paid by the party at whose request the witness is subpoenaed. Witnesses appearing at the request of the Board will be paid from the funds appropriated for the use of the Board. Any witness summoned by a party other than the Board may, at the time of service of the summons, demand one day's witness fee and mileage in advance and unless such fee is tendered, the witness will not be required to appear.

R641-108-900. Discovery.

Upon the motion of a party and for good cause shown, the Board may authorize such manner of discovery against another party, including the Division or the Staff, as may be prescribed by and in the manner provided by the Utah Rules of Civil Procedure.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation May 1, 1998

R641. Natural Resources; Oil, Gas and Mining Board.
R641-109. Decisions and Orders.
R641-109-100. Board Decision.

Upon reaching a final decision in any proceeding, the Board will prepare a decision to include findings of fact, conclusions of law, and an order. The Board may direct the prevailing party to prepare proposed findings of fact, conclusions of law, and an order, which will be completed within five days of the direction, unless otherwise instructed by the Board. Copies of the proposed findings of fact, conclusions of law, and order will be served by the prevailing party upon all parties of record before being presented to the Board for signature. Notice of objection thereto will be submitted to the Board and all parties of record within five days after service.

R641-109-200. Entry of Order.

The Chairman or designated Acting Chairman of the Board will sign the order on any matter no later than 30 days following the end of the hearing on that matter, and cause the same to be entered and indexed in books kept for that purpose. The order will be effective on the date it is signed, unless otherwise provided in the order. Upon petition of a person subject to the order and for good cause shown, the Board may extend the time for compliance fixed in its order.

R641-109-300. Notice.

The Board will notify all parties to the proceeding of its decision. A copy of the order with accompanying findings of fact and conclusions of law will be delivered or mailed to each party.

R641-109-400. Emergency Orders.

Notwithstanding the other provisions of these regulations, the Director of the Division or any member of the Board is authorized to issue an emergency order without notice or hearing, in accordance with the applicable statute. The emergency order will remain in effect no longer than until the next regular meeting of the Board, or such shorter period of time as will be prescribed by statute.

KEY: administrative procedure
1988 **40-6-1 et seq.**
Notice of Continuation May 1, 1998

R641. Natural Resources; Oil, Gas and Mining Board.
R641-110. Rehearing and Modification of Existing Orders.
R641-110-100. Time for filing.

Any person affected by a final order or decision of the Board may file a petition for rehearing. Unless otherwise provided, a petition for rehearing must be filed no later than the 10th day of the month following the date of signing of the final order or decision for which the rehearing is sought. A copy of such petition will be served on each other party to the proceeding no later than the 15th day of that month.

R641-110-200. Contents of Petition.

A petition for rehearing will set forth specifically the particulars in which it is claimed the Board's order or decision is unlawful, unreasonable, or unfair. If the petition is based upon a claim that the Board failed to consider certain evidence, it will include an abstract of that evidence. If the petition is based upon newly discovered evidence, then the petition will be accompanied by an affidavit setting forth the nature and extent of such evidence, its relevancy to the issues involved, and a statement that the party could not, with reasonable diligence, have discovered the evidence prior to the hearing.

R641-110-300. Response to Petition.

All other parties to the proceeding upon which a rehearing is sought may file a response to the petition at any time prior to the hearing at which the petition will be considered by the Board. Such responses will be served on the petitioner at or before the hearing.

R641-110-400. Action on the Petition.

The Board will act upon the petition for a rehearing at its next regularly scheduled meeting following the date of its filing. If no action is taken by the Board within such time, the petition will be deemed to be denied. The Board may set a time for a hearing on said petition or may summarily grant or deny the petition.

R641-110-500. Modification of Existing Orders.

A request for modification or amendment of an existing order of the Board will be treated as a new petition for purposes of these rules.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation May 1, 1998

R641. Natural Resources; Oil, Gas and Mining Board.
R641-111. Declaratory Rulings.
R641-111-100. Petition for Declaratory Rulings.

Any person may by a Request for Agency Action filed in accordance with these rules, petition the Board for a declaratory ruling on the applicability of any statute, rule, regulation or order to the operations or activities of that person. The petition will include the questions and answers sought and reasons in support of or in opposition to the applicability of the statute or rule or regulation involved.

R641-111-200. Ruling.

The Board will consider the petition, and will:

210. Notify the person that no declaratory ruling will be issued;

220. Issue a nonbinding declaratory ruling; or

230. Decide that a binding declaratory ruling affecting the petitioner or any other person may be proper, and initiate a proceeding under R641-104 which will be conducted according to these rules.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation May 1, 1998

R641. Natural Resources; Oil, Gas and Mining Board.
R641-112. Rulemaking.
R641-112-1. Rulemaking.

The Board will promulgate rules using the procedure described in the "Utah Administrative Rulemaking Act," Section 63-46a-1 et seq. and under the authority provided at Sections 40-6-5, 40-8-6(1), and 40-10-6(1).

KEY: administrative procedure
1994 40-6-1 et seq.
Notice of Continuation May 1, 1998

R641. Natural Resources; Oil, Gas and Mining Board.
R641-113. Hearing Examiners.
R641-113-100. Designation of Hearing Examiner.

The Board may, in its discretion, on its own motion or motion of one of the parties, designate a hearing examiner for purposes of taking evidence and recommending findings of fact and conclusions of law to the Board. Any member of the Board, Division Staff, or any other person designated by the Board may serve as a hearing examiner.

R641-113-200. Powers.

The order appointing a hearing examiner may specify or limit the hearing examiner's powers and may direct the hearing examiner to report only upon particular issues; to do or perform particular acts or to receive and report evidence only; and to fix the time and place for beginning and closing the hearing and for filing a report. Unless the hearing examiner's authority is limited, the hearing examiner will be vested with general authority to conduct hearings in an orderly and judicial matter, including authority to:

210. Summon and subpoena witnesses;

220. Administer oaths, call and question witnesses;

230. Require the production of records, books and documents;

240. Take such other action in connection with the hearing as may be prescribed by the Board in referring the case for hearing;

250. Make evidentiary rulings and propose findings of fact and conclusions of law; and

R641-113-300. Conduct of Hearings.

Except as limited by the Board's order, hearings will be conducted under the same rules and in the same manner as hearings before the Board, as more fully described in R641-108.

R641-113-400. Rules, Findings, and Conclusions of Hearing Examiner.

During the hearing, objections to evidence will be ruled upon by the hearing examiner. Where a ruling sustains objections to an admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the evidence excluded and the objecting party may then make an offer of proof in rebuttal. Upon completion of the hearing, the hearing examiner will prepare a written summary of all such rulings and will make proposed findings of fact and conclusions of law in a proposed order in conformance with R641-109. All such proposed rulings, findings, and conclusions will be distributed to the parties and filed with the Board.

R641-113-500. Board Final Order.

No later than the 10th day of the month following filing of the proposed rulings, findings, and conclusions by the hearing examiner, any party may file with the Board such briefs or statements as they may desire regarding the proposals made by the hearing examiner, but no party will offer additional evidence without good cause shown and an accompanying request for de novo hearing before the Board. The Board will then consider the hearing examiner's proposed rulings, findings, and conclusions and such additional materials as filed by the parties and may accept, reject, or modify such proposed rulings, findings, and conclusions in whole or in part or may remand the case to the hearing examiner for further proceedings, or the Board may set aside the proposed ruling, findings, and conclusions of the hearing examiner and grant a de novo hearing before the Board. If a Board member acted as the hearing examiner, then said Board member will not participate in the Board's determination.

KEY: administrative procedure
1988 **40-6-1 et seq.**
Notice of Continuation May 1, 1998

R641. Natural Resources; Oil, Gas and Mining Board.
R641-114. Exhaustion of Administrative Remedies.
R641-114-100. Requirement.

Persons must exhaust their administrative remedies in accordance with Section 63-46b-14, Utah Code Annotated (1953, as amended), prior to seeking judicial review.

200. Informal Adjudicative Proceedings before the Division. In any informal proceeding before the Division, there is an opportunity given to request an informal hearing before the Division. If a timely request is made, the Division will conduct an informal hearing and issue a decision thereafter. Only those aggrieved parties that participated in any hearing or an applicant who is aggrieved by a denial or an approval with conditions will then be entitled to appeal such Division decision to the Board within ten (10) days of issuance of the Division order. Such appeal shall be treated as a contested case which is processed as a formal proceeding under these rules. Such rights to request an informal hearing before the Division or to appeal the Division order and have the matter be contested and processed "formally" are available and adequate administrative remedies and should be exercised prior to seeking judicial review.

300. Formal Adjudicative Proceedings. In any formal adjudicative proceeding before the Board, there is an opportunity for affected parties to respond and participate. Only those aggrieved parties that so exhausted these available and adequate remedies before the Board may be allowed to seek judicial review of the final Board action.

KEY: administrative procedure
1988 **40-6-1 et seq.**
Notice of Continuation May 1, 1998

R641. Natural Resources; Oil, Gas and Mining Board.
R641-115. Deadline for Judicial Review.
R641-115-100. Filing.

A party shall file a petition for judicial review of final Board action within 30 days after the date that the order constituting the final Board action is issued. The petition shall name the Board and all other appropriate parties as respondents and shall meet the form requirements specified in Title 63, chapter 46b of the Utah code annotated (1953, as amended).

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation May 1, 1998

R641. Natural Resources; Oil, Gas and Mining Board.
R641-116. Judicial Review of Formal Adjudicative Proceedings.
R641-116-110.

Judicial review of formal adjudicative proceedings shall be conducted in conformance with Sections 63-46b-16 through 63-46b-18 of the Utah Code Annotated (1953, as amended).

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation May 1, 1998

R641. Natural Resources; Oil, Gas and Mining Board.
R641-117. Civil Enforcement.
R641-117-100. Agency Action.

In addition to other remedies provided by law and other rules of this Board, the Board or Division may seek enforcement of an order by seeking civil enforcement in the district courts subject to the following:

110. The action seeking civil enforcement must name, as defendants, each alleged violator against whom civil enforcement is sought.

120. Venue for an action seeking civil enforcement shall be determined by the Utah Rules of Civil Procedure.

130. The action may request, and the court may grant, any of the following:

131. declaratory relief;

132. temporary or permanent injunctive relief;

133. any other civil remedy provided by law; or

134. any combination of the foregoing.

200. Individual Action. Any person whose interests are directly impaired or threatened by the failure of an agency to enforce its order may timely file a complaint seeking civil enforcement of that order. The complaint must name as defendants, the agency whose order is sought to be enforced, the agency that is vested with the power to enforce the order, and each alleged violator against whom the plaintiff seeks civil enforcement. The action may not be commenced:

210. Until at least 30 days after the plaintiff has given notice of its intent to seek civil enforcement of the alleged violation to the Board, the attorney general, and to each alleged violator against whom the petitioner seeks civil enforcement;

220. If the Board or Division has filed and is diligently prosecuting a complaint seeking civil enforcement of the same order against the same or similarly situated defendant; or

230. If a petition for judicial review of the same order has been filed and is pending in court.

KEY: administrative procedure
1988 **40-6-1 et seq.**
Notice of Continuation May 1, 1998

R641. Natural Resources; Oil, Gas and Mining Board.
R641-118. Waivers.
R641-118-1. Waivers.

Notwithstanding any other provision of these rules, any procedural matter, including any right to notice or hearing, may be waived by the affected person(s) by a signed, written waiver in a form acceptable to the Division.

KEY: administrative procedure
1988 40-6-1 et seq.
Notice of Continuation May 1, 1998

R641. Natural Resources; Oil, Gas and Mining Board.
R641-119. Severability.
R641-119-1. Severability.

In the event that any provision, section, subsection or phrase of these rules is determined by a court or body of competent jurisdiction to be invalid, unconstitutional, or unenforceable, the remaining provisions, sections, subsections or phrases shall remain in full force and effect.

KEY: Administrative Procedures
1988 40-6-1 et seq.
Notice of Continuation May 1, 1998

R714. Public Safety, Highway Patrol.
R714-110. Permit to Operate a Motor Vehicle in Violation of Equipment Laws.
R714-110-1. Authority.

A. This rule is authorized by Subsection 53-8-204(5).

R714-110-2. Purpose of Rule.

A. The Utah Highway Patrol, hereafter division, may issue a permit which will allow operation of a motor vehicle in violation of the provisions of Title 41, Chapter 6, as authorized by Section 41-6-117.5.

B. The purpose of this rule is to set forth the procedures whereby:

(1) A person may apply for a permit.

(2) The division may act on a permit application.

(3) A person may appeal a permit denial.

R714-110-3. Designation.

A. All adjudicative proceedings performed by the division will proceed informally as set forth herein and as authorized by Sections 63-46b-4 and 63-46b-5.

R714-110-4. Application.

A. A person may apply for a permit on a form provided by the division.

R714-110-5. Processing of Application.

A. The division may issue a permit if the motor vehicle is safe to operate and if any of the following conditions are met:

(1) The applicant shows proof satisfactory to the division of a medical disability which requires the removal, addition, or modification of a motor vehicle part.

(2) The applicant is temporarily unable to obtain a motor vehicle part for reasons beyond the applicant's control.

(3) The applicant is the head of a law enforcement agency and removal, addition, or modification of a motor vehicle part is necessary for a legitimate law enforcement purpose.

B. The permit issued will be on a form provided by the division.

C. The permit may specify conditions under which the permit is granted including times and places the motor vehicle may be driven, duration of the permit, and any other conditions which the division considers appropriate to protect the safety of highway users or efficient movement of traffic.

R714-110-6. Appeal.

A. An applicant who is denied a permit will be given the reasons for denial in writing by the division.

B. An applicant who is denied a permit or who is granted a permit containing conditions with which the applicant disagrees, may appeal to the division on a form provided by the division. The appeal must be filed within ten days after receiving notice from the division.

C. No hearing will be granted to the applicant. The division will review the appeal and issue a written decision to the applicant within ten days either affirming or modifying the initial decision concerning the permit.

KEY: traffic regulations

February 15, 1997 **41-6-117.5**
Notice of Continuation May 1, 1998

R724. Public Safety, Law Enforcement and Technical Services, Regulatory Licensing.
R724-4. Concealed Firearm Permit Rule.
R724-4-1. Purpose.

The purpose of this rule is to set forth the process whereby the Division of Law Enforcement and Technical Services administers the Concealed Weapons Act in accordance with Title 53, Chapter 5, Part 7.

R724-4-2. Authority.

This rule is authorized by Subsection 53-5-704(12).

R724-4-3. Definitions.

Terms used in this rule shall be defined as follows:

A. "Affidavit" means a written statement made under oath before a notary public.

B. "Approved firearms instructor" means a person approved by the Division who can certify that an applicant meets the general firearm familiarity requirement of Subsection 53-5-704(7)and is an instructor who is certified pursuant to Sections R724-4-13 and 14.

C. "Board" means the Concealed Weapons Review Board referred to in Section 53-5-703.

D. "Concealed" means that which is covered, hidden, or secreted in a manner that the public would not be aware of its presence and is readily accessible for immediate use.

E. "Crime of violence" means any crime defined as such in Subsection 76-10-501(2)(b).

F. "Division" means the Division of Law Enforcement and Technical Services of the Utah Department of Public Safety.

G. "Domestic violence" means any of the crimes listed in Subsection 77-36-1(2) when committed by one co-habitant against another.

H. "Equivalent experience with a firearm through participation in law enforcement" means experience showing that the applicant has within the last five years met the firearms requirement of his/her department as evidenced by verifiable documentation from his/her department.

I. "Equivalent experience with a firearm through participation in the military" means experience showing that the applicant has within the last five years successfully met the firearms requirements of his/her military organization as evidenced by verifiable documentation from his/her military organization, provided that such training meets the requirements of Subsection 53-5-704(7)(a).

J. "Equivalent experience with a firearm through participation in an organized shooting competition" means experience showing that the applicant has within the last five years competed in an organized shooting competition as evidenced by verifiable documentation from the organization sanctioning or conducting the organized shooting competition, provided the organized shooting competition meets the requirements of Subsection 53-5-704(7)(a).

K. "Felony" means any criminal conduct other than those crimes defined as misdemeanors or infractions by the statutes of this state. It also includes any criminal conduct that is punishable by more than one year in prison by a federal statute, or by the statute of some other state.

L. "Mitigating circumstances" means circumstances which reduce culpability for purposes of assessing good character.

M. "Moral turpitude" means a conviction for criminal conduct under the statutes of this state or any other jurisdiction involving any of the following offenses:

1. theft;
2. fraud;
3. tax evasion;
4. issuing bad checks;
5. robbery;
6. aggravated robbery;
7. bribery;
8. perjury;
9. extortion;
10. arson or aggravated arson;
11. criminal mischief;
12. falsifying government records;
13. forgery;
14. receiving stolen property;
15. firearms violations;
16. burglary or aggravated burglary;
17. vandalism;
18. kidnaping, aggravated kidnaping, or child kidnaping;
19. crimes involving unlawful sexual conduct as described in Title 76, Chapter 5, Part 4, Chapter 5a, Chapter 7, Part 1, and Chapter 10, Part 13; and
20. violations of the pornographic and harmful materials and performances act, as defined in Title 76, Chapter 10, Part 12.

N. "Offenses involving the use of alcohol" means any of the following offenses:

1. any violation of Sections 41-6-44 through 41-6-44.20;
2. violations of Title 32A, Chapter 12, Part 2 involving the illegal use or consumption of an alcoholic beverage; and
3. a violation of 76-10-528.

O. "Offenses involving the use of narcotics" means any offense involving the use, possession, manufacturing or distribution of any narcotic or drug as defined in Title 58, Chapter 37, 37a, 37b, 37c, 37d, and 37e or a violation of 76-10-528.

P. "Past pattern of behavior" means verifiable incidents, with or without an arrest or conviction, that would lead a reasonable person to believe that an individual has a violent nature and would be a danger to themselves or others.

R724-4-4. Application For a Concealed Firearm Permit.

A. Application for a permit to carry a concealed firearm shall be made in writing to the Division on forms provided by the Division. An application package shall include:

1. a completed application form;
2. proof that the applicant is 21 years of age or older at the time application is made;
3. evidence of general familiarity with the types of firearms to be concealed, verified by a signed certificate from an approved firearms instructor;
4. a five-year employment history;
5. a five-year residential history;
6. two letters of character reference;
7. two recent color photographs of passport quality, measuring 2"x 2"; and

8. two completed fingerprint cards.

B. An applicant shall pay a non-refundable processing fee of $59.00 at the time the application is filed. This fee consists of $35.00 mandated by Section 53-5-707 and a $24.00 Federal Bureau of Investigation finger print processing fee. Payment shall be in the form of cash, cashier's check, or money order. The Division is not responsible for cash lost in the mail.

C. An applicant may request an interview prior to submitting the application. The Division may require an interview subsequent to the submission of the application.

D. A background investigation shall be conducted on all applicants to determine if they are of good character as required by Section 53-5-704. The background investigation shall consist of:

1. verifying the accuracy of the application information;

2. checking the applicant's criminal history through local, state and national computer files which include:

a. Utah computerized criminal history;

b. national crime information center;

c. Utah law enforcement information network;

d. drivers license information;

e. statewide warrants file;

f. criminal justice juvenile files;

g. criminal history expungement system; and

h. national instant check system (when available).

3. The fingerprint cards will be sent to the FBI for a review of the applicant's criminal history record pursuant to Sections 53-5-704 and 706.

E. The Division will review all the above information and approve or deny the application.

1. Notice of approval may be given by telephone or in writing.

2. Notice of denial shall be given in writing and shall state the reasons for denial.

F. Renewal of a permit to carry a concealed firearm is required every two years.

1. The renewal form is available from the Division.

2. A renewal applicant shall pay a non-refundable fee of $5.00 as required by Section 53-5-707. Payment shall be made in the form of cash, cashier's check or money order. The Division is not responsible for cash lost in the mail.

G. A peace officer who has honorably retired from full-time employment within five years of making application shall be exempt from the following requirements:

1. two letters of character reference; and

2. two sets of fingerprints.

R724-4-5. Temporary Concealed Firearm Permit.

A. To be eligible to obtain a temporary permit to carry a concealed firearm, as provided for in Section 53-5-705, an applicant must:

1. apply for a permit under Section 53-5-704;

2. apply for a temporary permit under Section 53-5-705;

3. demonstrate good character; and

4. prove to the satisfaction of the Division extenuating circumstances justifying the need for a temporary permit.

B. Provisions regarding denial, suspension or revocation of a temporary permit are set forth in Subsection R724-4-18(F).

R724-4-6. Out-of-State Concealed Firearm Permit Applicants.

Out-of-state applicants for a concealed firearm permit will be subject to the same application process as in-state applicants.

R724-4-7. Out of State Concealed Firearm Permits.

A. In accordance with Subsection 76-10-523(2)(b) the Division will conduct research annually to determine which states have requirements for the issuance of a concealed firearm permit that meet or exceed the requirements for issuance of a concealed firearm permit in this state.

B. A list of the out of state permits that will be honored in this state will be maintained by the Division. The list will be available to the public upon request.

R724-4-8. Application for a Certificate of Qualification.

A. Application for a certificate of qualification shall be made in writing to the Division on forms provided by the Division and will be subject to the same application requirements as concealed firearm permit applicants set forth in Section R724-4-4. The applicant must also provide proof to the satisfaction of the Division that they are a law enforcement official or judge as defined in Section 53-5-711.

B. A certificate of qualification will act as identification to verify that the holder is exempt from weapons laws in accordance with Section 76-10-523.

R724-4-9. Additional Training Requirements for Obtaining a Certificate of Qualification.

Training requirements for obtaining a certificate of qualification, as set forth in Subsection 53-5-711(2)(b), will be established by the commissioner. A copy of the training requirements will be available in the Division office upon request. The commissioner may make changes or additions to the training requirements as needed. It is the responsibility of the applicant to acquire the training through their agency.

R724-4-10. Annual Requalification Requirement for Obtaining a Certificate of Qualification.

Proof of annual requalification must be submitted to the Division, in writing, no earlier than November 1 and no later than November 30 of each year. If an applicant has received an initial certificate of qualification after August 1, requalification will not be required until the following year. Failure to provide proof of annual requalification by November 30 of each year will result in revocation of the certificate of qualification.

R724-4-11. Duty of Certificate of Qualification Holder to Notify the Division Upon Termination of Status as a Law Enforcement Official or Judge.

A certificate of qualification holder who resigns or is terminated from their position must notify the Division within six months after leaving their position. If the holder obtains other employment as a Law Enforcement Official or Judge within the six month period, the Division will allow the certificate of qualification to remain current provided the holder has not committed an offense that is grounds for revocation under Title 53 Chapter 5 Part 7. If a holder of a certificate of qualification has not obtained another position as a Law

Enforcement Official or Judge, the certificate of qualification will be revoked and a concealed firearm permit will be issued provided the holder has not committed an offense that is grounds for revocation under Title 53 Chapter 5 Part 7.

R724-4-12. Denial, Suspension, or Revocation of a Concealed Firearm Permit or Certificate of Qualification.

A concealed firearm permit or certificate of qualification may be denied, suspended or revoked for any of the reasons set forth in Subsections 53-5-704 (3)(a) and (c), or for failure to maintain good character as defined in Subsection 53-5-704(2).

R724-4-13. Requirement to Notify Peace Officer When Stopped.

When a concealed firearm permit holder or certificate of qualification holder is stopped for questioning by a peace officer based on reasonable suspicion in accordance with Section 77-7-15 and the holder has a concealed firearm in his/her possession, the holder shall immediately advise the peace officer that he/she is a lawful holder and has a concealed firearm in his/her possession.

R724-4-14. Concealed Firearm Permit Instructors.

A. The Division will certify concealed firearm permit instructors as provided for in Subsection 53-5-704(7)(b)(ii).

B. Application to become a concealed firearm permit instructor shall be made in writing to the Division on forms provided by the Division. The application shall include:

1. a completed application form;

2. evidence that the applicant has completed a firearms instructor training program sponsored by the National Rifle Association, or Peace Officer Standards and Training, or a program equivalent thereto; and

3. a notarized release of information form.

C. A concealed firearm permit instructor applicant shall pay a non-refundable fee of $5.00. Payment shall be made in the form of cash, cashier's check or money order. The Division is not responsible for cash lost in the mail.

D. The applicant must submit with the application a copy of a course of instruction that meets the course content requirements established by the Division as required by Subsection 53-5-704(7)(a).

E. The applicant must meet the good character requirements set forth in Subsections 53-5-704(2)(a) through (g).

R724-4-15. Certificate of Qualification Instructors.

A. The Division will certify certificate of qualification instructors as provided for in Subsection 53-5-711(4)(c). An applicant for a certificate of qualification instructor shall:

1. be certified as a firearms instructor by Peace Officer Standards and Training;

2. make a written request to the Division for approval;

3. meet the good character requirements set forth in Subsections 53-5-704(2)(a) through(g); and

4. demonstrate to the satisfaction of the Division that their approval would provide a benefit to the training program.

B. The number of certificate of qualification instructors approved by the Division will be limited to the needs of the program.

R724-4-16. Denial, Suspension, or Revocation of Approval as a Concealed Firearm Permit Instructor or Certificate of Qualification Instructor.

Approval as a concealed firearm permit instructor or certificate of qualification instructor may be denied, suspended or revoked for any of the following reasons:

1. failing to meet the requirements of Sections R724-4-14 or 15;

2. failing to teach from an approved course of instruction;

3. failing to maintain records verifying that an applicant has passed a required course of instruction; or

4. knowingly and wilfully providing false information to the Division.

R724-4-17. Records Access.

A. The purpose of this section is to define access to concealed firearm permit and certificate of qualification records in accordance with Title 63, Chapter 2, and Subsection 53-5-708(1).

B. Except as provided in Subsection 53-5-708(1), information supplied to the Division by an applicant shall be considered "private" in accordance with Subsection 63-2-302(2)(d).

C. Information gathered by the Division and placed in the applicant's file shall be considered "protected" in accordance with Subsections 63-2-304(8)and(9). However, if such information is used as the basis for denial of a concealed firearm permit or certificate of qualification, such information shall be considered "private" in accordance with Subsection 63-2-302(2)(d) and the applicant shall have access to it in accordance with Subsection 53-5-704(10)(c).

R724-4-18. Adjudicative Procedures.

A. Any applicant denied a concealed firearm permit or certificate of qualification may request a hearing before the board by filing an appeal to the Division within 60 days from the date the notice of denial is issued. This appeal process also applies to a concealed firearm permit holder or certificate of qualification holder whose concealed firearm permit or certificate of qualification has been suspended or revoked.

B. Board hearings will be conducted informally in accordance with Section 63-46b-5.

C. Board decisions shall be issued within 30 days from the date of the hearing in accordance with Subsection 53-5-704(10)(E) and shall comply with the requirements of Subsection 63-46b-5(1)(i).

D. In accordance with Section 63-46b-11 the board may enter a default order against any party who fails to participate in a hearing.

E. Judicial review of all final actions resulting from informal adjudicative proceedings is available pursuant to Section 63-46b-15.

F. Denial, suspension, or revocation of a temporary permit is not appealable to the board.

G. A concealed firearm permit instructor or certificate of qualification instructor has the same appeal rights as set forth in this section for concealed firearm permit holders and certificate

of qualification holders.

KEY: concealed firearm permit
April 16, 1998 **53-5-704**
Notice of Continuation December 2, 1997 **63-46b**

R728. Public Safety, Peace Officer Standards and Training.
R728-404. Basic Training Basic Academy Rules.
R728-404-1. Admission Requirements.

A. United States Citizenship.

B. Minimum age of 21 years at the time of appointment as a peace officer.

C. Fingerprinting and search of local, state and national fingerprint files to determine whether applicant has a criminal record, final certification to be withheld until this search is completed.

D. May not have been convicted of a crime for which the applicant could have been punished by imprisonment in a federal penitentiary, or for which the applicant could have been imprisoned in the penitentiary of this or another state. Conviction of any offense not serious enough to be covered under Subsection (1)(d) of 53-6-203 Utah Criminal Code, involving dishonesty, unlawful sexual conduct, physical violence, or the unlawful use, sale or possession for sale of a controlled substance is an indication that an applicant may not be of good moral character and may be grounds for denial of admission to a training program or refusal to take a certification examination. Notwithstanding the provisions of Section 77-18-2, expungement of felony convictions obtained in this state and any other jurisdiction shall be considered for purposes of this subsection.

E. Shall be a high school graduate or furnish evidence of successful completion of an examination indicating an equivalent achievement.

F. Shall demonstrate good moral character as determined by a background investigation, which may include consideration of offenses expunged under Section 77-18-2.

G. Free of any physical, emotional or mental conditions that might affect adversely the performance of duty as a peace officer as determined through a selection process by the employing agency.

R728-404-2. Graduation Requirements.

A. Written Examinations and Quizzes.

1. Examinations and quizzes are a necessary method of testing not only the student's substantive knowledge, but also their reading, comprehension, and reasoning abilities, all of which are essential criteria for proper performance of peace officer functions. They will be given as indicated in the curriculum schedule. Examinations are given on the honor basis. Evidence of dishonor will result in dismissal from the Academy. Students must score a minimum of 70% on all exams except the first aid, arrest control, and certification exams where a minimum of 80% must be scored.

2. All quizzes will be figured together to make one major examination. 70% must be scored in order to pass. This examination will be treated like all other examinations for retake purposes.

3. If a student fails a preliminary examination, he will be allowed to take a make-up exam. Regardless of what passing grade is earned on the make-up exam, the student will be given the minimum passing grade of 70% or 80% depending on which exam it is. If the score is less than the required score on the make-up examination, the student will be dismissed from the Academy and invited to return at a later date and attend another session. Should the student pass the make-up exam, but at a later date fail a second examination, he will not be allowed to take a second make-up exam and will be dismissed from the Academy but invited to return at a later date and attend another session.

4. A final Certification Examination will be required of each student in order to achieve peace officer/special function officer certification or become certifiable. A minimum score of 80% must be scored. If the score is less than 80%, the student will be allowed to take one make-up exam to achieve the required 80%. Make-up exams must be taken prior to one year from the date of the initial exam. If the student fails to achieve 80% on the make-up certification examination, he will be required to go through the training again to achieve certification or become certifiable (be eligible to be certified when hired in a position requiring certification.) It will be the policy of the Academy to cover the expenses of a returning sponsored student; however, if a sponsored student is twice suspended from the Academy and that student continues in his attempt to complete the Academy, it will become the responsibility of the sponsoring agency and/or the student to pay the tuition assessed by the Academy. Returning self-sponsored students will be responsible for their expenses and tuition.

B. Participation.

Students will actively participate in physical fitness training, practical problems, classroom work, tours, graduation exercises, and any other activities unless specifically excused by the training supervisor.

C. Reports.

Students may be required to complete written reports. All reports will be graded on a pass/fail basis.

D. Firearms Qualification.

1. Requirements.

Students attending a basic peace officer training course will:

a. participate in firearms training and demonstrate the ability to safely handle a firearm, and

b. pass the POST approved qualification course(s) at or above the required score.

2. Retesting.

Students who fail to qualify on any qualification course will receive one opportunity to retake the course(s) and qualify. Retests will be scheduled by the POST Firearms Instructor and applicable training supervisor.

Note: The POST Staff Firearms Instructor has the discretion of deciding if mitigating circumstances should be taken into consideration when a student fails any qualification or requalification course. Mitigating circumstances include:

a. weather,
b. quality/quantity of instructors,
c. equipment problems,
d. medical problems,
e. etc.

If the POST Staff Firearms Instructor decides there were one or more circumstances beyond the control of the student or the instructor and the student fails to qualify, the POST Staff Firearms Instructor may schedule a retest.

E. Vehicle Operation.

1. Requirements.

Students attending a basic peace officer training course will:

a. participate in all scheduled classroom and practical vehicle operation training (any training missed must be made up before a student can graduate and be certified or become certifiable),

b. demonstrate the ability to safely handle a vehicle in an emergency situation, and

c. pass the POST approved qualification course(s) at or above the required score.

2. Retesting.

Students who fail to qualify on any qualification course will:

a. have four more opportunities to qualify on the day of the test;

b. after remedial training the student will have three more opportunities to qualify at a later date which will be scheduled by the driving instructor and the training supervisor.

Note: The POST Staff Vehicle Operation Instructor has the discretion of deciding if mitigating circumstances should be taken into consideration when a student fails any qualification or requalification course. Mitigating circumstances include but are not limited to:

a. weather,

b. quality/quantity of instructors,

c. equipment problems,

d. medical problems,

e. etc.

If the POST Staff Vehicle Operation Instructor decides there were one or more circumstances beyond the control of the student and the student fails to qualify, the POST Staff Vehicle Operation Instructor may schedule a retest.

F. Physical Training.

Participation in physical training is required during the basic academy program. Students will be required to take the physical assessment test at the end of the peace officer program and score at the 50th percentile in each exercise to graduate. If a student fails to pass the physical assessment test, one retest will be administered before the graduation ceremony. Should students fail to meet the physical fitness testing requirements, they will not be permitted to have their picture taken with the class or graduate with the class.

G. Arrest Control/Baton.

1. Requirements.

Students attending a basic peace officer training course will:

a. participate in scheduled arrest control/baton training,

b. demonstrate the ability to apply arrest control and baton techniques, and

c. pass a POST approved practical examination.

2. Retesting.

H. Failure to Qualify in a Skill Area.

1. Students who fail to qualify in any skill area during a basic training program, will have four years to meet the approved standard before they will be required to go back through an academy program.

2. Retesting during the four year period will be at the convenience of POST and a testing fee will be imposed each time a test is administered.

3. POST may refuse to administer a test at any time if POST feels it's in the best interest of the individual and/or POST.

I. Counsel.

Individual counseling is available to any student on request to his class training supervisor.

J. Make-Up Policy.

1. All requirements must be satisfied before a student can graduate and become certifiable or certified.

2. Basic training supervisors will notify the student and his department head of any deficiencies in meeting graduation requirements.

3. The student and department head will be advised of the policy and procedures involved in the make-up of any deficiencies for graduation and certification.

4. Should a student become ill or injured to such an extent that it is impossible or unwise to participate in any part of the academy training, a doctor must be seen by the student. A written explanation must be obtained from the doctor and presented to the student's training supervisor.

K. Attendance.

1. Students will be required to attend all training unless an emergency exists or a valid excuse is given.

2. More than three unexcused absences may result in suspension from the Academy. Acceptable excuses include but are not limited to illness, court, and death of an immediate family member. Whenever possible, absences will be cleared through the student's Academy supervisor before the absence occurs. It is the student's responsibility to contact the Academy supervisor when he is absent or late. Attendance information may be made available to department heads periodically.

3. Anyone who is tardy three times without an acceptable excuse may be subject to disciplinary action.

4. In no case will a student be certified or become certifiable who has missed more than 10% of the basic course until the necessary make-up work has been completed.

5. If a student has missed a significant part of any block of instruction, as determined by the POST staff, he will not be certified or become certifiable until the necessary make-up work is completed.

6. Under no circumstances will a student graduate if he misses any of the following classes until they are made-up:

a. Ethics and Professionalism,

b. Laws of Arrest,

c. Laws of Search and Seizure,

d. Use of Force,

e. First Aid (CPR only),

f. Emergency Vehicle Operation,

g. Vehicle Operation Liability,

h. Vehicle Operation Practical,

i. Arrest Control Practical Examination,

j. Firearms Safety,

k. Firearms Range/Day Shooting (qualification only),

l. Firearms Range/Night Shooting,

m. Reasonable Force,

n. Firearms Decision Making, or

o. Crimes-In-Progress (practical only).

L. Grounds for Dismissal From Basic Training:

1. failure to meet the minimum academic standard,

2. failure to meet the physical fitness standard,

3. failure to achieve 80% on the State Certification exam,

4. evidence of any health problem that would keep the student from successfully completing the basic training program,

5. failure to comply with Academy rules,

6. failure to meet the standards as stated in Section 53-6-203, or

7. failure to satisfactorily perform in any of the skill areas required during basic training.

R728-404-3. Health Services and Emergencies.

A. Any person who becomes ill or injured while at the Academy shall notify a member of the Academy staff immediately.

B. The Academy is not authorized funds to pay for prescriptions, x-rays, casts, bandages, medications or out-patient visits to hospitals. Students or their departments will be expected to pay for the above services and supplies.

C. All personal calls are to be conducted on one of the phones located strategically throughout the building. Collect calls will not be accepted.

R728-404-4. Classrooms.

A. Students will be responsible for keeping the classrooms neat and clean. No food, drinks or smoking will be allowed in the classroom.

B. From time to time, POST will take portions of the training to locations other than the Academy. While at any of these locations, students will respect the property of others and conduct themselves accordingly. If any damage occurs, it will be reported to the training supervisor as soon as possible.

R728-404-5. Special Regulations.

A. Alcohol and Gambling.

No student will consume alcohol in any form during the course of the training day. The training day shall be interpreted to mean two hours prior to the first class of the day until the completion of the last class of the day. In circumstances where classes end at 5:00 p.m. and there is scheduled evening or night classes, the last class of the day means the last night class.

1. No alcoholic beverages of any kind shall be brought onto or consumed on the Academy site unless it's part of the training schedule.

2. Gambling will not be permitted at any time or place on the Academy site.

3. Persons found to be in violation of Section D will be suspended or dismissed from the Academy.

B. Dress Code.

Students are required to wear their individual department uniform beginning the first day of class. Because almost all training requires the wearing of the department uniform it is recommended that students have at least two clean uniforms available at all times.

The following dress code will be mandatory for self-sponsored students.

1. Male. Light blue long or short sleeve shirt, navy blue slacks, navy blue tie, and conservative dress shoes.

2. Female. Light blue long or short sleeve blouse, navy blue tie, navy blue dress slacks or skirt, and conservative dress shoes.

The official Academy patch will be worn on both sleeves of the self-sponsored uniform.

3. Only authorized Academy gym clothing will be worn during physical fitness training and arrest control techniques. No radio/tape head sets will be allowed during physical training classes. Hard soled shoes will not be worn on the gym floor.

4. Practical Problems.

The training supervisor may allow students to wear appropriate civilian clothing for designated training.

a. Appropriate civilian clothing includes: blue jeans, slacks, t-shirts, sweaters, hats, coats, jackets and athletic shoes.

b. Inappropriate civilian clothing includes: cutoffs, shorts, halter tops, tank tops or any other item the training supervisor deems inappropriate.

The uniform requirement is intended to help encourage basic students to look and act in a more professional manner. Any staff member at any time can instruct a student to change a uniform or any apparel when in the opinion of the staff member it does not meet the intent of the dress code.

C. Grooming.

All students will be expected to maintain proper grooming habits at all times. Clothing will be clean and well cared for. Shoes will be shined. Male students will be clean shaven every day. Beards will not be allowed. Hair must be clean and neat. Male students will have hair trimmed so that it does not hang over the center portion of the shirt collar when the student is standing straight.

D. Firearms.

1. Any firearm brought into the Academy by a resident student must be surrendered for storage in the weapons vault. Unload all such weapons prior to entering the building. No weapons are allowed in student dormitory rooms under any condition.

2. The firearm may be retrieved at the conclusion of the course or prior to departure on the weekends. Routinely checking the weapon out at the end of each training day will not be possible.

3. Weapons may be checked out for use on the range, for weekends, or as directed by the training staff.

4. Any discharge of a weapon on the Academy property, unless a part of the training experience, will result in immediate suspension from the Academy pending an investigation.

E. Conduct.

1. All students will be expected to conduct themselves in an adult and professional manner at all times.

2. No loud, abusive, or obscene language will be permitted unless necessary in a practical exercise.

F. All students shall realize that while at the Academy they will be directly supervised by their training supervisor and the Academy staff. Therefore, all decisions relative to their training status will be made by the training supervisor and approved, where necessary, through the chain of command.

R728-404-6. Lost, Damaged or Destroyed Items.

Students who lose or damage items beyond serviceability will be required to reimburse the Academy for the replacement value.

R728-404-7. Cost of Training.

Costs of Basic Training are born by the state for sponsored students. Self-sponsored students shall be charged the currently approved rate.

R728-404-8. Disciplinary Action.

A. Students do not have a protected property interest in their enrollment at the Academy. Any student who becomes the subject of an inquiry into an allegation of violation of Academy rules or standards will be dealt with following the procedures outlined in the Procedures for Dismissing Students from Peace Officer Training Programs for Cause found in the POST Policy and Procedure Manual.

B. A violation of any of the Academy rules can result in anyone or more of the following actions:

1. verbal reprimand,
2. written reprimand,
3. probation,
4. referral to department for discipline,
5. suspension, or
6. dismissal.

C. A student may be prohibited from participating in Academy functions during the course of an inquiry into alleged misconduct.

D. In all cases, the student will be given the opportunity to speak in his behalf before any action is taken.

E. Once an action is decided upon, the student and his employing agency will be immediately notified.

F. In all cases where a student is suspended or dismissed from the Academy, his employing agency will be immediately notified.

G. Students may appeal any decision by following the procedures outlined in the POST Policy and Procedure Manual.

R728-404-9. Dormitory Facilities.

A. Academy occupants are required to keep their room clean and orderly and to make their bed daily. Random inspections will be held to insure compliance. When noncompliance is found, the person(s) in violation will be subject to disciplinary action.

B. Damage incurred through neglect or intentional abuse to Academy property will result in the student or department head being billed for all repairs and replacements.

Students shall prevent spillage or smearing of shoe polish, etc. in the rooms. Students shall also be prohibited from using Academy issued linens for the purpose of cleaning rooms or personal gear, such as guns, shoes, etc.

C. Visitors are not allowed in dormitory rooms. They are invited to visit with students in the lounges.

D. Presence in the dormitory room of a member of the opposite sex is strictly forbidden unless such person has been instructed to be there by the Academy staff. Persons found to be in violation shall be suspended from the Academy.

E. The academy will not be responsible for personal items left unsecured.

F. Housekeeping Information.

Because of the obvious importance of cleanliness in a group living environment, anyone who demonstrates an unwillingness to follow POST's housekeeping guidelines will be required to leave the dormitory facility and provide their own housing.

KEY: law enforcement officers, basic academy rules*
April 15, 1998 **53-6-105**
Notice of Continuation October 6, 1997 **53-6-106**
53-6-107

R746. Public Service Commission, Administration.
R746-331. Determination of Exemption of Mutual Water Corporations.
R746-331-1. Conditions for Finding of Exemption.

A. Upon the Commission's own motion, complaint of a person, or request of an entity desiring a finding of exemption, the Commission may undertake an inquiry to determine whether an entity organized as a mutual, non-profit corporation, furnishing culinary water, is outside the Commission's jurisdiction.

B. In conducting the inquiry, the Commission shall elicit information from the subject of the inquiry concerning:

1. the organizational form of the entity and its compliance status with the Utah Division of Corporations;

2. ownership and control of assets necessary to furnish culinary water service, including water sources and plant;

3. ownership and voting control of the entity. To elicit this information, the Commission may adopt a questionnaire asking for the information in form and in detail that the Commission shall find necessary to make its jurisdictional determination; the questionnaire may include a requirement that documentation be furnished therewith, including copies of articles of incorporation, and effective amendments thereto, filed with the Utah Division of Corporations and certified by that agency, together with a certificate of good standing therewith.

C. If, on the basis of the information elicited, the Commission finds that the entity is an existing non-profit corporation, in good standing with the Division of Corporations; that the entity owns or otherwise adequately controls the assets necessary to furnish culinary water service to its members, including water sources and plant; and that voting control of the entity is distributed in a way that each member enjoys a complete commonality of interest, as a consumer, such that rate regulation would be superfluous, then the Commission shall issue its finding that the entity is exempt from Commission jurisdiction, and the proceeding shall end. Issuance of the finding shall not preclude another Commission inquiry at a later time if changed circumstances or later-discovered facts warrant another inquiry.

D. If, on the basis of the information elicited, the Commission determines that the entity is subject to Commission jurisdiction, the Commission shall initiate the proceedings, including an Order to Show Cause, as shall be necessary to assert Commission jurisdiction.

KEY: mutual water corporations*, public utilities, water
April 6, 1998 54-2-1

R746. Public Service Commission, Administration.
R746-332. Depreciation Rates for Water Utilities.
R746-332-1. Depreciation Rates for Water Utilities.

A. Water utilities operating under the jurisdiction of the Public Service Commission of Utah shall be allowed to recover in rates charged consumers, the cost of the investment in depreciable utility plant, less established net salvage, over the useful life of the plant.

B. The base on which depreciation expense is calculated shall be the original cost of the depreciable property to the person or entity who first devotes the property to public service, and that the method to be used in calculating depreciation expense for book and rate making purposes shall be the straight line average service life method.

C. Effective with each utility's next general rate case, each water utility operating in Utah shall not depreciate utility plant faster than allowed by the following rates, except where the Commission has approved depreciation rates based on shorter plant lives as shown by a competent depreciation study:

TABLE

NARUC Account Number	Account	Average Service Life -- Years	Net Salvage Percent --	Depreciation Rate Percent
304	Structures and Improvements	35		2.9
305	Collecting and Impounding reservoirs	50		2.0
306	Lake, River and Other Intakes	35		2.9
307	Wells & Springs	25		4.0
308	Infiltration Galleries and Tunnels	25		4.0
309	Supply Mains	50		2.0
311	Pumping Equipment	20		5.0
320	Water Treatment Equipment	20		5.0
330	Distribution Reservoirs and Standpipes	30		3.3
331	Transmission and Distribution Mains	50		2.0
333	Services	30		3.3
334	Meters and Meter Installations	35	10	2.6
335	Hydrants	40	5	2.4
340	Office Furniture and Equipment	20	5	4.8
341	Transportation Equipment	7	10	12.9
342	Stores Equipment	20		5.0
343	Tools, Shop and Garage Equipment	15	5	6.3
344	Laboratory Equipment	15		6.7
345	Power Operated Equipment	10	10	9.0
346	Communication Equipment	10	10	9.0

KEY: public utilities, water, rules and procedures

1987 **54-4-24**
Notice of Continuation April 2, 1998

R746. Public Service Commission, Administration.
R746-341. Lifeline Rule.
R746-341-1. Applicability.

Telecommunications corporations that have been designated as eligible telecommunications carriers by the Commission, pursuant to Section 214 of the Federal Communications Act, shall establish a lifeline telephone service pursuant to the requirements of Sections 2 through 8.

R746-341-2. Definitions.

A. "Applicant" -- means a head of a household or person in whose name the property or rental agreement resides.

B. "Appropriate State Agency" -- means the agency administering the public assistance programs listed in R746-341-3(A).

R746-341-3. Eligibility Requirements.

A. The eligible telecommunications carriers shall provide lifeline telephone service to any applicant who self-certifies eligibility for public assistance under one of the following or its successor programs:

1. Temporary Assistance to Needy Families (TANF);
2. Emergency Work Programs;
3. Food Stamps;
4. General Assistance;
5. Home Energy Assistance Target Programs;
6. Medical Assistance;
7. Refugee Assistance;
8. Supplemental Security Income.

B. Self-certification will be upon a form supplied by the eligible telecommunications carrier or the appropriate state agency and contain the following:

1. applicant's name, current telephone number, and social security number;
2. a request for lifeline service;
3. an affirmative statement that the applicant qualifies for lifeline service.
4. a statement as to whether the person is participating in one of the programs set out in Subsection A above or is simply eligible for one or more of those programs;
5. a statement that if the applicant is later shown to have submitted a false self-certification for the Lifeline program, the applicant will be responsible to pay the difference between the lifeline rate and the otherwise applicable rate;
6. a statement whether this is a reconnect or not; and
7. signature.

R746-341-4. Verification Procedures.

A. At least annually, the eligible telecommunications carriers offering Lifeline telephone service shall provide the appropriate state agency with computer tapes, written lists, or personal computer disks, listing their Lifeline service customers' names, telephone numbers, addresses and social security numbers. Eligible telecommunications carriers with more than 300 Lifeline telephone customers shall provide the information in an electronic format useable by the appropriate state agency.

B. Lifeline telephone customers who do not participate in any of the programs listed in Section 3, but who are qualified to participate in those programs, shall be certified by the appropriate state agency as being eligible for any of the qualifying programs, and shall thereafter be included on a Lifeline Only verification list maintained by the agency. Lifeline customers on Lifeline Only lists will be required to annually recertify with the appropriate state agency to verify their continued eligibility for Lifeline telephone service.

C. Eligible telecommunications carriers shall notify any Lifeline telephone service customer who fails to appear on the appropriate state agency's listing of public assistance program participants, or Lifeline Only list, that the customer is now ineligible and is no longer entitled to the Lifeline service rate.

D. A subscriber denied Lifeline telephone service under Subsection C above shall be entitled to resubscribe to Lifeline service only after the eligible telecommunications carrier providing telephone service to that subscriber has received confirmation from the appropriate state agency that the discontinued Lifeline telephone services subscriber is currently a participant in a state public assistance program or is qualified to participate in those programs.

E. A Lifeline telephone service customer who does not qualify and has falsely self-certified and participated in the Lifeline program will be responsible to pay the difference between the Lifeline rate and the otherwise applicable rate for the length of time the customer subscribed to Lifeline telephone service for which the customer was not eligible.

R746-341-5. Lifeline Telephone Service Features.

A. Lifeline telephone service provided by eligible telecommunications carriers shall consist of dial tone line, usage charges or their equivalent, and any Extended Area Service (EAS) charges, less a discount equal to the end user common line charge and any other matching funds established by the Federal Communication Commission.

B. When customer security deposits are otherwise required, they will be waived for Lifeline telephone service subscribers if the subscriber voluntarily elects to receive toll blocking.

C. Companies providing Lifeline service shall apply for the Link-Up America Plan provided by the Federal Communications Commission.

D. In addition to the Link-Up America reduction, Lifeline qualifying customers are entitled to a 50 percent reduction of the remaining connection charges.

E. Lifeline telephone service subscribers will receive a waiver of the nonrecurring service charge for changing the type of local exchange usage service to Lifeline service, or changing from flat rate service to message rate service, or vice versa, but only once during any 12-month period.

F. Lifeline service shall not be disconnected for nonpayment of toll service.

G. Lifeline telephone service will be subject to the following restrictions:

1. Lifeline telephone service will only be provided to the applicant's principal residence.
2. A Lifeline telephone service subscriber will only receive a Lifeline discount on one single residential access line.

R746-341-6. Reporting Requirements.

A. Telecommunications corporations, excluding eligible

telecommunications carriers shall file an annual report, by March 31 of each year with the Division of Public Utilities, on their Lifeline telephone service programs. This report shall include the following information:

1. administrative costs associated with the Lifeline telephone service program; and

2. the amount and calculation basis of monthly Lifeline surcharge collections.

3. B. Eligible telecommunications carriers shall submit, to the Division of Public Utilities, a semi-annual report, by June 30 and December 31, of each year, containing a description of the eligible telecommunicaions carrier's Lifeline program. The reports shall also contain monthly information on:

1. the Lifeline surcharge revenues billed and collected;

2. the forgone revenue resulting from the discounts provided to Lifeline customers;

3. the amounts of administrative, advertising, voucher and other program expenses;

4. interest accrual amounts on Lifeline and Link up funds; and

5. the number of Lifeline telephone service subscribers by exchange area.

R746-341-7. Funding of Lifeline.

A. Total cost of providing Lifeline telephone service, including the administrative costs of the eligible telecommunications carriers and the cost of the appropriate state agency, shall be funded from an equal surcharge imposed upon the non-Lifeline access lines of all telecommunications corporations.

B. The Commission shall hold hearings as it determines necessary for the purpose of establishing surcharge rates which it finds reasonable to be assessed on all non-Lifeline access lines in the state to provide for the funding of Lifeline telephone service.

C. Thirty days following approval of the surcharges referred to in Subsection B above, the telecommunications corporations shall begin collecting the new surcharge from all non-Lifeline access lines and remitting the funds collected to the Commission as described in R746-341-8. The initial rate to be charged shall be $0.10 per month per non-Lifeline access line. Such initial rate shall be collected by telecommiunications corporations beginning April 1, 1998.

R746-341-8. Collection and disbursement of Lifeline Funds.

A. At the end of each month, telecommunications corporations shall submit to the Commission all Lifeline surcharge revenues collected. Eligible telecommunications carriers shall submit only the Lifeline surcharge revenues in excess of their monthly Lifeline program expenses and Lifeline discounts granted pursuant to R746-341-4. Telecommunications corporations with fewer than 5,000 access lines may submit the funds on a quarterly basis. Lifeline funds received by the Commission shall be treated in the same manner as Section 54-8b-15 Universal Service Fund funds.

B. Within 30 days after review and audit of an eligible telecommunications carrier's semi-annual report, the Public Service Commission shall disburse from Lifeline surcharge funds an amount equal to the net difference between the eligible telecommunications carrier's semi-annual Lifeline surcharge revenues collected and Lifeline program expenses and Lifeline discounts granted.

KEY: telephone, telecommunications, rules and procedures, lifeline rates

April 6, 1998 **54-4-1**

Notice of Continuation November 15, 1995 **54-4-4**

R746. Public Service Commission, Administration.
R746-342. Rule on One-Way Paging.
R746-342-1. One Way Paging Service Jurisdiction.

The Public Service Commission of Utah does not have jurisdiction over one-way paging services. The reason for the rule is that one-way paging service does not fall within the definition of a "telephone corporation" in that such service does not utilize a "telephone line."

KEY: rules and procedures, public utilities, telecommunications, paying standards*
1987 54-4-1
Notice of Continuation April 3, 1998

R746. Public Service Commission, Administration.
R746-402. Rules Governing Reports of Accidents by Electric, Gas, Telephone, and Water Utilities.
R746-402-1. Reporting Accidents.

A. As hereinafter specified, a report should be made to this Commission of every accident occurring on the property, or involving the property of a public utility, or resulting from the construction, operation, and maintenance of its properties, whenever it may be located in Utah.

B. Accidents to be Reported--Accidents should be reported that result in one or more of the following circumstances:

1. as required by federal law;

2. death of a person;

3. damage to property amounting to more than $1,000,000 or one percent of utility revenues, whichever is less. In determining the cost of property damage under this rule, the damage shall be considered separately for each localized area.

C. Instructions for Reporting Accidents--

1. Accidents resulting in the loss of life, or damages to property which in the opinion of the reporting officers are of major importance, shall be reported to this Commission by telephone.

2. Written reports of accidents resulting in loss of life, or damages to property, including those previously reported by telephone, shall be submitted to this Commission within a period of ten days from the date on which the accident occurred.

KEY: public utilities, rules & procedure
1987 **54-4-1**
Notice of Continuation April 3, 1998 **54-4-14**

R746. Public Service Commission, Administration.
R746-405. Rules Governing the Filing of Tariffs for Gas, Electric, Telephone, Water and Heat Utilities.
R746-405-1. General Provisions.

A. Scope--The following rules for electricity, gas, telephone, and water utilities are designed to provide for:

1. the general form and construction of tariffs required by law to be filed with the Commission and open for public inspection,

2. the procedures for filing and publishing tariffs in Utah, and

3. the particular circumstances and procedures under which utilities may depart from their filed and effective tariffs.

B. Applicability--These rules apply to and govern utilities of the classes herein named, whether they begin service before or after the effective date of these rules, but they shall not affect a right or duty arising out of an existing rule or order in conflict herewith. The rules apply only to new tariff filings, and do not require the modification of tariffs which are effective on the date the rules are adopted. Each utility shall have on file with the Commission its current tariff. Each utility shall abide by the tariff as filed and approved by the Commission. The Commission at any time may direct utilities to make revisions or filings of their tariffs or a part thereof to bring them into compliance.

C. Definitions--

1. "Commission" means the Public Service Commission of Utah.

2. "Effective Date" means the date on which the rates, charges, rules and classifications stated in the tariff sheets first become effective, except as otherwise provided by statute. This date, in accordance with the statutory notice period, shall not be less than the 30th calendar day after the filed date, without the prior approval of the Commission. Unless otherwise authorized, rates shall be made effective for service rendered on or after the effective date.

3. "Filed Date" of tariff sheets submitted to the Commission for filing is the date the tariff sheets are date-stamped at the Commission's Salt Lake City office.

4. "Tariff" means the entire body of rates, tolls, rentals, charges classifications and rules collectively enforced by the utility, although the book or volumes incorporating the same may consist of one or more sheets applicable to distinct service classifications.

5. "Tariff Sheet" means the individual sheets of the volume constituting the entire tariff of a utility and includes the title page, preliminary statement, table of contents, service area maps, rates schedules and rules.

6. "Utility" means a gas, electric, telecommunications, water or heat corporation as defined in Section 54-2-1.

D. Separate Utility Services--

1. Utilities engaged in rendering two or more classes of utility services, such as both gas and electric services, shall file with the Commission a separate tariff covering each class of utility service rendered.

2. Utilities planning to jointly provide utility service shall designate one utility to file a joint tariff for the service with the other utility or utilities filing a concurrence with the joint tariff.

E. Withdrawal of Service--No utility of a class specified herein shall, without prior approval of the Commission, withdraw from public service entirely or in any portion of the territory served.

R746-405-2. Format and Construction of Tariffs.

A. Format--Tariffs shall be in loose-leaf form for binding in a stiff-backed book or books as required and consist of parts or subdivisions arranged in order set forth as follows:

1. Title:
"TARIFF"
Applicable to
Kind of
SERVICE
NAME OF UTILITY

2. Table of Contents: a complete index of numbers and titles of effective sheets listed in the order in which the tariff sheets are arranged in the tariff book. Table of contents sheets shall bear sheet numbers and be in the form set forth in Subsection R746-405-2(C).

3. Preliminary statement: a brief description of the territory served, types and classes or service rendered and general conditions under which the service is rendered. Preliminary sheets shall bear sheet numbers and be in the form set forth in Subsection R746-405-2(C). The preliminary statement shall clearly define the symbols used in the tariffs. For example:

a. "C" to signify changed listing, rule or condition which may affect rates or charges;

b. "D" to signify discontinued material, including listing, rate, rule or condition;

c. "I" to signify increase;

d. "L" to signify material relocated from or to another part of the tariff schedules with no change in text, rate, rule or condition;

e. "N" to signify new material including listing, rate, rule or condition;

f. "R" to signify reduction;

g. "T" to signify change in wording of text but no change in rate, rule or condition.

4. Service area maps: maps for telecommunication utilities shall clearly indicate the boundaries of the service area, the principal streets, other main identifying features therein, the general location of the service area in relation to nearby cities, major highways or other well-known reference points and the relation between service area boundaries and map references. Service area maps shall be approximately 8-1/2 x 11 inches in size, or folded to that size in order to fit within the borders of the space provided on tariff sheets. Maps for gas, water and electric utilities shall clearly indicate the boundaries of the service area.

B. Tariff Books--

1. Utilities shall constantly maintain their presently effective tariff at each business office open to the public.

2. Utilities shall remove canceled tariff sheets from their currently effective tariffs. Utilities shall permanently retain a file of canceled tariff sheets.

C. Construction of Tariffs for Filing--

1. The loose-leaf sheets used in tariffs shall be of paper stock not less than 16 lb. bond or of equal durability and 8-1/2

x 11 inches in size. Tariffs may be printed, typewritten or mimeographed or other similar process. Tariffs may not be hand-written. One side of a sheet only may be used and a binding margin of at least 1-1/8 inches at the left of the sheet.

a. The tariff sheets of each utility shall provide the following information:

i. the name of the utility;

ii. the sheet, or page number, along with information to designate whether it is the first version of the sheet or whether the sheet has been revised since it was originally issued. Sheets shall be numbered consecutively;

iii. the number of the advice letter with which the sheet is submitted to the Commission or the docket number if the sheet is filed in accordance with a report and order of the Commission;

iv. information to indicate the date the sheet was filed with the Commission and the date the sheet became effective.

2. Tariffs shall include the following information and as nearly as possible in the following order:

a. schedule number or other designation;

b. class of service, such as business or residential;

c. character of applicability, such as heating, lighting or power, or individual and party-line service;

d. territory to which the tariff applies;

e. rates, in tabular form if practicable;

f. special conditions, limitations, qualifications and restrictions. The conditions shall be brief and clearly worded to cover all special conditions of the rate. Amounts subject to refund shall be specified.

3. If a rate schedule or a rule is carried forward from one sheet to another, the word "Continued" shall be shown.

D. Submission of Tariff Sheets and Advice Letters--

1. Tariff sheets shall be transmitted by an advice letter or in response to a Commission order. A revised table of contents sheet shall be transmitted with each proposed tariff change, if the change requires alteration of the table of contents.

2. Ten copies of each submission of advice letter and tariff sheets shall be filed with the Commission. One copy of the tariff sheets bearing the "Filed Date" and "Effective Date" shall be returned to the utility to constitute the utility's official file copy.

3. Advice letters shall include the following:

a. sheet numbers and titles of the tariff sheets being filed, together with the sheet numbers of the sheets being canceled;

b. essential information as to the reasons for the filing;

c. dates on which the tariff sheets are proposed to become effective;

d. increases or decreases, more or less restrictive conditions, or withdrawals;

e. in the case of an increase authorized by the Commission, reference to the report and order authorizing the increase and docket number;

f. if the filing covers a new service not previously offered or rendered, an explanation of the general effect of the filing, including a statement as to whether present rates or charges will be affected, or service withdrawn from a previous user and advice whether the proposed rates are cost-based;

g. a statement that the tariff sheets proposed do not constitute a violation of state law or Commission rule. The filing of proposed tariff sheets shall of itself constitute the representation of the filing utility that it, in good faith, believes the proposed sheets or revised sheets to be consistent with applicable statutes, rules and orders. The Commission may, after hearing, impose sanctions for a violation hereof.

4. If authorized to file a notice that the effective tariff of a previous owner for the same service area is being adopted, the notice of adoption shall be submitted in the form of an advice letter.

5. Advice letters shall be numbered annually and chronologically. The first two digits represent the year followed by a hyphen and two or more digits, beginning with 01, as submitted by a utility for class of utility service rendered.

6. If a change is proposed on a tariff sheet, attention shall be directed to the change by an appropriate character along the right-hand margin of the tariff sheet using the symbols set forth in the preliminary statement.

7. At the time of making a tariff filing with the Commission, the utility shall furnish a copy of the advice letter and a copy of each related tariff sheet to interested parties having requested notification.

8. If the suspension is lifted by order of the Commission, the filing shall be resubmitted under a new advice letter number. If the suspension is made permanent by the Commission, the advice letter number shall not be used again.

E. Approval of Filed Tariff Sheets--

1. Utility tariffs may not increase rates, charges or conditions, change classifications which result in increases in rates and charges or make changes which result in lesser service or more restrictive conditions at the same rate or charge, unless a showing has been made before and a finding has been made by the Commission that the increases or changes are justified. This requirement does not apply to electrical or telephone cooperatives in compliance with Section 54-7-12(6), or by telecommunications utilities with less than 5,000 subscribers access lines in compliance with Section 54-7-12(7).

2. New tariff sheets covering a service or commodity not previously furnished or supplied, or revised tariff sheets, not increasing, or increasing pursuant to Commission order, a rate, toll, rental or charge, may be filed by the advice letter. Tariff sheets, unless otherwise authorized by the Commission either on complaint or on its own motion, shall become effective after not less than 30 calendar days after the filed date.

3. Upon application in the advice letter and for good cause shown, the Commission may authorize tariff sheets to become effective on a day before the end of the 30 day notice period.

4. The Commission may reject tariff sheets that do not conform to these rules, which have alterations on the face thereof or contain errors, or for other reasons as the Commission determines. Copies of rejected tariff sheets and accompanying advice letter shall be stamped "Sheet Rejected" in the appropriate places. The Commission shall return one copy of the rejected sheets to the utility, with a letter stating the reasons for its rejection. Rejected tariff sheets shall be retained in the utility's file of canceled and superseded sheets. Advice letter numbers of rejected filings shall not be reused.

F. Public Inspection of Tariffs--

1. Utilities shall maintain, open for public inspection at their main office, a copy of the complete tariff and advice letters

filed with the Commission. Utilities shall maintain, open for public inspection, copies of their effective tariffs applicable within the territories served by the offices.

2. Utilities shall post in a conspicuous place in their major manned business office, a notice to the effect that copies of the schedule of applicable rates in the territory are on file and may be inspected by anyone desiring to do so.

G. Contracts Authorized by Tariff--Tariff sheets expressly providing that a written contract shall be executed by a customer as a condition to the receipt of service, relating either to the quantity or duration of service or the installation of equipment, the contract need not be filed with the Commission. A copy of the general form of contract to be used in each case shall be filed with the tariff as provided in these rules.

This contract shall be subject to changes or modifications by the Commission.

KEY: rules, procedure, public utilities, tariffs, utility regulation

1987	**54-3-2**
Notice of Continuation April 3, 1998	**54-3-3**
	54-3-4
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	54-4-4
	54-7-12

R765. Regents (Board of), Administration.
R765-134. Informal Adjudicative Procedures Under the Utah Administrative Procedures Act.
R765-134-1. Purpose.

To provide guidelines and procedures for the application of the Administrative Procedures Act Title 63, Chapter 46b, and associated regulations, to the public institutions of higher education, the State Board of Regents, and the Utah Higher Education Assistance Authority.

R765-134-2. References.

2.1. Section 53B-1-103

2.2. Section 63-46b-1 et seq.

R765-134-3. Definitions.

3.1. "Adjudicative proceeding" means an institutional action or proceeding described in Section 63-46b-1, Utah Code Annotated (1953).

3.2. "Institution" means the State Board of Regents, the Utah Higher Education Assistance Authority, the University of Utah, Utah State University, Weber State University, Southern Utah University, Snow College, Dixie College, the College of Eastern Utah, Utah Valley State College, Salt Lake Community College, and other public post-high school educational institutions as the Legislature may designate to be included in the State System of Higher Education.

3.3. "Party" means the institution or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the presiding officer to intervene in the proceeding, and all persons authorized by statute or institutional rule to participate as parties in an adjudicative proceeding.

3.4. "Person" means an individual, group of individuals, partnership, corporation, association, institution, agency, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character.

3.5. "Presiding officer" means the chief executive officer of the institution, or an individual or body of individuals designated by the chief executive officer, by institutional rules, or by statute to conduct an adjudicative hearing.

3.6. "Respondent" means a person against whom an adjudicative proceeding is initiated, whether by an institution or any other person.

R765-134-4. Policy.

4.1. The Utah Administrative Procedures Act, Section 63-46b-1, provides certain exemptions from the Act which affect higher education institutions.

As a consequence of the foregoing statutory provisions adjudicative proceedings relating to the evaluation, discipline, employment, transfer, reassignment, or promotion of students and faculty, to personnel matters for all employees, to contracts for the purchase and sale of goods and services by the institutions, or to actions required by federal statute or regulation to be conducted solely according to federal procedures are not governed by the Utah Administrative Procedures Act.

4.2. Campus traffic and parking - Section 53B-3-106(2), provides that "State institutions of higher education are 'political subdivisions' . . . as these terms are used in Chapter 6, Title 41." relating to Traffic Rules and Regulations. The Utah Administrative Procedures Act applies to "agencies" which as defined in 63-46b-2(1)(b) does not include "any political subdivision of the state, or any administrative unit of a political subdivision of the state." Consequently, the institutions are exempt from the Act in matters involving campus traffic regulations not only where students and employees are involved but also where they impact persons other than students and employees. However, since some aspects of parking and parking lot management may not be covered by Chapter 6, Title 41, hearings relating to parking matters which involve persons other than students and employees may be subject to the Act.

4.3. Informal adjudicative proceedings for certain admissions, residence for tuition purposes, financial aid (including the eligibility for and collection of student loans), campus parking, campus event participation, former student matters, former employee matters, and other matters not exempted from the Administrative Procedures Act - Adjudicative proceedings, undertaken by an institution, which affect matters other than (a) the evaluation, discipline, employment, transfer, reassignment, or promotion of students and faculty, (b) personnel matters for all employees, (c) campus traffic, (d) contracts for the purchase and sale of goods and services by the institution, or (e) actions required by federal statute or regulation to be conducted solely according to federal procedures, are to be conducted informally according to the procedures set forth in these rules, enacted under the authority of the Utah Administrative Procedures Act. Adjudicative proceedings where parties other than students or employees are involved hereby authorized to be handled informally include, but are not limited to, admissions, residence for tuition purposes, financial aid (including the eligibility for and collection of student loans), campus parking, campus event participation, former student matters, and former employee matters.

4.4. Board findings as to appropriateness of informal adjudicative proceedings - The use of informal procedures as provided in paragraph 4.3 does not violate any procedural requirement imposed by a statute other than Chapter 46b, Title 63; the rights of the parties to the proceedings will be reasonably protected by the informal procedures; the institutions' administrative efficiency will be enhanced by this categorization; and the cost of formal adjudicative proceedings outweighs the potential benefits to the public of a formal adjudicative proceeding.

4.5. Substitution of presiding officer - If fairness is not compromised, an institution may substitute one presiding officer for another during any proceeding. A person who acts as a presiding officer at one phase of a proceeding need not continue as presiding officer through all phases of a proceeding.

4.6. Institutional variances with this rule - Each institution is authorized to adopt its own categorizations and procedures duly enacted under the authority of Chapter 46b, Title 63. Significant variations from the Board's rules and procedures must be approved by the Board.

R765-134-5. Procedures for Informal Adjudicative Proceedings.

5.1. Commencement - An informal adjudicative

proceeding shall be commenced by either (a) a notice of institutional action, if proceedings are commenced by the institution; or (b) a request for institutional action, if proceedings are commenced by persons other than the institution.

5.2. Notice - A notice of institutional action or a request for institutional action shall be filed and served according to the following requirements: The notice shall be in writing, signed by a presiding officer if the proceeding is commenced by the institution, or by the person invoking the jurisdiction of the institution, or by his representative, and shall include:

5.2.1. the names and mailing addresses of all respondents and other persons to whom notice is being given;

5.2.2. the institution's file number or other reference number;

5.2.3. the name of the adjudicative proceeding;

5.2.4. the date that the notice of institutional action or the request for institutional action was mailed;

5.2.5. if a hearing is to be held, a statement of the time and place of any scheduled hearing, a statement of the purpose for which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default;

5.2.6. if a hearing is not scheduled, a statement that a party may request a hearing within 20 days of the mailing of the notice or such other time as prescribed by institutional rule;

5.2.7. a statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained or institutional action is requested;

5.2.8. a statement of the purpose of the adjudicative proceeding, the questions to be decided (to the extent known) or the facts and reasons forming the basis for relief, and the relief or decision sought by the commencing party; and

5.2.9. the name, title, mailing address, and telephone number of the presiding officer.

5.2.10. The institution shall mail the notice of institutional action or the request for institutional action to each party.

5.3. Answer not required - No answer or other pleading responsive to the allegations contained in the notice of institutional action or the request for institutional action need be filed.

5.4. Hearings - The institution shall hold a hearing only if a hearing is required by statute or rule, or if a hearing is permitted by statute and a hearing is requested by a party within 20 days of the mailing of the notice, or such other time as prescribed by institutional rule. "Hearing" includes not only a face-to-face proceeding but also a proceeding conducted by telephone, television or other electronic means.

5.5. Rights of parties to testify, present evidence, and comment on the issues - In any hearing, the parties named in the notice of institutional action or in the request for institutional action shall be permitted to testify, present evidence, and comment on the issues. Participation is normally limited to the named parties.

5.6. Timely notice - Hearings will be held only after timely notice to all parties.

5.7. No discovery or subpoenas - Discovery is prohibited, and the institution may not issue subpoenas or other discovery orders. This prohibition against discovery is not intended to discourage the non-coercive gathering or sharing of information by the parties.

5.8. Access to institution's files - All parties shall have access to information contained in the institution's files and to all materials and information gathered in any investigation, to the extent permitted by law.

5.9. Intervention prohibited - Intervention is prohibited, except that the institution may enact rules permitting intervention where a federal statute or rule requires that a state permit intervention.

5.10. Hearings open to parties - All hearings shall be open to all parties. If the hearing is conducted by telephone, television or other electronic means this criterion is met if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see that aspect of the entire proceeding which is significant to the viewer while the proceeding is taking place.

5.11. Order of the presiding officer - Within a reasonable time after the close of the hearing, or after the parties' failure to request a hearing within the time prescribed by the institution's or this rule, the presiding officer shall issue a signed order in writing that states the following:

5.11.1. the decision;

5.11.2. the reasons for the decision;

5.11.3. a notice of any right of administrative or judicial review available to the parties; and

5.11.4. the time limits for filing an appeal or request for review.

5.12. Basis of order - The presiding officer's order shall be based on the facts appearing in the institution's files and on the facts presented in evidence at any hearings.

5.13. Hearings recorded - All hearings shall be recorded at the institution's expense. Any party, at his own expense, may have a reporter approved by the institution prepare a transcript from the institution's record of the hearing.

5.14. Institution's investigative rights - Nothing in this rule restricts or precludes any investigative right or power given to an institution by a statute other than Chapter 46a, Title 63.

5.15. Default - The presiding officer may enter an order of default against a party if that party fails to participate in the adjudicative proceeding. The order shall include a statement of the grounds for default and shall be mailed to all parties. A defaulted party may seek to have the institution set aside the default order according to procedures outlined in the Utah Rules of Civil Procedure. After issuing the order of default, the presiding officer shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting party.

5.16. Institutional review - If a statute or the institution's rules permit parties to any adjudicative proceeding to seek review of an order, the aggrieved party may file a written request for review within ten days after the issuance of the order with the person or entity designated for that purpose by statute or rule. The form and procedures for such a request are set forth in 63-46b-12, Utah Code Annotated (1953).

5.17. Institutional reconsideration - Within ten days after the date that an order on review is issued, or within ten days

after the date that a final order is issued for which institutional review is unavailable, any party may file a written request for reconsideration, stating the specific grounds upon which relief is requested. Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order or the order on review. The request for reconsideration shall be filed with the institution and one copy shall be sent by mail to each party by the person making the request. The institution president, or a person designated for that purpose, shall issue a written order granting the request or denying the request. If the president or his designee does not issue an order within 20 days after the filing of the request, the request for rehearing shall be considered to be denied.

5.18. Exhaustion of administrative remedies - A party aggrieved may obtain judicial review of final institutional action except in actions where judicial review is expressly prohibited by statue, only after exhausting all administrative remedies available, except that:

5.18.1. a party seeking judicial review need not exhaust administrative remedies if a statute states that exhaustion is not required;

5.18.2. the court may relieve a party seeking judicial review of the requirement to exhaust any or all administrative remedies if the administrative remedies are inadequate, or exhaustion of remedies would result in irreparable harm disproportionate to the public benefit derived from requiring exhaustion.

5.19. Filing for judicial review - A party shall file a petition for judicial review of final institutional action within 30 days after the date that the order constituting the final institutional action is issued. The petition shall name the institution and all other appropriate parties as respondents and shall meet the form requirements specified in Chapter 46b, Title 63.

5.20. Judicial review - The district courts shall have jurisdiction to review by trial de novo all final institutional action resulting from an adjudicative proceeding hereunder, except that final institutional action from proceedings based on a record shall be reviewed by the district courts on the record according to the standards of 63-46b-16(4). The form of the petition and procedures for this process are set forth in 63-46b-15, Utah Code Annotated (1953).

5.21. Stay and other temporary remedies pending final disposition on judicial review - Unless precluded by statute, the institution may grant a stay of its order, or other temporary remedy during the pendency of judicial review, according to the institution's rules. If the institution denies a stay or denies other temporary remedies requested by a party, the institution's order of denial shall be mailed to all parties and shall specify the reasons why the stay or other temporary remedy was not granted.

5.22. Emergency adjudicative proceedings - An institution may issue an order on an emergency basis without complying with the requirements of Chapter 46b, Title 63 if the facts known by the institution or presented to the institution show that an immediate and significant danger to the public health, safety, or welfare exists, and the threat requires immediate action by the institution. In issuing its emergency order, the institution shall:

5.22.1. limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;

5.22.2. issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the institutions utilization of emergency adjudicative proceedings; and

5.22.3. give immediate notice to the persons who are required to comply with the order. If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the institution shall commence appropriate adjudicative proceedings in accordance with the other provisions of these rules and Chapter 46b, Title 63.

5.23. Declaratory orders - Any person may file a request for institutional action, requesting that the institution issue a declaratory order determining the applicability of a statute, rule, or order within the primary jurisdiction of the institution to specified circumstances. An institution may issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party, only if that person consents in writing to the determination of the matter by a declaratory proceeding. After receipt of a petition for a declaratory order, the institution may issue a written order: (a) declaring the applicability of the statute rule, or order in question to the specified circumstances; (b) setting the matter for adjudicative proceedings; (c) agreeing to issue a declaratory order within a specified time; or (d) declining to issue a declaratory order and stating the reasons for its action. The declaratory order shall contain: (a) the names of all parties to the proceeding on which it is based; (b) the particular facts on which it is based; and (c) the reasons for its conclusions.

KEY: colleges, higher education, adjudicative procedures
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Notice of Continuation April 13, 1998

R765. Regents (Board of), Administration.
R765-171. Postsecondary Proprietary School Act Rules.
R765-171-1. Purpose.

To set forth standards by which institutions and their agents subject to the Postsecondary Proprietary School Act are registered to operate consistent with public policy.

R765-171-2. References.

2.1. Title 53B, Chapter 5, Utah Code Annotated 1953.

R765-171-3. Definitions in addition to those in 53B-5-103.

3.1. A "course" is a unit subject within a program of education that must be successfully mastered before an educational credential can be awarded.

3.2. An "institution" operates for profit or nonprofit, is degree or non-degree granting, maintains a place of business within the state of Utah, solicits students from the general public, charges tuition and/or fees, offers instruction to students for entry-level employment or for upgrading in a specific field of endeavor, affords students legitimate and pedagogical methods that will logically culminate in a lawful educational credential, and is not exempt in accordance with this Title 53B, Chapter.

3.3. A "resident institution" is one where the courses and programs offered are predominantly conducted in a classroom or a class laboratory, with an instructor.

3.4. A "correspondence institution" is one in which the instruction is conducted predominantly through the means of home study. It is expected to maintain a stability of faculty and other resources sufficient for the completion of the program(s) offered, in order that the credential awarded will be of the caliber accepted by recognized authorities in the field.

3.5. A "branch or extension" is a freestanding location that is apart from the main campus, where resident instruction is provided on a regular, continuing basis.

3.6. A "permit" consists of a nontransferable pocket identification card issued to an agent or sales representative by the board, stating that he has been authorized to solicit students in behalf of his employing institution.

3.7. "Probation" is a negative action of the board which specifies a stated period for an institution or agent to correct stipulated deficiencies; but does not imply any impairment of operational authority.

3.8. A "program of education" consists of a series of courses which when completed, lead to an educational credential.

3.9. "Revocation" is a negative action of the board which orders an institution or agent to surrender its certificate or permit and cease operations, including advertising, enrolling students and teaching classes, for whatever reason.

3.10. "Suspension" is a negative action of the board which places stipulated limitations upon usage of a permit or certificate of registration for a stated period of time during which the deficiencies must be corrected or the certificate may be revoked.

R765-171-4. Rules Relating to 53B-5-104.

4.1. In order to award a degree or certificate an institution must meet the following general criteria:

4.1.1. The institution's program must meet the following generally accepted minimum number of semester/quarter credit hours required to complete a standard college degree: associate, 60/90; bachelor's, 120/180; master's, 150/225; and doctorate, approximately 200/300.

4.1.2. The areas of study at the institution, the methods of instruction, and the level of effort required of the student for a degree or certificate must be determined by the board to be commensurate with reasonable standards established by recognized accrediting agencies and associations.

4.1.3. In order for the institution to award a certificate or degree, the faculty must be academically prepared in the area of emphasis at the appropriate level, or as to vocational-technical programs, must have equivalent job expertise based on reasonable standards established by recognized accrediting agencies and associations. Notwithstanding, credit may be awarded toward degree completion based on (1) transfer of credit from other accredited and recognized institutions, (2) recognized proficiency exams (CLEP, AP, etc.), and (3) in-service competencies as evaluated and recommended by recognized national associations such as the American Council on Education. Such credit for personal experiences shall be limited to not more than one year's worth of work (45 quarter/30 semester credit hours).

4.1.4. In order to offer a program of study, either degree or non-degree, it must be of such a nature and quality as to make reasonable the student's expectation of some advantage in enhancing or pursuing employment, as opposed to a general education or nonvocational program which is excluded from registration under 53B-5-105(g).

4.2. The faculty member shall assign work, set standards of accomplishment, measure the student's ability to perform the assigned tasks, provide information back to the student as to his or her strengths and deficiencies, and as appropriate, provide counseling, advice, and further assignments to enhance the student's learning experience. This requirement does not preclude the use of computer assisted instruction or programmed learning techniques when appropriately supervised by a qualified faculty member.

4.3. As appropriate to the program or course of study to be pursued, the institution shall evaluate the prospective student's experience, background, and ability to succeed in that program through review of educational records and transcripts, tests or examinations, interviews, and counseling. This evaluation shall include a finding that the prospective student is beyond the age of compulsory high school attendance, as prescribed by Utah law; has received either a high school diploma or a General Education Development certificate, or has satisfactorily completed a national or industry developed competency-based test or an entrance examination that establishes the individual's ability to benefit. Based on this evaluation, the institution, before admitting the prospective student to the program, must have a reasonable expectation that the student can successfully complete the program, and that if he or she does so complete, that there is a reasonable expectation that he or she will be qualified and able to find appropriate employment based on the skills acquired through the program.

4.4. Each institution not exempted from this chapter shall prepare for the use of prospective students and other interested persons a catalog or general information bulletin that contains

the following information:

4.4.1. legal name, address, and telephone number of the institution, also any branches and/or extension locations;

4.4.2. date of issue;

4.4.3. names, titles, and qualifications of administrators and faculty;

4.4.4. calendar, including scheduled state and federal holidays, recess periods, and dates for enrollment, registration, start of classes, withdrawal and completion;

4.4.5. admission and enrollment prerequisites, both institutional and programmatic, as provided in subsection 8.2;

4.4.6. policies regarding student conduct, discipline, and probation for deficiencies in academics and behavior;

4.4.7. policies regarding attendance and absence, and any provision for make-up of assignments;

4.4.8. policies regarding dismissal and/or interruption of training and of reentry;

4.4.9. policies explaining or describing academic matters such as:

4.4.9.1. student records maintained by the institution, including transcripts;

4.4.9.2. credit granted for previous education and experience;

4.4.9.3. grading system, including standards of progress required;

4.4.9.4. provision to students of interim grade or performance reports; and

4.4.9.5. graduation requirements and the credential awarded upon satisfactory completion of a program, as provided in subsection 8.4;

4.4.10. schedule of tuition, any other fees, books, supplies and tools;

4.4.11. policies regarding refunds of any unused charges collected as provided in subsection 8.3.2;

4.4.12. student assistance available, including scholarships and loans.

4.4.13. name, description, and length of each program offered, including a subject outline with course titles and approximate number of credit or clock hours devoted to each course;

4.4.14. placement services available and any variation by program;

4.4.15. facilities and equipment available; and

4.4.16. such other information as the institution may desire to include.

R765-171-5. Rules Relating to 53B-5-105.

5.1. Institutions that provide nonprofessional review courses, such as law enforcement and civil service, are not exempt, unless these are considered as workshops or seminars within the meaning of 53B-5-105(h).

5.2. In order for the church or religious denomination to be "bona fide" such that the institution is exempt from registration, the institution may not be the church or religious denomination's primary purpose, function or asset.

5.3. An institution accredited by an accrediting organization recognized by the Commission on Recognition of Postsecondary Accreditation is exempt from registration for the purposes of this chapter.

5.4. Any institution which claims an accreditation exemption must furnish acceptable documentation upon request by the board.

5.5. When available evidence suggests that an accredited institution is not in compliance with the standards for registration under this chapter and these rules, first the board shall contact the officials of the subject institution and request corrective action. If the board determines that the institution is unable or unwilling to resolve the matter, the board shall request corrective action from the appropriate accrediting authority.

5.6. To be exempt, the training or instruction shall not be the primary activity of the organization, association, society, labor union, or franchise system.

5.7. Flight schools approved under Part 141, Federal Aviation Regulations (FAR), 14 CFR Chapter 141, are exempt. Schools providing aviation training under Part 61, FAR, 14 CFR Chapter 61, are required to register.

5.8. When available evidence suggests that an institution regulated and approved by a state or federal governmental agency is not in compliance with the standards for registration under this chapter and these rules, first the board shall contact the officials of the subject institution and request corrective action. If the board determines that the institution is unable or unwilling to resolve the matter, the board shall request corrective action from the appropriate state or federal government agency.

5.9. The board shall determine an institution's status in accordance with the categories contained in this section.

5.10. An exempt institution shall notify the board within thirty (30) days of a material change in circumstances which may affect its exempt status as provided in this section and shall follow the procedure outlined in Section 53B-5-106.

5.11. An exempted institution which voluntarily applies for a certificate by filing a registration statement shall comply with all rules as though such institution were nonexempt.

5.11.1. To apply for a certificate of registration, an accredited institution shall submit a completed registration statement application and a copy of such portions of its current accreditation self-evaluation report as are specified by the Board.

R765-171-6. Rules Relating to 53B-5-106.

6.1. The registration statement combined with an attached current catalog or information bulletin as outlined in subsection 4.4 of this chapter shall provide information and assertions as follows:

6.1.1. the institution's name, address, and telephone number;

6.1.2. the names of all persons involved in the operation of the institution and a stipulation that the resumes are on file at the institution and available to the students.

6.1.3. a current financial report, as described in subsection 7.9;

6.1.4. that its articles of incorporation have been registered and accepted by the Lieutenant Governor's office and it has a local business license, if necessary;

6.1.5. that its facilities, equipment, and materials meet minimum standards for the training and assistance necessary to prepare students for employment;

6.1.6. that it maintains accurate attendance records, progress and grade reports, and information on tuition and fee payments appropriately accessible to students;

6.1.7. that its maintenance and operation is in compliance with all ordinances, laws, and codes relative to the safety and health of all persons upon the premises; and

6.1.8. that it maintains adequate insurance continuously in force to protect its assets.

6.2. The institution provides copies of the following documents:

6.2.1. a sample of the credential(s) awarded upon completion of a program;

6.2.2. a sample of current advertising including radio, television, newspaper and magazine advertisements, and listings in telephone directories; and

6.2.3. a copy of the student enrollment agreement.

6.3. A new institution not previously in operation in Utah and which intends to solicit and enroll students in this state, shall demonstrate as part of its registration statement that there is:

6.3.1. sufficient student interest in Utah in its courses; and

6.3.2. reasonable employment potential in those areas of study in which credentials will be awarded.

6.4. In addition, a branch institution whose parent campus is located outside of the state of Utah shall:

6.4.1. provide a copy of the authorization granted by the state of the parent institution;

6.4.2. designate a Utah resident with an agent's permit from the board as a permanent contact authorized to legally accept the responsibility to respond to student inquiries; and

6.4.3. make available a listing of which programs are offered in whole or in part in Utah and whether the student can complete his or her program without having to take residence at the parent campus;

6.5. Correspondence institutions, within or without the state of Utah shall demonstrate that:

6.5.1. their educational objectives can be achieved through home study;

6.5.2. their programs, instructional material, and methods are sufficiently comprehensive, accurate, and up-to-date to meet the announced institutional course and program objectives;

6.5.3. they provide adequate interaction between student and instructor, through the submission and correction of lessons, assignments, examinations, and such other methods as are recognized as characteristic of this particular learning technique and

6.5.4. any degrees and certificates earned through correspondence study meet the requirements and criteria of 4.1.

6.6. An authorized officer of each institution not exempted from this chapter shall sign a statement that:

6.6.1. discloses whether the institution, or any owner, administrator, faculty, staff, or agent of the institution has violated laws, federal regulations or state rules related to the operation of educational institutions as determined in a criminal, civil or administrative proceeding within five years preceding the filing of the registration statement; and

6.6.2. the information which the institution has provided in its registration statement is true and correct.

6.7. Upon receipt of a registration statement and its attachments, the board, within thirty (30) days, shall either issue a certificate, request further information or conduct a site visit to the institution as detailed in subsection 11.1.

6.8. A certificate of registration shall be issued by the board, if after review of an institution's registration statement, it is satisfied that the interests of the public will be served. This certificate is valid until it expires or is renewed, supplemented, canceled, or forfeited.

6.9. A registered institution shall notify the Board of circumstances that will result in a change in any information contained on the certificate, including name, type of institution, ownership or management, exemption status, academic programming, facilities, new or additional locations, etc. The Board shall determine whether the change necessitates a new registration application.

6.10. An institution ceasing its operations shall inform the board and provide the board with student records in accordance with 53B-5-109.

R765-171-7. Rules Relating to 53B-5-107.

7.1. An authorized officer of the institution to be registered under this chapter shall sign a certificate as to whether the institution or an owner, administrator, faculty, staff, or agent of the institution has violated laws, federal regulations or state rules related to the operation of educational institutions as determined in a criminal, civil or administrative proceeding within five years preceding the filing of the registration statement.

7.2. The Board shall refuse to register an institution when it determines that the institution or an owner, administrator, faculty, staff, or agent of the institution has violated laws, federal regulations or state rules related to the operation of educational institutions as determined in a criminal, civil or administrative proceeding and as a consequence of such violation(s) the Board has a reasonable doubt that the institution will function in accordance with these laws and rules or provide students with an appropriate learning experience.

7.3. A change in the ownership of an institution, as defined in subsection 53B-5-103(8), occurs when there is a merger or change of ownership or partnership or stock or assets of more than 50 percent within a three-year period. When this occurs the following information is submitted to the board for its review:

7.3.1. a copy of any new articles of incorporation;

7.3.2. a current financial statement, as outlined in subsection 7.9;

7.3.3. a listing of all institutional personnel that have changed as a result of the ownership transaction, together with complete resumes and qualifications;

7.3.4. a detailed description of any material modifications to be made in the operation of the institution; and

7.3.5. payment of the appropriate fee.

7.4. Procedures for filing a renewal application consist of:

7.4.1. the board will notify the institution approximately sixty (60) days prior to the expiration date of its certificate of registration of the requirements for re-registration;

7.4.2. prior to thirty (30) days before expiration date, the institution shall submit the new registration statement with its attachments to the board, along with the appropriate fee.

7.4.3. within thirty (30) days after receipt of the new registration form and its attachments, the board shall either issue a certificate, request further information or conduct a site visit to the institution; and

7.4.4. when all requirements have been satisfied, a new certificate shall be issued.

7.5. If an institution fails to comply with the requirements to re-register stated above, its registration may be suspended or revoked.

7.6. To be reinstated an institution must submit evidence of compliance, together with payment of a penalty fee of $50, in addition to any other fees owed in accordance with 7.8.

7.7. Although a certificate of registration is valid for two (2) years, the board may request periodic updates of financial statements and the following statistical information:

7.7.1. number of students enrolled from September 1 through August 31;

7.7.2. number of students who completed and received a credential;

7.7.3. number of students who terminated or withdrew;

7.7.4. number of administrators, faculty, supporting staff, and agents; and

7.7.5. new catalog, information bulletin, or supplements.

7.8. The board collects the following fees in accordance with Section 53B-5-107(5):

7.8.1. initial registration statement and renewal application fees will be based on the number of students enrolled:

TABLE

Number of Students	Registration Fee
0-25 students per year,	$50
26 students and over per year	$100

7.9. The institution must have, in addition to other criteria contained in this chapter, sufficient financial resources to fulfill its commitments to students and staff members, and to meet its other obligations as evidenced by the following financial statements:

7.9.1. a current financial report prepared in accordance with generally accepted accounting principles including a balance sheet and an income statement for the most recent fiscal year with all applicable footnotes;

7.9.2. pro forma financial statements until actual information is available when an institution has not operated long enough to complete a fiscal year; and/or

7.9.3. a certified fiscal audit of its operations or such other documentation of financial status as may be required by the board.

7.10. The board will not register a program at a proprietary institution if it determines that the educational credential associated with the program may be interpreted by employers and the public to represent the undertaking or completion of educational achievement that has not been undertaken and earned.

7.11. Acceptance of registration statements and the issuing of certificates of registration to operate a school signifies that the legal requirements prescribed by statute and regulations have been satisfied. It does not mean that the board supervises, recommends, nor accredits institutions whose statements are on file and who have been issued certificates of registration to operate.

R765-171-8. Rules Relating to 53B-5-108.

8.1. The information required by 53B-5-108(1) shall be contained in the institution's catalog or information bulletin as set forth in subsection 4.4.

8.2. An institution, as part of its assessment for enrollment, shall consider the applicant's basic skills, aptitude, and physical qualifications, as these relate to the choice of program and to anticipated employment and shall not admit a student to a program unless there is a reasonable expectation that the student will succeed, as prescribed by 4.3.

8.3. Financial dealings with students shall reflect standards of ethical practice and provide for the following:

8.3.1. a three-day cooling-off period, commencing with the day the contract with the applicant is signed until midnight of the third business day following such date, exclusive of Sundays and holidays, during which time the contract may be rescinded.

8.3.2. a fair and equitable refund policy that considers the interests of a student who withdraws as well as the institution itself. The refund must include a pro rata part of prepaid tuition and fees for the student who withdraws from the institution after only an initial exposure to its educational and/or housing program;

8.3.3. complete written information on repayment obligations to all applicants for financial assistance before an applicant student assumes such responsibilities; and

8.3.4. when there is a written enrollment agreement, promissory note or other obligation, such documents shall contain provisions which detail the rights of both the student and the institution.

8.4. Following the satisfactory completion of his or her training and education, a student is provided with appropriate educational credentials that show the program in which he or she was enrolled, together with a transcript of courses completed and grades or other performance evaluations received.

8.5. No institution shall use the designation of 'college' nor 'university' in its title nor in conjunction with its operation unless it actually confers a standard college degree as one of its credentials.

8.5.1. Such an institution which has, prior to the effective date of this chapter, used the designation of 'college' or 'university' in its title or in conjunction with its operation, may continue that practice.

8.5.2. The name of the institution shall not contain any reference that could mislead potential students or the general public as to the type or nature of its educational services, affiliations or structure.

8.6. Advertising standards consist of the following:

8.6.1. the institution's chief administrative officer assumes all responsibility for the content of public statements made on behalf of the institution and instructs all personnel, including agents, as to this chapter and other appropriate laws regarding the ethics of advertisement and recruitment;

8.6.2. advertising shall be clear, factual, supportable, and shall not include any false or misleading statements with respect

to the institution, its personnel, its courses and programs, its services, nor the occupational opportunities for its graduates;

8.6.3. the institution shall not advertise in conjunction with any other business or establishment, nor advertise in "help wanted" nor in "employment opportunity" columns of newspapers, magazines or similar publications in such a way as to lead readers to believe that they are applying for employment rather than education and training. It must disclose that it is primarily operated for educational purposes, if this is not apparent from its legal name;

8.6.4. an institution, its employees and agents, shall refrain from other forms of ambiguous or deceptive advertising, such as:

8.6.4.1. claims as to endorsement by manufacturers or businesses or organizations until and unless written evidence supporting this fact is on file; and

8.6.4.2. representations that students completing a course or program may transfer either credits or credentials for acceptance by another institution, state agency, or business, unless written evidence supporting this fact is on file;

8.6.5. an institution shall maintain a file of all promotional information and related materials for a period of three (3) years;

8.6.6. the board may require an institution to submit its advertising prior to its use; and

8.6.7. pursuant to subsections 53B-5-107(8) and 7.11, the only statement authorized for use in advertising is 'Registered under the Utah Postsecondary Proprietary School Act. UCA 53B-5-107(8)'.

8.7. Recruitment standards include the following:

8.7.1. recruiting efforts shall be conducted in a professional and ethical manner and free from 'high pressure' techniques; and

8.7.2. an institution shall not use loans, scholarships, discounts, or other such enrollment inducements, where such result in unfair or discriminatory practices.

8.8. An agent or sales representative may not be directly or indirectly portrayed as 'counselor,' 'advisor,' or any other similar title to disguise his or her sales function.

8.9. General requirements for all agents or sales representatives shall consist of the following:

8.9.1. no individual representing any institution offering programs or courses in this state may solicit students without first obtaining a permit, as set forth in sections 8.12 to 8.15.

8.9.2. a permit shall not be issued to an individual who has been convicted of a felony or misdemeanor or has been enjoined for violations of any state or federal laws relating to education within five (5) years preceding the filing of a permit application;

8.9.3. an agent or representative is responsible to have a clear understanding and knowledge of the programs and courses, tuition, enrollment requirements, enrollment agreement, support services, and the general operational procedures thereof;

8.9.4. a person may render information about an institution without securing a permit if:

8.9.4.1. he or she does not mention the specific price of a program or course and does not seek to solicit students; or

8.9.4.2. he or she participates in a high school career day or college day program and only explains the institution's offerings.

8.9.5. an agent shall surrender his or her permit to the board upon termination of his or her employment with the institution, or in the event that his or her permit is revoked or suspended before its expiration.

8.10. An institution is responsible to provide indemnification to any student suffering loss as a result of any fraud or other form of misrepresentation used by an agent in the recruitment process.

8.11. An institution operating in Utah but domiciled outside the state shall designate a Utah resident as its contact as set forth in subsection 6.4.2.

8.12. The agent's permit application shall include:

8.12.1. the name, Utah address, and telephone number of the applicant;

8.12.2. the name and address of the institution(s) the agent seeks to represent;

8.12.3. a letter of authority by the institution's chief administrative officer;

8.12.4. three (3) letters of reference from third persons or businesses who know the applicant and his work;

8.12.5. a complete record of the applicant's past five (5) years of employment;

8.12.6. a signed statement that the applicant has not been convicted, as set forth in subsection 8.9.2 above; and will fairly and honestly represent the institution(s) consistent with the instructions issued by it and the information which is contained on its registration statement.

8.13. Permits are restricted as follows:

8.13.1. a permit is issued to a specific individual, residing at a specific address, to represent a specific institution(s);

8.13.2. an agent, upon a material change in any of the information contained in his application, shall within thirty (30) days submit a supplementary application to the board for approval, and detail all particulars; and

8.13.3. although a permit is issued for two (2) years, the board may request interim information as to the agent's activities.

8.14. Procedure for filing a renewal permit includes:

8.14.1. the board will notify each agent prior to the expiration date of his permit and provide information as to the requirements for renewal;

8.14.2. the agent shall submit the renewal application with attachments to the board.

8.14.3. within thirty (30) days after receipt of the information and any attachments, the board will issue another permit, request further information, or conduct an investigation;

8.14.4. when all requirements have been satisfied, a new permit will be issued;

8.14.5. should an agent fail to comply, as stated above, he or she may be suspended, or his or her authorization revoked; and

8.14.6. in order for an agent to be reinstated, he or she must provide evidence of compliance with these law and rules.

R765-171-9. Rules Relating to 53B-5-109.

9.1. Institutional closure procedures consist of the following:

9.1.1. the chief administrative officer of each institution subject to this chapter, shall prepare a written plan for access to and the preservation of permanent records in the event the

institution closes for whatever reason; and

9.1.2. in the event an institution closes with students enrolled who have not completed their programs, a list of such, including the amount of tuition paid and the proportion of their program completed, shall be submitted to the board, with all particulars.

9.2. School records consist of the following permanent scholastic records for all students who are admitted, even though withdrawn or terminated:

9.2.1. appropriate entrance and admission acceptance information;

9.2.2. attendance and performance information, including transcripts which consist of no less than the program for which he enrolled, each course attempted and the final grade earned;

9.2.3. graduation or termination dates of students;

9.2.4. enrollment agreements, tuition payments, refunds, and any other financial transactions;

R765-171-11. Rules Relating to 53B-5-111.

11.1. The Board may perform on-site evaluations to verify information submitted by an institution or an agent, or to investigate complaints filed with the Board.

11.2. Representative circumstances which provide just cause for negative actions are:

11.2.1. the award of credentials by a nonexempt institution without a filed and accepted registration statement and an issued certificate of registration;

11.2.2. a registration statement or permit application that contains material representations which are incomplete, improper, or incorrect;

11.2.3. failure to maintain facilities and equipment in a safe and healthful manner;

11.2.4. failure to perform the services, failure to meet the reasonable expectations of students for faculty instruction, teaching materials, equipment and facilities, failure to perform any commitment made in the registration statement or permit application, offering programs or services not contained in the registration statement currently on file, or violations of the conditions of the certificate of registration or permit;

11.2.5. utilization of agents without permits;

11.2.6. failure to maintain sufficient financial capability, as set forth in section 7.9;

11.2.7. to confer, or attempt to confer, a fraudulent credential, as set forth in 53B-5-201;

11.2.8. employment of students for commercial gain, if such fact is not contained in the current registration statement;

11.2.9. promulgation to the public of fraudulent or misleading statements relating to a program or service offered;

11.2.10. failure to correct a deficiency or act of noncompliance under this chapter and regulations;

11.2.11. withdrawal of the authority to operate in the home state of an institution whose parent campus or headquarters is not domiciled in this state;

11.2.12. failure of a Utah institution to comply with applicable laws in another state; and

11.2.13. failure to provide reasonable information to the board as requested from time to time.

11.3. The board, when aware of either one or a combination of the above causes shall:

11.3.1. promptly notify the attorney general or the county attorney of any county in which the activity is believed to have occurred so that he can instigate an action; and

11.3.2. regularly keep the attorney general or county attorney apprised of all significant developments as the matter evolves. The attorney general or the country attorney may proceed on his or her own initiative.

11.4. To be considered, a student complaint against an institution must be filed with the board within one year of the last date of the student's attendance. The following alternative procedures for handling student complaints are available to the board:

11.4.1. the board may conduct an investigation into the matter. If the evidence suggests probable violations because of unauthorized practices, it:

11.4.1.1. may make oral communication with the institution or agent and advise it or the agent of the discrepancies suspected, together with specific counsel and instructions for improvement;

11.4.1.2. may send a written communication which sets forth the details of the matter;

11.4.2. may set an informal conference of the complainant, the defendant, and authorized representatives of the board to seek a resolution in which all parties involved agree; or

11.4.3. may convene a hearing. Hearings shall be conducted according to recognized due process procedures;

11.4.4. regardless of which of the above procedures is followed, the board's representative, upon careful deliberation, shall render a decision predicated upon the evidence. The board may dismiss the complaint or take action(s) including:

11.4.4.1. "probation," as defined in subsection 3.7;

11.4.4.2. "suspension" as defined in subsection 3.10; and

11.4.4.3. "revocation" as defined in subsection 3.9;

11.4.5. all interested parties shall be advised of the decision.

11.5. Review of decisions consist of the following:

11.5.1. within ten days after the issuance of a decision, any party may file a written request for reconsideration, stating the specific grounds upon which relief is requested. The filing of the request is not a prerequisite for seeking judicial review of the decision;

11.5.2. the request for reconsideration shall be filed with the board and one copy sent by mail to each party;

11.5.3. the Commissioner or his designee shall issue a written order denying the request or granting the request. The request is deemed to have been denied if the decision is not made within 20 days after the request is filed; and

11.5.4. a party may obtain judicial review of final board action.

R765-171-12. Rules Relating to 53B-5-112.

12.1. Upon request of one or more institutions, the board may, at its discretion, counsel, advise, facilitate cooperation among or otherwise help and assist the requesting institutions in the development or improvement of appropriate postsecondary education programs.

R765-171-21. Rules Relating to 53B-5-201.

21.1. A person may not represent him or herself in a

deceptive or misleading way, such as by the title "Dr." or "Ph.D." if he or she has not satisfied accepted academic or scholastic requirements.

KEY: education, postsecondary proprietary school*, registration
July 2, 1997 53B-5
Notice of Continuation December 3, 1997

R765. Regents (Board of), Administration.
R765-555. Policy on Colleges and Universities Providing Facilities, Goods and Services in Competition with Private Enterprise.
R765-555-1. Purpose.

To establish policy and guidelines on public colleges and universities providing facilities, goods and services in competition with the private sector.

R765-555-2. References.

2.1. 53B-1-103

R765-555-3. Definitions.

3.1. "Institutions" - colleges and universities which are part of the Utah System of Higher Education.

3.2. "Campus Community" - an institution's students, faculty, staff, and campus guests.

3.3. "Services" - an institution's facilities, goods, and services.

R765-555-4. Policy.

Institutions shall not sell or provide services to their campus community or to the general public except as set forth below.

4.1. Services Necessary for the Education of Students or Basic Research - Institutions are expected to provide their campus communities appropriate services which are necessary for the education of students, or the performance of basic research in accordance with the institution's mission as established by the Utah State Board of Regents. This responsibility includes, but is not limited to, instructional, research, and public service programs; libraries; computing programs; and other academic support services.

4.2. Educationally Related Activities - Institutions may provide other services to their campus communities even though such services are practically available elsewhere providing that the services satisfy reasonable educationally related needs of the campus community, e.g. campus newspapers, campus bookstore, campus dining facilities, student housing, etc., and provided such services are not advertised to the general public and are not generally provided to persons who are not members of the campus community.

4.3. Services to Persons Other Than Members of the Campus Community - An institution shall not provide services to persons other than members of the campus community unless:

4.3.1. The service offers a substantial and valuable educational or research experience for registered students and faculty;

4.3.2. The service fulfills the institution's public service mission;

4.3.3. The service is incidental to the ordinary and authorized function of a campus entity, i.e., occasional sales by bookstores, food service, etc., to campus visitors;

4.3.4. The service consists of recreational, cultural, and athletic events; health services and medical treatment; public service radio and TV broadcasting; events or functions which have as their principal purposes the improvement of relations between the institutions and the general public; and sales of contributed services, if related to fund raising activities;

4.3.5. The equivalent service is not available in the local area; or

4.3.6. The service to persons not members of the campus community has been specifically authorized by the State Board of Regents.

4.4. By-Products of Research and Instruction - Surplus Property - Institutions may dispose of by-products of research and instruction undertaken by an institution by sale to persons not members of the campus community, provided such products shall not be sold at less than market value. Institutions may dispose of surplus property by sale to persons not members of the campus community providing such items are disposed of in accordance with state laws.

4.5. Private Enterprise on Campus - Private enterprise entities which operate service or auxiliary units on a campus under contract with an institution are subject to this policy.

4.6. Exceptions Authorized by State Board of Regents - Exceptions to this policy may be authorized by the State Board of Regents if it determines, upon consideration and weighing of the various interests and public policies pertinent to providing the facilities, goods or services in competition with private enterprise, that the public interest favoring an exception outweighs the interest favoring denial of an exception.

KEY: colleges, higher education, free enterprise*, educational policy*
July 2, 1997 53B-8-102
Notice of Continuation April 13, 1998

R765. Regents (Board of), Administration.
R765-993. Records Access and Management.
R765-993-1. Purpose.

To provide policy related to State Board of Regents and Office of the Commissioner records access and management matters pursuant to the Government Records Access and Management Act (GRAMA), Title 63, Chapter 2, Utah Code Annotated 1953.

R765-993-2. References.

2.1. 63-2-204(2)

2.2. 63-2-904(2)

2.4. 53B-16-301 through 305

2.5. The Family Educational Rights and Privacy Act of 1974 (Buckley Amendment), 20 U.S.C. Section 1232g

2.6. Policy and Procedures R132, Government Records Access and Management Act Guidelines

R765-993-3. Definitions.

3.1. Classification - "Classification," "classify," and their derivative forms mean determining whether a record series, record, or information within a record is public, private, controlled, protected, or exempt from disclosure under GRAMA Section 201(3)(b).

3.2. Designation - "Designation," "designate," and their derivative forms mean indicating, based on the Records Officer's familiarity with a record series, the primary classification that a majority of records in a record series would be given if classified.

3.3. Exempt records - "Exempt records" are records to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, such as, for higher education institutions, Restricted Sponsored Research/Technology Transfer Records (53B-16-301 through 305); and The Family Educational Rights and Privacy Act of 1974 (Buckley Amendment), 20 U.S.C. Section 1232g.

R765-993-4. Policy Guidelines.

4.1. Records sub units in the Office of the Commissioner - There shall be two records sub units within the Office of the Commissioner: the general State Board of Regents and Office of the Commissioner records sub unit and the student financial aid records sub unit.

4.2. Records Officers - The Commissioner shall appoint a Records Officer for each sub unit to provide for the care, maintenance, scheduling, disposal, classification, designation, access, and preservation of the records of the sub unit.

4.3. Written requests for access to records - All written requests for access to records shall be directed as follows, and shall be made in a format as specified by the cognizant Records Officer:

4.3.1. General Board of Regents and Office of the Commissioner - Requests for records of general Board of Regents and Office of the Commissioner functions shall be directed to the Records Officer of the State Board of Regents and Office of the Commissioner sub unit.

4.3.2. Student Financial Aid - Requests for records of student financial aid functions shall be directed to the Records Officer of the Student Financial Aid sub unit.

4.4. Officers responsible to undertake the various requirements of GRAMA - The various requirements of GRAMA shall be undertaken, as follows:

4.4.1. Designation of records - The Records Officer shall designate each record or record series retained by the sub unit as either public, private, controlled, protected, restricted under 53B-16-302, or otherwise exempt from disclosure under GRAMA 201(3)(b). The Records Officer shall report the designations to state archives. (See GRAMA Section 306.)

4.4.2. Statement of purpose for collecting information - When the Records Officer designates a record as private or controlled, the Records Officer must also file a statement with state archives explaining the purposes for which the records are collected and used. (See GRAMA Section 601.) The Office may use the record only for the purposes listed in that statement. However, sharing of records with other governmental entities is allowed, subject to the restrictions of GRAMA Section 206.

4.4.3. Weighing of privacy and access interests - The Commissioner may weigh privacy interests against access interests and allow access to specific private or protected records if the interests favoring access outweigh the interests favoring restriction of access. (See GRAMA Section 201(5)(b).)

4.4.4. Appeals to the Commissioner - Appeals regarding questions of access to records shall be directed to the Commissioner. (See GRAMA Section 401.)

4.4.5. Fees - If duplication, or compilation of records in a form other than that maintained, is necessary, the cognizant Records Officer may charge a fee to the requestor of the records to cover the actual cost of duplicating or compiling the records. (See GRAMA Section 203(3).)

4.4.6. Access for research purposes - The cognizant Records Officer may make determinations regarding requests for access to records for research purposes, as provided by GRAMA Section 202(3).

4.4.7. Intellectual property rights - The Commissioner shall make determinations regarding the duplication and distribution of materials held by either sub unit and for which the State Board of Regents or Office of the Commissioner owns the intellectual property rights, as permitted by GRAMA Section 201(10).

4.4.8. Sponsored research and technology transfer - The Commissioner may restrict access to portions of technology transfer and sponsored research records for the purpose of securing and maintaining proprietary protection of intellectual property rights, or for competitive or proprietary purposes as a condition of actual or potential participation in a sponsored research or technology transfer agreement, as provided by sections 53B-16-301 through 305.

4.4.9. Written claim of business confidentiality - A Records Officer may accept a written claim of business confidentiality in a form specified by the Records Officer and subject to the Records Officer's review of the claim for reasonableness. (See GRAMA 304(2) and 308.)

4.4.10. Segregation - A Records Officer may choose to segregate records or information within records that a future requester will be entitled to inspect, from records or information within records that the requester will not be entitled to inspect, in order to simplify the segregation process at the time the

request for access is made. (See GRAMA Section 307.)

4.5. Appeals of the accuracy or completeness of personal records - An individual may contest the accuracy or completeness of records concerning him or her. Appeals from such decisions are governed by the Utah Administrative Procedures Act (UAPA). Appeals from such decisions shall be conducted informally rather than formally pursuant to R134, Informal Adjudicative Proceedings Under the Utah Administrative Procedures Act. (See GRAMA Section 603.)

4.6. Anonymity of donors and prospective donors - A donor or prospective donor may request anonymity in writing. The written request shall be submitted to a Records Officer and shall be accompanied by a written statement which does not reveal the identity of the donor or prospective donor but which contains any terms, conditions, restrictions, or privileges relating to the donation, which information may not be classified protected by the Office of the Commissioner under GRAMA Section 304(36).

KEY: colleges, higher education, records access, records management

July 2, 1997	**63-2**
Notice of Continuation April 13, 1998	**53B-7**
	53B-16

R909. Transportation, Motor Carrier.
R909-1. Safety Regulations for Motor Carriers.
R909-1-1. Adoption of Federal Regulations.

A. Safety Regulations for Motor Carriers, 49 CFR Parts 350 through the end of part 399, and their amendments as of February 1, 1998, in the October 1, 1997 Edition as printed in the Regulations Management Corporation Service, are incorporated by reference, except for parts 395.1(l), 395.1(m), 395.1(n) and 395.1(o). This applies to all motor carrier(s) as defined in CFR Title 49 Part 390.5 engaged in Interstate and/or Intrastate Commerce.

B. In the instance of a driver who is used primarily in the transportation of construction materials and equipment, as defined under 395.2, to and from an active construction site, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 36 or more successive hours.

KEY: trucks, transportation safety
May 1, 1998 **27-17-103**
Notice of Continuation March 31, 1997 **27-17-104**
54-6-9
63-49-4